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Transcript Exhibit(s)

Docket #(s): T-01051B-02-0871

Exhibit # : Q1, Q2, AT&T1, AT&T2, AT&T3, AT&T4, AT&T5, AT&T6, AT&T7, AT&T8, S1, S2, S3

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BEFORE THE ARIZONA CORPORATION COMMISSION

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Commissioner
WILLIAM MUNDELL
Commissioner
JEFF HATCH-MILLER
Commissioner
MIKE GLEASON
Commissioner

ARIZONA CORPORATION COMMISSION, Complainant, v. QWEST CORPORATION, Respondent.	DOCKET NO. T-01051B-02-0871 **QWEST CORPORATION'S NOTICE OF FILING REBUTTAL TESTIMONY**

Qwest Corporation ("Qwest") hereby provides notice of filing the William R. Easton Rebuttal Testimony in the above referenced matter.

DATED this 15th day of May 2003.

FENNEMORE CRAIG

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COMMISSIONER
JEFF HATCH-MILLER
COMMISIONER

ARIZONA CORPORATION COMMISSION	)	
	)	
Complainant,	)	
	)	
v.	)	
	)	DOCKET NO. T-01051B-02-0871
QWEST CORPORTATION	)	
	)	
Respondent	)	
	)	
_____	)	

REBUTTAL TESTIMONY OF

WILLIAM R. EASTON

QWEST CORPORATION

May 15, 2003

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I. EXECUTIVE SUMMARY

On June 12, 2002 the Arizona Corporation Commission adopted Decision No. 64922 authorizing revised wholesale rates. Due to the complexities involved in implementing the order and cost docket implementation work in other states, Qwest did not finish the implementation until December 2002. Qwest acknowledges that its communications with regard to the implementation process for the wholesale rate changes ordered by the Commission were inadequate. To properly fulfill its obligations to both its customers and this Commission, Qwest should have communicated its timeline for implementation of the Commission's order to the Commission Staff and other affected parties. Qwest is committed to proactively communicating future implementation timelines and plans with the Commission, its Staff and interested parties and to ensuring that future wholesale rate changes are made more quickly. In fact, Qwest has already undertaken system and process changes to provide for a quicker and more efficient method of rate implementation. Because Qwest has heard and responded to the Commission's concerns and because, as Staff has acknowledged, the CLECs were not harmed by Qwest's actions, Qwest respectfully submits that a finding that Qwest is in contempt and the imposition of fines is not necessary or appropriate.

II. IDENTIFICATION OF WITNESS

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

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. PLEASE REVIEW YOUR EDUCATIONAL BACKROUND AND PROFESSIONAL EXPERIENCE.

A. I graduated from Stanford University in 1975, earning a Bachelor of Arts degree. In 1980, I received a Masters of Business Administration from the University of Washington. In addition, I am a Certified Management Accountant and member of the Institute of Management Accountants.

I began working for Pacific Northwest Bell in 1980, and have held a series of jobs in financial management with U S WEST, and now with Qwest, including staff positions in the Treasury and Network organizations. From 1996 through 1998, I was Director – Capital Recovery. In this role I negotiated depreciation rates with state commission and FCC staffs and testified in various regulatory proceedings. From 1998 until 2001 I was a Director of Wholesale Finance. In this capacity I worked closely with the Product Management organization on their product offerings. In October of 2001 I moved from Wholesale Finance to the Wholesale

Advocacy group, where I am currently responsible for advocacy related to Wholesale products and services. In this role I work extensively with the Product Management, Network and Costing organizations.

Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE THE ARIZONA CORPORATION COMMISSION?

A. Yes. I have testified previously in Docket Nos. T-01051B-97-0689 and U-3021-96-448

III. PURPOSE OF TESTIMONY

Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?

A. The purpose of my testimony is to respond to the testimony of Matthew Rowell of the Arizona Corporation Commission Staff and John Finnegan of AT&T. In my testimony, I will discuss the background of the implementation of the Arizona cost docket, the process that is followed in implementing a cost docket order and the improvements that have been and are being made to this process. I will then respond to the specific issues raised in the testimony of Staff and AT&T.

IV. BACKGROUND

Q. PLEASE PROVIDE SOME BACKROUND ON THE IMPLEMENTATION OF THE ARIZONA COST DOCKET ORDER?

A. On June 12, 2002 the Arizona Corporation Commission adopted Decision No. 64922 authorizing revised wholesale rates. The order did not specify an implementation date but did require Qwest to make a compliance filing containing the price list agreed to by the parties within 30 days. Qwest filed a Notice of Compliance on June 26, 2002 and began implementing the new rates. On October 7, 2002 AT&T sent a letter to the Arizona Corporation Commission expressing concerns about the amount of time the implementation of the Arizona wholesale rates was taking. Qwest responded to AT&T on October 16, 2002 that implementation of the Arizona rates was being dealt with as quickly as possible and that, based on the current implementation schedule, it was projected that the rate implementation would be completed sometime in mid-December 2002.

Qwest completed the rate implementation for all companies except five wireless companies on December 15, 2002. The rate changes for the wireless companies were completed on December 23, 2002. These new rates were applied back to the effective date of the Decision. As a part of this back billing process, CLECs were issued credits and were paid interest on the difference between what they had previously been billed and the billable amounts using the new rates.

Despite the fact that Qwest believes the above actions place Qwest in compliance with the Commission's Order, Qwest acknowledges that its communications with regard to the implementation process for the wholesale rate changes ordered by the Commission were inadequate. To properly fulfill its obligations to both its customers and this Commission, Qwest should have communicated its timeline for implementation of the Commission's order to the Commission Staff and other affected parties. Although Qwest's conduct in this matter was not intentional, Qwest acknowledges the role it played in creating this situation and pledges to work cooperatively with the Commission, its Staff and interested parties to ensure that future rate changes are made in a timelier manner. A later section in this testimony will discuss the steps Qwest has taken and is taking to ensure that future wholesale rate changes go more smoothly and quickly.

V. COST DOCKET IMPLEMENTATION

Q. COULD YOU PLEASE DESCRIBE THE PROCESS THAT QWEST GOES THROUGH TO IMPLEMENT COST DOCKET RATES?

A. Implementation of a cost docket is an extremely complex undertaking. Qwest's cost docket implementation process consists of three (3) primary phases: the Initiation Phase, the Contract Implementation Phase, and the I.T. Rate Implementation Phase. Once these Phases are completed there is an additional

work effort required to determine what, if any, true up is required pursuant to the Commission's Decision or language in CLEC contracts.

The Initiation Phase occurs once the decision of the Commission in the cost docket becomes final. This Phase involves at least 13 individuals representing each of the business entities within Qwest that are charged with implementing the Commission's decision. The entities include representatives from Wholesale, Product Management, Business Development and Contract Development & Services. During this Phase, the Commission's order is evaluated and analyzed to determine the scope of work necessary to implement each of the rates. Issues raised by the Decision are assigned for resolution within the appropriate business units, legal interpretation is provided and operational impacts are also addressed in this Phase. The rates are then mapped into existing CLEC contracts and the new rate information is sent on to the departments charged with posting the new rate information on internal websites, determining the application of the rates to each CLEC and preparing the necessary documentation to incorporate the new rates into the various billing systems. Twenty-five business days are normally scheduled for the work required in this Phase. However, that time period may vary depending on the size, scope and complexity of the docket to be implemented, the number of CLEC contracts to which the rates need to be applied and the workload of implementation activities associated with cost dockets from other jurisdictions.

The Contract Implementation Phase involves over 23 individuals – again representing the business units responsible for the tasks necessary to complete this Phase including the Cost Docket Coordinator, the Contract Implementation Team for IABS, the Contract Implementation Team for CRIS, representatives from CPMC (collocation), Product Process representatives and the Program Management Organization. Activities include preparing the documents necessary to build new rate tables, performing quality and accuracy checks of the rate information, data entry associated with inputting the rates into the system, CLEC notification of updated rate sheets associated with their contract, creating documentation necessary for any new rate elements or structure changes, and determining cost of and establishing priority for the systems modifications. Twenty business days are normally scheduled for the work required in this Phase. Again, that time period may vary, depending on the size and scope of the docket to be implemented, the number of CLEC contracts to which the rates need to be applied and the workload of implementation activities associated with cost dockets from other jurisdictions.

The I.T. Rate Implementation Phase involves at least 13 individuals representing the various billing systems (CRIS, IABS, LEXCIS). These individuals receive all of the documentation from work done in previous phases and are responsible for updating the system tables, making system modifications where necessary to accommodate the rate changes and completing the tasks necessary to have the new rates reflected on the CLEC bills. This Phase is normally scheduled for

completion within 15 business days, with variance possible due to complexity or workload demands.

This wholesale rate implementation process is followed in all fourteen Qwest service states.

Q. YOU MENTIONED THAT A "TRUE UP" MAY BE NECESSARY AFTER THE ABOVE PROCESS IS FOLLOWED. PLEASE EXPLAIN.

A. The process I have just described places rates into the billing systems on a going forward basis and also provides for "back billing", which is the process of making billing adjustments back to the effective date of the order or to a date designated by the Commission. In addition to these two steps, there may also be a third step called "true up", which would apply the new rates to a period prior to the effective date of the order. A true up is necessary if individual interconnection agreements call for interim rates to be adjusted to reflect a Commission decision in a cost docket. The primary application of true ups is when a rate element is being addressed for the first time by the Commission. To determine if a true up is necessary, a review of all interconnection agreements in the state must be conducted to see if there is contract language related to the retroactive application of cost docket rates. If there is such language, true up adjustment amounts are calculated for that carrier.

Q. WHY IS THE COST DOCKET RATE IMPLEMENTATION PROCESS SO COMPLEX?

A. The process is complex due to the existence of a large number of rate elements, multiple billing systems and the fact that changes must be made on a carrier by carrier basis.

Q. WHY IS IT NECESSARY TO MAKE THE CHANGES ON A CARRIER BY CARRIER BASIS?

A. Existing contracts with CLECs have been negotiated and arbitrated at various points in time since the passage of the 1996 Telecommunications Act. As a result, contractual provisions and structure concerning rates varies. When the Commission orders a new rate element or changes a rate element structure, each contract must be analyzed to determine how the change impacts that particular contract. For example, an early interconnection agreement for CLEC "XYZ" may have different product names or rate elements than those identified in the Commission's cost docket decision, making a manual review of the contract necessary to determine how the Commission's order applies to "XYZ." Such review and analysis is critical to ensure that CLECs are treated fairly. This makes implementing cost docket rates significantly more complicated than merely changing rates in a table.

Q. DO ALL COST DOCKET ORDERS TAKE THE SAME AMOUNT OF TIME TO IMPLEMENT?

A. No. The amount of time depends on numerous factors, including the number of rate elements, the number of CLECs and whether system changes are required to implement the new rates. Other factors include the number of other states with cost docket orders to implement and the resources available to accomplish the task.

Q. HOW MANY RATE ELEMENTS WERE INVOLVED IN THE ARIZONA COST DOCKET IMPLEMENTATION?

A. There were 547 rate elements involved in the implementation of the Arizona order. It is important to note that the implementation involved more than just a change of rates. The Arizona order also involved a restructuring of rate elements themselves, which necessitated further work effort and involved billing system changes.

Q. PLEASE EXPLAIN THE SYSTEM CHANGES ASSOCIATED WITH DECISION NO. 64922?

A. During the implementation process Qwest determined that billing system modifications would be required to establish the capability to identify, provision and bill for several elements ordered in Decision No. 64922. The Commission's decision modified the methodology for deaveraging from distance-based to wire center-based. This required system changes to accommodate the new structure and allow for proper billing for EEL DS1, EEL DS3, Unbundled Loops, Sub

Loops, UNE-P PRI and UNE-P DSS. Approximately 255 hours of coding time were required to make this system change.

Q. HOW MANY CLECS WERE INVOLVED IN THE ARIZONA COST DOCKET IMPLEMENTATION?

A. 126 CLECs and 11 wireless service providers. As I mentioned previously, implementation must take place at a CLEC by CLEC level. In Arizona this meant researching and determining how the Commission ordered rates impacted each of these 137 customers.

Q. WAS QWEST ALSO WORKING ON IMPLEMENTING OTHER COST DOCKET ORDERS DURING THIS SAME TIME FRAME?

Yes. During this same time period Qwest was in the process of implementing cost docket orders for a number of other states. Listed below are the cost docket implementations that Qwest was working on during this time period and the amount of time that each implementation took:

Arizona	122 Business Days
Colorado	122 Business Days
Iowa	110 Business Days
Montana	120 Business Days

Nebraska	73 Business Days[1]
Utah	81 Business Days
Washington	157 Business Days
Wyoming	138 Business Days

It should be noted that Qwest implemented all these comprehensive cost dockets sequentially in the order of their effective dates.

Q. WHAT DO YOU CONCLUDE FROM THIS LIST?

A. Two conclusions can be drawn from this list. First, there was a significant amount of implementation work going on during this period. Second, the times to implement Arizona are comparable to those experienced in other states. The next section of this testimony describes the steps Qwest has taken to expedite the rate implementation process.

VI. PROCESS ENHANCEMENTS

Q. WHAT STEPS HAS QWEST TAKEN TO SPEED UP THE IMPLEMENTATION PROCESS FOR FUTURE COST DOCKET ORDERS?

[1] The Nebraska PUC's order required implementation by a specific date.

A. Even before issues arose over the implementation of the Arizona rates, Qwest began conducting a full re-examination of its rate implementation processes and procedures with the goal to shorten the implementation cycle time through process improvements and increased automation. Toward that end, Qwest has:

- Designated a Program Management Office to oversee the implementation process – ensuring that implementation schedules are adhered to and opportunities for process improvement are explored and acted upon.

- Established a Cost Docket Governance Team comprised of executive level personnel from the organizations within the company with primary involvement and responsibility for cost docket implementation. Those organizations include: Wholesale Product Management, Wholesale Service Delivery, and Public Policy. The purpose of the Governance Team is to provide both an oversight role and to serve as an escalation point for issues or obstacles that may arise during the implementation process. The Team has scheduled meetings every two weeks, but may meet more frequently if issues arise that require immediate resolution.

- Engaged outside consultants to provide recommendations for automation of as many of the processes associated with cost docket implementation as possible.

- Set a schedule for delivery of mechanized solutions.

- Modified its Communications process for CLECs to require correspondence to all wholesale customers at critical process points, including:
    1. Immediately after the issuance of a final Commission Order
    2. Immediately after rate sheets are updated
    3. Immediately prior to the introduction of new Commission-approved rates to wholesale customer bills

These process changes are not exhaustive of future actions Qwest may take in this area; however, they do represent a necessary and appropriate first step toward addressing the concerns identified in the Commission's Show Cause Order. Qwest is confident that these changes will result in the timelier implementation of future cost docket orders.

VII. TESTIMONY OF MATTHEW ROWELL

Q. STAFF RECOMMENDS THAT QWEST BE FINED FOR FAILING TO IMPLEMENT RATES IN A REASONABLE PERIOD. PLEASE RESPOND.

A. As I testified previously, Qwest acknowledges that the implementation process took longer than the Commission, the CLECs and Qwest would like to see and has taken steps to ensure that future rate changes will be made more quickly.

As to the question of fines, however, I would have to disagree with Staff. Decision No. 64922 did not specify an implementation date. Page 13 of Mr. Rowell's testimony states that it is Staff's opinion that Decision No. 64922 required Qwest to implement the rates "immediately". This conclusion is not supported by the language in the order and, given the need for the parties to agree upon the rates for the compliance filing, is not reasonable. In fact, Decision No. 64922 stated that the rates shall be "effective" immediately, not "implemented" as Staff contends, and gives the parties an additional 30 days to agree to the ordered rates. In its implementation of the rates, Qwest followed the order by using the date of the decision as the effective date.

The more important questions here are ones of intent and harm. Qwest did not intentionally delay the implementation of the Arizona rates and, in fact, would have no incentive to delay the implementation, as a delay would only increase the amount of back billing work required by Qwest. As to the question of harm, Mr. Rowell acknowledges on page 16 of his testimony that the CLECs have been made whole. Based on this, as well as the actions Qwest has taken to improve the process, I do not believe that fines are appropriate or necessary.

Q. IF THE COMMISSION DOES DECIDE THAT FINES ARE NECESSARY, WHAT DO YOU BELIEVE SHOULD BE THE STARTING POINT OF THE CALCULATION?

A. Although Staff recommends a starting point 60 days from the date of the order, a more appropriate starting point would be 60 days from the date of the June 26, 2002 compliance filing.

Q. STAFF CONTENDS THAT QWEST DELIBERATELY DELAYED THE IMPLEMENTATION OF THE ARIZONA RATES UNTIL IT HAD IMPLEMENTED WHOLESALE RATE CHANGES IN OTHER STATES WHERE 271 APPLICATIONS WERE PENDING AND THAT QWEST SHOULD BE FOUND IN CONTEMPT. DO YOU AGREE?

A. No. As I mentioned previously, Qwest implemented all comprehensive cost dockets, such as Arizona, sequentially in the order of their effective dates. Only certain voluntary rate reductions were implemented prior to the implementation of the Arizona wholesale rates. Since these rate changes were made based on reference to benchmark rates adopted in Colorado, it was more efficient to implement the voluntary changes on an integrated basis. In addition, the complexity of the benchmark rate changes was significantly less than that required for a cost docket order such as the Arizona order. The number of benchmark rate changes was substantially smaller in number than the changes for Arizona: an average of 35 versus the 547 rate element changes in Arizona. Most significantly, the benchmark changes did not require CLEC by CLEC true ups, a determination of how the rate changes applied to a given CLEC's contract or any restructuring of the rate elements and the necessary system changes that restructuring entails.

Q. PLEASE EXPLAIN WHAT IS MEANT BY "BENCHMARK RATES"?

A. The FCC utilized a process they termed "Benchmarking" in its evaluation of UNE prices for states that applied for 271 approval. This benchmarking process compared rates from one state to another state's rates. For example, when Oklahoma's rates were being evaluated for TELRIC compliance, the FCC was not satisfied that Oklahoma's rates were completely compliant with TELRIC principles. The FCC then compared Oklahoma's rates for basic UNE elements to those same element rates from Texas, where UNE rates had already been evaluated and deemed to be TELRIC compliant. When the FCC made the comparison they found that Oklahoma's rates were within a zone of reasonableness when adjusted by the FCC Universal Service Fund (USF) cost model for state cost differences. Qwest utilized the FCC benchmarking approach proactively in its 271 (nine state) applications. Qwest made the same comparison of rates as the FCC by comparing eight states rates to the Colorado rates (which Qwest felt were TELRIC compliant). Where certain rates were higher than the Colorado benchmark, Qwest voluntarily lowered the rate to be the equivalent of the Colorado rate adjusted by the FCC USF cost model state differences. The FCC accepted this approach and has found both the Colorado rates to be TELRIC compliant, and each state's evaluation and adjusted rates to be within the zone of reasonableness of TELRIC. Qwest implemented these limited rate changes as part of an integrated project.

Q. SO YOU DO NOT FEEL THAT FINES ARE WARRANTED FOR IMPLEMENTING THESE BENCHMARK RATES DURING THE SAME TIME PERIOD ARIZONA WAS BEING IMPLEMENTED?

A. No. Fines are not appropriate given the unique nature of the benchmark rate reductions. To the extent that the Commission feels that fines are warranted, however, it needs to consider the number of days for which fines apply. Staff has not demonstrated that 126 days is the appropriate number. Given that Qwest was working simultaneously on implementing a number of cost docket orders in addition to the benchmark rate reductions, it is difficult to argue that the entire delay of 126 days is attributable to the benchmark rate reductions.

Q. STAFF RECOMMENDS THAT QWEST IMPLEMENT A BILLING AND SYSTEMS PROCESS WHICH WILL ALLOW IT TO IMPLEMENT WHOLESALE RATE CHANGES IN 30 DAYS. PLEASE COMMENT.

A. Qwest has acknowledged the need for a revised process and, as I noted previously, has taken steps to put such a process into place. However, the requirement that the process allow for a rate change in 30 days appears to be overly stringent. Given Staff's conclusion on page 14 of Mr. Rowell's testimony that sixty days is a reasonable time period for the implementation of new rates, Mr. Rowell's selection of 30 days on page 20 of his testimony is puzzling. Qwest believes 90 calendar days, with a true up to follow, is a more reasonable time frame for the implementation of new wholesale rates, balancing the needs for

timely implementation with the recognition that this is a complex, time consuming process.

Q. IS STAFF'S PROPOSAL THAT QWEST SHOULD HIRE AN INDEPENDENT AUDITOR TO EVALUATE THE EFFECTIVENESS OF THE PROCESS AND SYSTEMS CHANGES NECESSARY?

A. No. The Commission's legitimate concern is that Qwest implement the rates in a timely manner; the specifics of the system that Qwest uses to accomplish that need not be the concern of Staff or the Commission or require review by an outside auditor. In fact, as I noted previously, Qwest hired an outside consultant to make process improvement recommendations. The best way for the Commission to ensure timely implementation is to adopt Qwest's recommended timeframe (90 days, with true up to follow) for use in future wholesale cost dockets.

VIII. TESTIMONY OF JOHN FINNEGAN

Q. MR. FINNEGAN CONCLUDES THAT THERE IS NO REASON WHY THE PROCESS TO CHANGE WHOLESALE RATES NEEDS TO BE MORE CUMBERSOME THAN THAT EMPLOYED TO CHANGE RETAIL RATES. DO YOU AGREE?

A. No. While this suggestion may appear reasonable on its face, it ignores the significant differences that exist between the wholesale and retail billing processes. Decision 94622 required Qwest to identify and implement hundreds of changes to USOCs. Typical retail rate changes involve far fewer changes. Given the nature of a cost docket, it is difficult to anticipate and plan for each potential outcome prior to the final determination by the Commission, greatly limiting the amount of preparation that can be done before a decision is issued.

A second major difference between wholesale and retail rate changes is that there are no contract specific elements for retail customers. As I discussed previously, wholesale rate implementation must occur at a CLEC by CLEC level due to differences in the interconnection agreements.

Q. ON PAGE 6 OF HIS TESTIMONY MR. FINNEGAN INSINUATES THAT QWEST IS OFFERING DISCRIMINATORY PRICING BETWEEN CLECS. PLEASE COMMENT.

A. Mr. Finnegan is aware that the Telecommunications Act prohibits discriminatory pricing. Mr. Finnegan is also aware that the FCC has concluded that Qwest's prices and policies are in compliance with the Act.

Q. IS THE PERFORMANCE MEASUREMENT THAT MR. FINNEGAN PROPOSES ON PAGE 6 AND 7 OF HIS TESTIMONY NECESSARY?

A. No. Qwest has taken the necessary steps to ensure future cost docket implementation timelines are communicated to the Arizona Corporation Commission, its Staff and other interested parties and subsequent rate changes are implemented in a timely manner. Therefore, a specific performance measurement is not necessary.

IX. SUMMARY AND CONCLUSION

Q. PLEASE SUMMARIZE YOUR TESTIMONY.

A. Nothing can change the fact that Qwest did not communicate better with Staff concerning its implementation plans and the time it took for Qwest to complete implementation. It is, however, important for the Commission to ensure that wholesale customers were not harmed by implementation delays and that future implementations happen in a timelier manner. As Staff has noted, wholesale customers have been compensated for any delay through the calculation of interest amounts. In addition, Qwest has already undertaken system and process improvements to ensure future rate changes go more smoothly and quickly. Finally, Qwest is committed to proactively communicating future implementation timelines and plans with the Commission, its Staff and interested parties. Because Qwest has heard and responded to the Commissions concerns and because, as Staff has acknowledged, the CLECs were not harmed

by Qwest's actions, Qwest respectfully submits that a finding that Qwest is in contempt and the imposition of fines is not necessary or appropriate.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes it does. Thank you.

BEFORE THE ARIZONA CORPORATION COMMISSION

MARC SPITZER
Chairman
JAMES M. IRVIN
Commissioner
WILLIAM MUNDELL
Commissioner
JEFF HATCH-MILLER
Commissioner
MIKE GLEASON
Commissioner

ARIZONA CORPORATION COMMISSION Complainant, v. QWEST CORPORATION, Respondent.	)	Docket No. T-01051B-02-0871
STATE OF WASHINGTON COUNTY OF KING	)	AFFIDAVIT OF WILLIAM R. EASTON

William R. Easton, of lawful age being first duly sworn, deposes and states:

1. My name is William R. Easton. I am Director – Wholesale Advocacy of Qwest Corporation in Seattle, Washington. I have caused to be filed written rebuttal testimony and exhibits in support of Qwest Corporation in Docket No. T-01051B-02-0871.

2. I hereby swear and affirm that my answers contained in the attached testimony to the questions therein propounded are true and correct to the best of my knowledge and belief.

Further affiant sayeth not.

William R. Easton

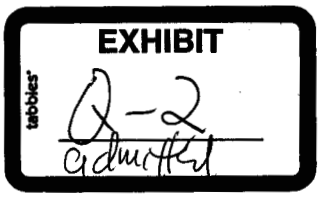
SUBSCRIBED AND SWORN to before me this 9th day of May, 2003.

Lori L. White
Notary Public residing at
Seattle, Washington

My Commission Expires: 7/10/03

LORI L. WHITE
COMMISSION EXPIRES
NOTARY PUBLIC
7-10-03
STATE OF WASHINGTON

Before the
Federal Communications Commission
Washington, D.C. 20554



In the Matter of	)	
	)	
Application by Qwest Communications	)	
International, Inc. for Authorization To	)	WC Docket No. 03-11
Provide In-Region, InterLATA Services in	)	
New Mexico, Oregon and South Dakota	)	

MEMORANDUM OPINION AND ORDER

Adopted: April 15, 2003 **Released:** April 15, 2003

By the Commission: Commissioner Copps concurring and issuing a statement; Commissioner Martin approving in part, concurring in part, and issuing a statement; Commissioner Adelstein issuing a statement.

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APPENDIX F – STATUTORY REQUIREMENTS

I. INTRODUCTION

1. On January 15, 2003, Qwest Communications International, Inc. filed this multi-state application on behalf of itself and its subsidiaries, Qwest Corporation and Qwest LD Corporation and Qwest Communications Corporation (collectively "Qwest") pursuant to section 271 of the Communications Act of 1934, as amended,[1] for authority to provide in-region, interLATA service in New Mexico, Oregon and South Dakota.[2] In this Order, we grant Qwest's

[1] We refer to the Communications Act of 1934, as amended by the Telecommunications Act of 1996 and other statutes, as "the Communications Act" or "the Act." *See* 47 U.S.C. §§ 151 *et seq*. We refer to the Telecommunications Act of 1996 as "the 1996 Act." *See* Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996).

[2] *See Application by Qwest Communications International Inc. for Authority to Provide In-Region, InterLATA Services in New Mexico, Oregon, and South Dakota*, WC Docket No. 03-11 (filed Jan. 15, 2003) (Qwest Application).

Appendix F
Statutory Requirements

I. STATUTORY FRAMEWORK

1. The 1996 Act conditions BOC entry into the market for provision of in-region interLATA services on compliance with certain provisions of section 271.[1] BOCs must apply to the Federal Communications Commission (Commission or FCC) for authorization to provide interLATA services originating in any in-region state.[2] The Commission must issue a written determination on each application no later than 90 days after receiving such application.[3] Section 271(d)(2)(A) requires the Commission to consult with the Attorney General before making any determination approving or denying a section 271 application. The Attorney General is entitled to evaluate the application "using any standard the Attorney General considers appropriate," and the Commission is required to "give substantial weight to the Attorney General's evaluation."[4]

2. In addition, the Commission must consult with the relevant state commission to verify that the BOC has one or more state-approved interconnection agreements with a facilities-based competitor, or a Statement of Generally Available Terms and Conditions (SGAT), and that either the agreement(s) or general statement satisfy the "competitive checklist."[5] Because the Act does not prescribe any standard for the consideration of a state commission's verification under section 271(d)(2)(B), the Commission has discretion in each section 271 proceeding to

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[1] For purposes of section 271 proceedings, the Commission uses the definition of the term "Bell Operating Company" contained in 47 U.S.C. § 153(4).

[2] 47 U.S.C. § 271(d)(1). For purposes of section 271 proceedings, the Commission utilizes the definition of the term "in-region state" that is contained in 47 U.S.C. § 271(i)(1). Section 271(j) provides that a BOC's in-region services include 800 service, private line service, or their equivalents that terminate in an in-region state of that BOC and that allow the called party to determine the interLATA carrier, even if such services originate out-of-region. *Id.* § 271(j). The 1996 Act defines "interLATA services" as "telecommunications between a point located in a local access and transport area and a point located outside such area." *Id.* § 153(21). Under the 1996 Act, a "local access and transport area" (LATA) is "a contiguous geographic area (A) established before the date of enactment of the [1996 Act] by a [BOC] such that no exchange area includes points within more than 1 metropolitan statistical area, consolidated metropolitan statistical area, or State, except as expressly permitted under the AT&T Consent Decree; or (B) established or modified by a [BOC] after such date of enactment and approved by the Commission." *Id.* § 153(25). LATAs were created as part of the Modification of Final Judgment's (MFJ) "plan of reorganization." *United States v. Western Elec. Co.*, 569 F. Supp. 1057 (D.D.C. 1983), *aff'd sub nom. California v. United States*, 464 U.S. 1013 (1983). Pursuant to the MFJ, "all [BOC] territory in the continental United States [was] divided into LATAs, generally centering upon a city or other identifiable community of interest." *United States v. Western Elec. Co.*, 569 F. Supp. 990, 993-94 (D.D.C. 1983).

[3] 47 U.S.C. § 271(d)(3).

[4] *Id.* § 271(d)(2)(A).

[5] *Id.* § 271(d)(2)(B).

e. Maintenance and Repair

38. A competing carrier that provides service through resale or UNEs remains dependent upon the incumbent LEC for maintenance and repair. Thus, as part of its obligation to provide nondiscriminatory access to OSS functions, a BOC must provide requesting carriers with nondiscriminatory access to its maintenance and repair systems.[116] To the extent a BOC performs analogous maintenance and repair functions for its retail operations, it must provide competing carriers access that enables them to perform maintenance and repair functions "in substantially the same time and manner" as a BOC provides its retail customers.[117] Equivalent access ensures that competing carriers can assist customers experiencing service disruptions using the same network information and diagnostic tools that are available to BOC personnel.[118] Without equivalent access, a competing carrier would be placed at a significant competitive disadvantage, as its customer would perceive a problem with a BOC's network as a problem with the competing carrier's own network.[119]

f. Billing

39. A BOC must provide nondiscriminatory access to its billing functions, which is necessary to enable competing carriers to provide accurate and timely bills to their customers.[120] In making this determination, the Commission assesses a BOC's billing processes and systems, and its performance data. Consistent with prior section 271 orders, a BOC must demonstrate that it provides competing carriers with complete and accurate reports on the service usage of competing carriers' customers in substantially the same time and manner that a BOC provides such information to itself, and with wholesale bills in a manner that gives competing carriers a meaningful opportunity to compete.[121]

g. Change Management Process

40. Competing carriers need information about, and specifications for, an incumbent's systems and interfaces to develop and modify their systems and procedures to

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[116] *Id.* at 4067, para. 212; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20692; *Ameritech Michigan Order*, 12 FCC Rcd at 20613, 20660-61.

[117] *Bell Atlantic New York Order*, 15 FCC Rcd at 4058, para. 196; *see also Second BellSouth Louisiana Order*, 13 FCC Rcd at 20692-93.

[118] *Bell Atlantic New York Order*, 15 FCC Rcd at 4058, para. 196.

[119] *Id.*

[120] *See SWBT Texas Order*, 15 FCC Rcd at 18461, para. 210.

[121] *See id.*; *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6316-17, at para. 163.

EXHIBIT
AT&T-1
admitted

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

MARC SPITZER, Chairman
JIM IRVIN
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
MIKE GLEASON

ARIZONA CORPORATION COMMISSION Complainant. v. QWEST CORPORATION Respondent.	DOCKET NO. T-01051B-02-0871

DIRECT TESTIMONY

OF

JOHN F. FINNEGAN

ON BEHALF OF

AT&T COMMUNICATIONS OF THE MOUNTAIN STATES, INC.,

April 28, 2003

I. INTRODUCTION

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

A. My name is John F. Finnegan. My business address is 1875 Lawrence St., Denver CO, 80202. I am a Senior Policy Witness in AT&T's Law and Government Affairs organization.

Q. PLEASE PROVIDE YOUR BACKGROUND AND PROFESSIONAL EXPERIENCE AS THEY RELATE TO THE ISSUES IN THIS PROCEEDING.

A. My education and relevant work experience are as follows. I have a B.S. in Engineering from the Rutgers College of Engineering and an M.B.A. from the University of Denver. I have worked for AT&T for almost 20 years. After graduating from Rutgers, I spent the next two years with Combustion Engineering in Valley Forge, PA as a Project Engineer. In 1983, I joined AT&T as a purchased product engineer. Over the next 12 years, I spent time with AT&T in a variety of engineering, quality management, sales and marketing positions. Almost half of that time was spent leading a supplier quality management organization.

In 1995, I joined AT&T's New Markets Development Organization and was one of the first employees in AT&T's Western Region to explore the opportunities associated with providing local exchange services. In 1996, I began in my current position. Recently, I have concentrated my work efforts on collaborating with Qwest, competitive local exchange carriers ("CLECs") and state regulators on

understanding and evaluating Qwest's operational support system ("OSS"). I have been AT&T's representative in the Arizona and the Regional Oversight Committee's ("ROC") OSS tests since their inception. I am a frequent panelist on ROC OSS discussions, and I have testified in proceedings in Kansas, Iowa, Minnesota, Arizona, Montana, Wyoming, Utah, Idaho, Colorado, Washington, North Dakota, South Dakota, Nebraska, Oregon, and New Mexico.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. The purpose of my testimony is to respond to the Direct Testimony of Matthew Rowell. I will also provide AT&T's perspective on the Arizona Corporation Commission's ("Commission") Complaint and Order to Show Cause ("OSC") against Qwest Corporation ("Qwest") regarding its failure to implement wholesale rates ordered in Decision No. 64922 in a timely fashion.

II. COUNT III – UNREASONABLE WHOLESALE RATE CHANGE SYSTEMS DESIGN AND PROCESS

Q. DOES AT&T SUPPORT STAFF WITNESS MATTHEW ROWELL'S RECOMMENDATION THAT QWEST BE ORDERED TO IMPLEMENT BILLING AND SYSTEMS PROCESS CHANGES THAT WILL ALLOW IT TO IMPLEMENT WHOLESALE RATES WITHIN 30 DAYS AND THAT SUCH CHANGES BE IMPLEMENTED WITHIN FOUR MONTHS OF A DECISION IN THIS DOCKET?[1]

A. Yes, AT&T does support that recommendation.

Q. WHY?

A. AT&T believes that Qwest has designed its wholesale billing systems in a manner that makes wholesale rate changes unnecessarily complex, cumbersome and slow to implement. In contrast, Qwest has designed its retail billing systems in a

[1] Direct Testimony of Matthew Rowell, p. 20.

manner that permits it to implement retail rate changes much faster and more efficiently for retail customers than for CLECs. AT&T and the Staff view the differences between the CLEC and retail rate change processes as discriminatory. Specifically, the Staff concluded:

> The inability of Qwest to make wholesale rate changes in a reasonable amount [of] time and to charge accurate rates to CLECs creates an unlevel playing field and results in discriminatory treatment by Qwest relative to how it treats its retail customers. In addition it results in discrimination between CLECs by giving new CLECs the rates immediately, but requiring existing CLECs to wait 6 months (or longer) to be charged the new lower wholesale rates. The preceding issues have implications for application for 271 relief as well."[2]

AT&T agrees with Staff's conclusion that its findings demonstrate discrimination in the access to billing functions that Qwest provides to CLECs.

Q. HOW DO UNREASONABLY LONG INTERVALS BETWEEN A COMMISSION ORDER FOR NEW RATES AND IMPLEMENTATION OF NEW RATES AFFECT A CLEC?

A. One example is that unreasonably long intervals between a Commission order for new rates and implementation of new rates can result in an increase in a CLEC's costs of reviewing and auditing Qwest's wholesale bills.

Q. HOW?

A. CLECs will generally review and audit the wholesale bills that Qwest sends to ensure that there are no unwarranted charges on the bill and that legitimately billed items are billed at the right rate. A Commission order that states that new rates are effective immediately creates an expectation in the CLECs that the correct rate should soon appear on the bills that Qwest sends. When the Qwest

[2] Complaint and Order to Show Cause, T-01051B-02-0871 Decision No. 65450, docketed December 12, 2002, ¶ 35.

wholesale bills are received by the CLEC, if the charges do not reflect the correct rates, the CLEC will initiate a billing claim with Qwest. When the CLEC reviews and audits the wholesale bill, all the CLEC can determine is whether the rates are correct or incorrect. If the CLEC identifies rates that are incorrect, the CLEC is unaware if the rates are incorrect because; 1) Qwest has not yet implemented the rate changes, 2) the rate changes have been implemented but Qwest has implemented the wrong rates or 3) for some other reason.

In Arizona, the likely result of Qwest taking six months to implement rate changes that should have been effective immediately is that many CLECs bore the expense of initiating billing claims in all six months for a large majority of the items on their bill. The CLEC's expense to identify billing errors and to initiate and pursue billing claims would have been unnecessary if Qwest had implemented the rate changes in a more reasonable period of time.

Reviewing Qwest bills is no easy matter. Bills are lengthy and complex. Getting multiple bills or credits – once when normal billing comes out and once when the credits or adjustments are made – places a tremendous burden on the CLEC to verify it has been properly billed for services. Making the job of bill review even harder is that Qwest will only stand behind a paper bill as the bill of record. CLECs can choose to receive a bill from Qwest in electronic and/or paper form. Electronic bills would be AT&T's (and most other large CLECs) preferred media for receiving bills. Receipt of electronic bills makes manipulation and auditing of

the bill a much easier matter. However, electronic bills are often not as accurate as paper bills. While Qwest will send both electronic and paper bills to CLECs, Qwest uses the paper bill as the bill of record. Paper bills can be thousands of pages long and several feet thick. It is no easy task to have personnel reviewing these enormous bills in an attempt to identify billing inaccuracies.

Q. WHAT IS YOUR UNDERSTANDING OF HOW QWEST IMPLEMENTS RATE CHANGES FOR RETAIL CUSTOMERS?

A. My understanding is that Qwest's retail billing systems contain state-specific tables that identify all of the items that a retail customer can obtain from Qwest, along with the recurring rates and any non-recurring rates. Since there is essentially only one state-specific rate table,[3] each customer in a state that obtains a specific item from Qwest will pay the same rates as every other customer. For example, residential customers that want a flat-rated residential line will pay the same rate as every other Qwest residential customer in the state.

Having essentially one rate table makes changes in rates a relatively simple matter. When Qwest needs to change a rate for a service, it changes the rate once in the rate table and at that point, every customer that obtains that service will pay the new rate. Continuing with the above example, if Qwest reduces the rate for a flat-rated residential line, it only has to change the rate once in the retail rate table.

Q. WHAT IS YOUR UNDERSTANDING OF HOW QWEST IMPLEMENTS RATE CHANGES FOR WHOLESALE CUSTOMERS?

[3] Qwest may have multiple rate tables in a state but those rate tables will not have a service that is found in two different rate tables.

1 A. My understanding is that Qwest chose to forego the "single rate table for all
2 customers" approach that it uses for its retail customers and adopted a much more
3 cumbersome "every CLEC gets its own rate table" approach for CLECs. With
4 Qwest's chosen approach, every CLEC has its own unique rate table.[4] Therefore,
5 when Qwest wants to change a rate for a wholesale service, it must change the
6 rate for every CLEC in each of the multiple CLEC tables. Unlike with the retail
7 rate changes, to change the rate for one item requires potentially dozens of
8 changes to CLEC-specific rates. Qwest's chosen approach is cumbersome and
9 adds unnecessary administrative burdens on Qwest.

10 **Q. IS THERE ANY APPARENT REASON WHY QWEST CHOSE A MUCH**
11 **MORE CUMBERSOME APPROACH FOR BILLING CLECS THAN IT**
12 **DOES FOR BILLING ITS RETAIL CUSTOMERS?**

13 A. The only apparent benefit that I can envision is that CLEC-specific rate tables
14 permit Qwest to charge different rates to different CLECs for the exact same item.
15 Building into its CLEC billing systems the ability to charge different CLECs
16 different rates for the exact same items permits Qwest to offer discriminatory
17 prices between CLECs.

18 **Q. DO YOU HAVE ANY SUGGESTIONS ON HOW THE EFFECTIVENESS**
19 **OF ANY CHANGES TO QWEST'S BILLING PROCESS COULD BE**
20 **DETERMINED?**

21 A. A performance measurement that tracks the percentage of rate elements
22 implemented within thirty days would be a method of gauging the speed in which
23 Qwest implements rate changes. Process management techniques suggest the best
24 way to gauge the effectiveness of a process is to measure the results of the

[4] It may also be possible that Qwest has a single CLEC rate table with the rows identifying the items and separate columns with rates for each CLEC.

1 process. A specific performance measurement with associated benchmarks can

2 help Qwest to focus on the steps needed to enable it to make rate changes within

3 thirty days.

4 **Q. DOES AT&T AGREE WITH STAFF'S DECISION NOT TO**
5 **RECOMMEND SPECIFIC BILLING OR PROCESS CHANGES?[5]**

6 A. Yes. Recommending the outcome (the ability to implement billing and systems

7 changes within 30 days) rather than the method to achieve the outcome is

8 reasonable and appropriate.

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

10 A. Yes.

[5] Direct Testimony of Matthew Rowell, p. 20.

EXHIBIT
AT&T-2
admitted

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

MARC SPITZER, Chairman
JIM IRVIN
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
MIKE GLEASON

ARIZONA CORPORATION COMMISSION Complainant. v. QWEST CORPORATION Respondent.	DOCKET NO. T-01051B-02-0871

REPLY TESTIMONY

OF

JOHN F. FINNEGAN

ON BEHALF OF

AT&T COMMUNICATIONS OF THE MOUNTAIN STATES, INC.,

June 3, 2003

1 **Q. ARE YOU THE SAME JOHN F. FINNEGAN THAT SUBMITTED**
2 **DIRECT TESTIMONY IN THIS PROCEEDING?**

3 **A.** Yes, I am.

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

5 **A.** The purpose of my testimony is to respond to the Rebuttal Testimony of Qwest
6 Witness William R. Easton.

7 **Q. BY WHAT STANDARD SHOULD QWEST BE HELD TO FOR THE**
8 **TIME IT TAKES TO IMPLEMENT WHOLESALE PRICE CHANGES?**

9 **A.** Qwest should be held to a standard of parity with the time it takes to implement
10 retail price changes.

11 **Q. ON WHAT BASIS DO YOU COME TO THAT CONCLUSION?**

12 **A.** I came to that conclusion based upon the requirements of the Telecommunications
13 Act of 1996 and the FCC's rules and decisions implementing those requirements.
14 The FCC concluded that:

15 ...if competing carriers are unable to perform the functions
16 of pre-ordering, ordering, provisioning, maintenance and
17 repair, and *billing* for network elements and resale services
18 *in substantially the same time and manner that an*
19 *incumbent can for itself*, competing carriers will be
20 severely disadvantaged, if not precluded altogether, from
21 fairly competing. Thus providing nondiscriminatory access
22 to these support systems functions, which would include
23 access to the information such systems contain, is vital to
24 creating opportunities for meaningful competition.[1]
25 (emphasis added)

26 Fundamentally, Qwest should make changes in its wholesale rates in substantially
27 the same time and manner as it does for its retail rate changes.

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[1] *In the Matter of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, and *Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, CC Docket 95-185, First Report and Order, FCC 96-325 (rel. Aug. 8, 1996), ¶ 518 ("First Report and Order").

1 **Q. IS QWEST MEETING THAT REQUIREMENT?**

2 **A.** No, it is not. Qwest admitted in this proceeding that it "is usually able to
3 implement retail [changes in] rates in one billing cycle."[2] In contrast, it took
4 Qwest over five bill cycles to complete its Arizona changes to the wholesale
5 rates.[3]

6 **Q. WHAT IS YOUR REACTION TO MR. EASTON'S STATEMENT THAT**
7 **"SIGNIFICANT DIFFERENCES EXIST BETWEEN THE WHOLESALE**
8 **AND RETAIL BILLING PROCESSES?"[4]**

9 A. My reaction is that if there are "significant differences" between the wholesale
10 and retail billing processes it is the result of Qwest's choices in how it designed
11 the wholesale billing processes. Qwest was in sole control of the process to
12 produce wholesale bills for CLECs. If, as Mr. Easton states, "[t]he [wholesale
13 rate change] process is complex," it is because Qwest designed it that way.[5]

14 **Q. DO YOU BELIEVE THAT MR. EASTON'S CONCLUSION THAT "THE**
15 **TIMES TO IMPLEMENT ARIZONA [WHOLESALE RATE CHANGES]**
16 **ARE COMPARABLE TO THOSE EXPERIENCED IN OTHER STATES"[6]**
17 **IS COMPELLING?**

18 **A.** No, I do not. My understanding is that Qwest uses essentially the same processes
19 to change rates in its entire fourteen-state region. With one process, it is hardly
20 surprising that the process produces similar results across the fourteen states.
21 However, that process to implement required rate changes is complex,
22 cumbersome and slow. What I find more compelling is Mr. Rowell's testimony
23 that "RBOCs other than Qwest usually implement wholesale rates in much shorter

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[2] Qwest's Answer to Commission's Complaint and Order to Show Cause, Docket No. T-01051B-02-0871, December 23, 2002, p. 6. A billing cycle is generally a calendar month.
[3] Rebuttal Testimony of William R. Easton, May 15, 2002, p. 11.
[4] *Id,* p. 20.
[5] *Id,* p. 9.
[6] *Id.,* p. 12.

periods of time than six months. ...the California PUC ordered Pacific Bell to complete the necessary billing program changes within 60 days of the order" and "the New York Commission required Verizon to have its rates in effect within thirty days of the order."[7] This shows that the process to change wholesale rates need not be as complex, cumbersome and slow as the process that Qwest chose to design.

Q. DOES THE FCC RECOGNIZE THE HARM THAT COULD BE CAUSED BY A DELAY IN IMPLEMENTING REQUIRED WHOLESALE RATE REDUCTIONS?

A. Yes, it does. Delays in the implementation of wholesale rate changes are a form of inaccurate wholesale bills. The FCC recognized that even with eventual bill corrections, inaccurate wholesale bills can impede a CLEC's ability to compete. Specifically, the FCC found:

> Inaccurate or untimely wholesale bills can impede a competitive LEC's ability to compete in many ways. First, a competitive LEC must spend additional monetary and personnel resources reconciling bills and pursuing bill corrections. Second, a competitive LEC must show improper overcharges as current debts on its balance sheet until the charges are resolved, which can jeopardize its ability to attract investment capital. Third, competitive LECs must operate with a diminished capacity to monitor, predict and adjust expenses and prices in response to competition. Fourth, competitive LECs may lose revenue because they generally cannot, as a practical matter, back-bill end users in response to an untimely wholesale bill from an incumbent LEC.[8]

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[7] Direct Testimony of Matthew Rowell, April 17, 2003, p. 8.

[8] *In the Matter of Application of Verizon Pennsylvania Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks Inc., and Verizon Select Services Inc. for Authorization To Provide In-Region, InterLATA Services in Pennsylvania*, CC Docket No. 01-138, Memorandum Opinion and Order, FCC 01-269 (rel. Sept. 19, 2001), ¶23 (footnotes omitted).

1 Given that the FCC has recognized the competitive impediments that
2 inaccurate wholesale bills create, I would have to disagree with Mr.
3 Easton's statement that "the CLECs were not harmed by Qwest's
4 actions."[9]

5 **Q. MR. EASTON STATED THAT YOU "INSINUATE[D] THAT QWEST IS**
6 **OFFERING DISCRIMINATORY PRICING BETWEEN CLECS."[10] DID**
7 **YOU MAKE THAT INSINUATION?**

8 **A.** No, I did not. I simply pointed out that CLEC-specific rate tables allowed Qwest
9 to charge different CLECs different rates for the exact same items. I also pointed
10 out that the ability to charge different CLECs different rates for the exact same
11 items permitted Qwest to offer discriminatory prices between CLECs.
12 However, in direct response to Mr. Easton, there is evidence that Qwest did offer
13 discriminatory pricing between CLECs. In Arizona, Qwest is under investigation
14 for failing to file certain agreements for Commission approval. Staff witness
15 Kalleberg described the secret agreements between Qwest and Eschelon and
16 Qwest and McLeod as "unique and discriminatory" because, among other
17 reasons, Eschelon and McLeod received "discounted pricing on UNE-E [and
18 UNE-M], [and] discounts on all other services" and "other CLECs [] could not
19 view and possibly opt-in to the agreements between the parties since they were
20 not publicly filed."[11]

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[9] Rebuttal Testimony of William Easton, May 15, 2003, p. 1.
[10] *Id.*, p. 20.
[11] Before the Arizona Corporation Commission, *In the Matter of Qwest Corporation's Compliance with Section 252(e) of the Telecommunications Act of 1996*, Docket No. RT-00000F-02-0271, Direct Testimony of Marta Kalleberg, (Feb. 21, 2003), pp. 18, 22 and 38.

1 The Minnesota PUC also found that Qwest provided certain CLECs with
2 discriminatory pricing. In an order fining Qwest for failing to file interconnection
3 agreements the Minnesota PUC stated:

> 4 The ALJ found and the record shows that in each of the
> 5 twelve interconnection agreements cited by the
> 6 Department, Qwest provided terms, conditions, or rates to
> 7 certain CLECs that were better than the terms, rates and
> 8 conditions that it made available to the other CLECs and, in
> 9 fact, kept those better terms, conditions, and rates a secret
> 10 from the other CLECs. In so doing, *Qwest unquestionably*
> 11 *treated those select CLECs better than the other CLECs,*
> 12 *thereby discriminating against them in violation of the cited*
> 13 *provisions of Section 251.*[12]

14 The Minnesota PSC explicitly found that Qwest provided discriminatory pricing.
15 The Arizona Commission may or may not make the same finding. The facts
16 speak for themselves. However, the point I was trying to make is that Qwest
17 structured its process in a manner that permitted CLEC-specific rate tables *by*
18 *design* and, as a result, the process permitted Qwest to discriminate.

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

20 **A.** Yes, it does.

[12] Before the Minnesota Public Utilities Commission, *In the Matter of the Complaint of the Minnesota Department of Commerce Against Qwest Corporation Regarding Unfiled Agreements*, Docket No. P-421/C-02-197, Order Assessing Penalties, (Feb. 28, 2002), pp. 3- 4 (emphasis added).

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EXHIBIT
tabbies
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Qwest

4041 North Central Avenue
11th Floor
Phoenix, Arizona 85012
Office 602-630-8255
Fax 602-235-3107

Monica Luckritz
Manager – Public Policy

May 29, 2003

Richard S. Wolters
AT&T
1875 Lawrence Street, Suite 1503
Denver, CO 80202

Dear Mr. Wolters:

RE: Qwest Corporation
Docket No. T-00000A-00-0194

Enclosed please find Qwest Corporation's responses to AT&T 01-001 through -014 in AT&T's first set of data requests. Portions of these responses may be proprietary and are provided pursuant to the terms of the Protective Agreement

If you have questions, please contact me.

Very truly yours,

Monica Luckritz

Enclosures

Arizona
T-01051B-02-0871
AT&T 01-001

INTERVENOR: AT&T Communications of the Mountain States, Inc.

REQUEST NO: 001

Of the 547 rate elements involved in the implementation of the Arizona order (page 10, lines 9-10, page and line numbers in all questions refer to the Rebuttal Testimony of William Easton), please indicate the number of new rate elements.

RESPONSE:

Of the 547 rate elements involved in the Arizona Implementation, 284 of them are new rate elements.

Respondent: Cindy Pierson

Arizona
T-01051B-02-0871
AT&T 01-002

INTERVENOR: AT&T Communications of the Mountain States, Inc.

REQUEST NO: 002

Of the 547 rate elements involved in the implementation of the Arizona order (page 10, lines 9-10), please indicate the number of rate elements that involved a restructure of an existing rate element.

RESPONSE:

Of the 547 rate elements involved in the Arizona Implementation, 43 of them involved a restructure of an existing rate element.

Respondent: Cindy Pierson

Arizona
T-01051B-02-0871
AT&T 01-003

INTERVENOR: AT&T Communications of the Mountain States, Inc.

REQUEST NO: 003

Please indicate the states in which, prior to date of the Arizona order (pages 10-11), EEL DS1, EEL DS3, Unbundled Loops, Sub Loops, UNE-P PRI and UNE-P DSS were priced using a wire center-based methodology for deaveraging. Please also indicate the docket numbers in which the wire center-based methodology was required.

RESPONSE:

Three states ordered wire-center based deaveraging prior to the issuance of the AZ Phase II cost docket order:

1. Colorado Docket No. 99A-577T ordered wire-centered based deaveraging for unbundled loops, Subloops and EEL Link.
2. Iowa Docket No. RPU-01-6 ordered wire-centered based deaveraging for DS1 and DS3 Capable Loops and Subloops.
3. Nebraska Docket No. C-2516 ordered wire-centered based deaveraging for Unbundled Loops, Subloops and EEL Li

Respondent: Cindy Pierson

Arizona
T-01051B-02-0871
AT&T 01-004

INTERVENOR: AT&T Communications of the Mountain States, Inc.

REQUEST NO: 004

Of the 137 customers involved in the Arizona Cost Docket Implementation (page 11, lines 6-9),

a. Identify by name all 137 CLECs referred to by Mr. Easton.

b. Identify which of the 137 CLECs that did not purchase any interconnection, network elements, or wholesale services during the calendar year 2002.

c. Please indicate the number of those customers to which Qwest sent a wholesale bill during the last six months of 2002.

RESPONSE:

a. See Confidential Attachment A.

b. Qwest objects to this request on the grounds that it requests Highly Confidential CLEC-specific information. Notwithstanding and without waiving this objection, Qwest states:

62 CLECs did not purchase any interconnection, network elements, or wholesale services during the calendar year 2002.

c. None.

Respondent: Veronica Lopez, Barb Cornwell, Qwest Managers

Arizona
T-01051B-02-0871
AT&T 01-005

INTERVENOR: AT&T Communications of the Mountain States, Inc.

REQUEST NO: 005

Of the 137 customers involved in the Arizona Cost Docket Implementation (page 11, lines 6-9),

a. Does Qwest have a signed interconnection agreement for each of the 137 CLECs?

b. Was every one of the interconnection agreements with the CLECs filed for Commission approval?

c. Identify which of the 137 CLECs have interconnection agreements that only permit the resale of Qwest's services.

RESPONSE:

Qwest objects to this request on the grounds that the information requested is beyond the scope of this docket and not likely to lead to the discovery of admissible evidence. Notwithstanding and without waiving this objection, Qwest states:

a. Yes.

b. Yes.

c. 38.

Respondent: Veronica Lopez, Barb Cornwell, Qwest Managers

Arizona
T-01051B-02-0871
AT&T 01-006

INTERVENOR: AT&T Communications of the Mountain States, Inc.

REQUEST NO: 006

For the following cost docket implementation initiation phase activities, please indicate which were unnecessary when implementing the voluntary rate reductions associated with Qwest's nine-state section 271 application:

a. Determine scope of work to implement rates
   i. Assignment of issues raised by the rate change,
   ii. Legal interpretation;
   iii. Assessment of operational impacts.

b. Map rates into existing CLEC contracts
   i. New rate information sent to internal Qwest departments;
   ii. Posting of new rate information on internal websites;
   iii. Determination of application of the rates to each CLEC;
   iv. Preparation of necessary documentation to incorporate new rates into the various billing systems.

For the activities that Qwest believes were unnecessary in implementing the voluntary rate reductions, please explain why those activities were unnecessary.

RESPONSE:

a. The steps outlined to determine the scope of work were performed for the voluntary rate reductions. However, because those changes were Qwest initiated, and therefore, were developed with the Qwest operational structure in mind, the issues identification, legal interpretation and operational impacts assessment were considerably less complex and time consuming.

b. The voluntary rate reductions were smaller with fewer elements and therefore faster to implement. A single rate sheet was created that had rate element, USOC, class of service and rate which was used to implement the Voluntary Rate Reductions into our systems. Qwest did not have to create CLEC individual rate sheets.

Respondent: Veronica Lopez, Barb Cornwell, Qwest Managers

Arizona
T-01051B-02-0871
AT&T 01-007

INTERVENOR: AT&T Communications of the Mountain States, Inc.

REQUEST NO: 007

For the following cost docket implementation contract implementation phase activities, please indicate which were unnecessary when implementing the voluntary rate reductions associated with Qwest's nine-state section 271 application:

a. Preparation of documents necessary to build new rate tables;

b. Performance of quality and accuracy checks of the rate information;

c. Data entry associated with inputting the rates into the system;

d. CLEC notification of updated rate sheets associated with their contract;

e. Creation of documentation necessary for any new rate elements or structure changes;

f. Determination of cost of systems modifications;

g. Establishment of priority of systems modifications.

For the activities that Qwest believes were unnecessary in implementing the voluntary rate reductions, please explain why those activities were unnecessary.

RESPONSE:

a. Although documentation had to be prepared to build new rate tables, the voluntary rate reduction was smaller with fewer elements.

b. Performance of quality and accuracy checks were not as extensive for the voluntary rate reductions because of their fewer number of elements.

c. Although data entry was required, it was less extensive due to the fewer number of elements.

d. The CLECs were sent a notification with the elements and rate changes, however, individual rate sheets were not updated at that time.

e. There were no new rate elements or structure changes with the voluntary rate reductions.

f. There were no system modifications associated with the voluntary rate reductions.

g There were no system modifications associated with the voluntary rate reductions.

Respondent: Veronica Lopez, Barb Cornwell, Qwest Managers

Arizona
T-01051B-02-0871
AT&T 01-008

INTERVENOR: AT&T Communications of the Mountain States, Inc.

REQUEST NO: 008

For the following cost docket implementation I.T. Rate Implementation phase activities, please indicate which were unnecessary when implementing the voluntary rate reductions associated with Qwest's nine-state section 271 application:

a. Receipt of documentation from initiation and contract implementation phases,

b. Updating of system tables;

c. Complete system modifications.

For the activities that Qwest believes were unnecessary in implementing the voluntary rate reductions, please explain why those activities were unnecessary.

RESPONSE:

a The rate implementation phase did not involve multiple rate sheets in the case of the voluntary rate reductions.

b. The Voluntary Rate Reductions did involve the updating of system tables.

c. There were no system modifications made with the voluntary rate reductions.

Respondent: Veronica Lopez, Barb Cornwell, Qwest Managers

Arizona
T-01051B-02-0871
AT&T 01-009

INTERVENOR: AT&T Communications of the Mountain States, Inc.

REQUEST NO: 009

What permitted Qwest to implement comprehensive cost dockets in Nebraska and Utah in a significantly shorter interval than the other six states (page 12, lines. 1-2)?

RESPONSE:

In Nebraska,the Nebraska Commission ordered a specific due date. Qwest was able to meet this date as the implementation teams were only working one other cost docket concurrently with the Nebraska docket. In contrast, by the time the Arizona Commission issued its decision, the implementation teams already had four other dockets in process and, consequently, the timeline was extended. In Utah, the Order was a partial docket, only addressing UNEs residing in one billing system, thereby reducing the complexity of the implementation process.

Respondent: Timothy Dowd

Arizona
T-01051B-02-0871
AT&T 01-010

INTERVENOR: AT&T Communications of the Mountain States, Inc.

REQUEST NO: 010

Please provide the first and last versions of the implementation schedule for the implementation of rates associated with Decision No. 64922 (page 13, lines. 6-8).

RESPONSE:

Please see Confidential Attachments A and B.

Respondent: Cindy Pierson and Timothy Dowd

Arizona
T-01051B-02-0871
AT&T 01-011

INTERVENOR: AT&T Communications of the Mountain States, Inc.

REQUEST NO: 011

Please explain why Qwest believes it was justified in ignoring how its voluntary rate reductions applied to a given CLEC's contract (page 16, lines. 20-23).

RESPONSE:

Qwest did not "ignore how its voluntary rate reductions applied to a given CLEC's contract." The intent of the statement on page 16, lines 20-23 of Mr. Easton's testimony was to point out that the rate reductions, because they were voluntary, were not subject to any true-up requirements or backward-looking treatment of any kind. Qwest implemented the lower rates, to the benefit of all CLECs, on a going forward basis.

Respondent: Carolyn Hammack

Arizona
T-01051B-02-0871
AT&T 01-012

INTERVENOR: AT&T Communications of the Mountain States, Inc.

REQUEST NO: 012

In the state of Arizona, has Qwest in the past, or does Qwest currently charge different CLECs different rates for the exact same USOC (page 20, lines. 3-4)?

RESPONSE:

No.

Respondent: Veronica Lopez, Barb Cornwell, Qwest Managers

Arizona
T-01051B-02-0871
AT&T 01-013

INTERVENOR: AT&T Communications of the Mountain States, Inc.

REQUEST NO: 013

In the state of Arizona, has Qwest in the past, or does Qwest currently charge different retail customers different rates for the exact same USOC (page 20, lines. 3-4)?

RESPONSE:

Qwest objects to this request on the grounds that the information requested is beyond the scope of this docket and not likely to lead to the discovery of admissible evidence. Notwithstanding and without waiving this objection, Qwest states:

The same USOC may charge different retail rates based on class of service, contractual arrangement, volume discounts or geographic location.

Respondent: Bill Easton and Barb Alguire

Arizona
T-01051B-02-0871
AT&T 01-014

INTERVENOR: AT&T Communications of the Mountain States, Inc.

REQUEST NO: 014

At a special open meeting held on December 2, 2002, Qwest's attorney, Mr. Mark Brown, stated (at page 16 of the transcript) that there were 180 different CLECs in Arizona. Reconcile the number of CLECs given by Mr. Brown with the number of CLECs identified by Mr. Easton (137) at page 11, lines 6-9.

RESPONSE:

Mr. Brown is no longer a Qwest employee. Qwest does not know where he got the "180 different CLECs" number. Notwithstanding the foregoing, Qwest assumes that Mr. Brown's comments were simply meant as an approximation/general reference.

Respondent: Legal

EXHIBIT
ATT-4
admitted

NEWS

Qwest
Spirit of Service

QWEST COMMUNICATIONS REPORTS FIRST QUARTER EARNINGS, OPERATIONAL HIGHLIGHTS, AND ADDITIONAL RESULTS OF FINANCIAL RESTATEMENT AND AUDIT REVIEW

- **First Quarter Diluted EPS of $0.09**
- **Total Principal Amount of Short- and Long-Term Borrowings Decreases $333 Million In the First Quarter, and Approximately $500 Million Year-To-Date (See "Debt Update" For Details)**
- **Cash and Cash Equivalents Increase Approximately $100 Million to $2.4 Billion**
- **530,000 Access Lines Signed Up For Long-Distance Service Following 271 Approvals In Nine States**
- **Retail Consumer Access Line Losses Improve for Third Consecutive Quarter**

Investors: All financial information contained herein is unaudited. The company has included the estimated impact of its current restatement analysis updated in this release to all reported results. Qwest can give no assurance that the aggregate adjustments to the financial information contained herein are final or that all adjustments necessary to present its financial statements in accordance with generally accepted accounting principles (GAAP) have been identified. Financial results for 2002 and 2003 related to continuing operations exclude QwestDex, as it is presented as a discontinued operation. Please see attached statement of operations (Attachment A) and selected consolidated data (Attachment B) for important information.

DENVER, May 29, 2003 — Qwest Communications International Inc. (NYSE: Q) today announced its earnings and operational highlights for the first quarter of 2003. The company announced first quarter net income of $150 million or $0.09 per diluted share.

"We continue to see signs of improvement in our core businesses," said Richard C. Notebaert, Qwest chairman and CEO. "Our focus on improving the service we provide to customers and the great value we offer is paying off not only in retaining our local customers, but also in growth opportunities such as long-distance service."

"Qwest took additional steps to improve its financial positioning in the first quarter," said Oren G. Shaffer, Qwest vice chairman and CFO. "We continued to strengthen the balance sheet through strategic financing transactions, and made significant progress in

our financial restatement process. These actions, combined with improving operational trends, are helping position Qwest for long-term financial success."

Operating Results
Revenue for the first quarter was $3.63 billion, a 9.4 percent decrease from the same period last year. First quarter revenues declined year-over-year due to competitive pressures in local voice and wireless services, as well as strategic de-emphasis of certain lines of business, including customer premise equipment (CPE) resale and out-of-region consumer and wholesale long-distance.

For the first quarter, operating income increased to $179 million from a loss of $47 million a year ago.

Cost of sales and SG&A expenses for the first quarter decreased $233 million, or 8.1 percent year-over-year. Operating expense declines were driven by cost reduction initiatives, reductions in depreciation and amortization, as well as reductions in demand for certain products. These expense reductions were partially offset by year-over-year increases to pension and other employee benefits.

First quarter net income was $150 million or $0.09 per diluted share, including a $206 million gain, net of related income tax, for the cumulative effect of adopting SFAS 143, "Accounting for Asset Retirement Obligations." This compares to a net loss in the first quarter of 2002 of $23.9 billion or $14.32 per share. This loss included a $23.1 billion charge or $13.36 per share, net of tax, related to the adoption of SFAS No. 142, "Goodwill and Other Intangible Assets."

Operational and Financial Highlights
Some of the key operational and financial highlights achieved since the announcement of fourth quarter results include:

- The company's Qwest Corporation (QC) subsidiary obtained a commitment for a $1 billion senior term loan due in 2007. This loan is being arranged by Merrill Lynch & Co., Credit Suisse First Boston and Deutsche Bank. The proceeds will be used to refinance QC bonds due in 2003. With completion of this refinancing transaction, as well as the close of the second phase of the QwestDex sale, Qwest expects its business plan to be fully funded, based upon its ability to generate operating cash flow and continued access to the capital markets.
- By the end of the first quarter, Qwest had signed up 530,000 access lines within its local service area for long-distance service. These long-distance sales were within the nine states approved by the Federal Communications Commission (FCC) in late December 2002 -- Colorado, Idaho, Iowa, Montana, Nebraska, North Dakota, Utah, Washington and Wyoming. These nine states represent approximately 55 percent of Qwest's total local access line base.
- On April 15, 2003, Qwest received unanimous approval from the FCC to re-enter the long-distance business in three additional states: New Mexico, Oregon and South Dakota. These three states represent approximately 15 percent of Qwest's total local access line base. With this action, Qwest now has FCC approval to offer long-distance service everywhere in its local service territory except for Minnesota and Arizona. An FCC decision on Qwest's Minnesota

application is due by June 26, 2003. Qwest plans to file a similar application for long-distance authority in its final state, Arizona, this summer.

- Qwest continued to experience positive stabilizing trends in its core business. In the first quarter, Qwest lost approximately 130,000 retail consumer access lines, 27,000 fewer lines than in the fourth quarter. This represents the third consecutive quarter of sequential improvement. The company believes this improvement was due to ongoing retention and customer service initiatives, partially offsetting the effects of competition and technology substitution. Combined consumer and business access lines declined 4.1 percent year-over-year in the first quarter. Qwest continues to face competition in its retail access line business from UNE-P service providers and technology substitution.
- As part of an ongoing, disciplined approach to capital investment, first quarter capital expenditures were approximately $450 million, or approximately 12 percent of revenue. Qwest is committed to upholding quality customer service through a disciplined capital investment strategy.
- Qwest reported strong and measurable service improvements in the first quarter. Since the launch of the Spirit of Service™ campaign last year, Qwest has improved its customer service based upon direct customer feedback. In the American Customer Satisfaction Index (ACSI) published by the University of Michigan Business School, Qwest's score moved up 10.7 percent over last year's survey, the largest improvement of any telecom company and the second-highest improvement of all the companies surveyed. Qwest's own customer survey also reports significant improvements in service: the percentage of consumers reporting their customer care experience was excellent or very good increased five percentage points in the first quarter, and 13 percentage points since the third quarter of 2002.
- Qwest continued to secure major contracts with large enterprise and government customers for voice and data services, entering into new service agreements with: the states of Minnesota and Utah, Grubb and Ellis, the Department of Energy, Crate and Barrel, and Recreational Equipment, Inc.
- Qwest reached a settlement agreement with the Utah Public Utilities Division for approval of the QwestDex sale. This settlement agreement has been adopted by the Utah Public Services Commission. Regulatory reviews of the QwestDex transaction remain pending in two states. Qwest has reached a settlement agreement with the staff of the Arizona Corporation Commission. Hearings in Arizona began May 27. In addition, Qwest has reached an agreement with the Washington Attorney General and certain other groups in advance of Washington hearings that began on May 19. The second phase of the QwestDex sale is expected to close in 2003 subject to customary closing conditions with gross proceeds of $4.3 billion.

Debt Update
During the first quarter, Qwest reduced the principal amount of short- and long-term borrowings by $333 million, from $22.7 billion at December 31, 2002 to $22.3 billion at March 31, 2003. This reduction was achieved through debt maturity payments of approximately $160 million, as well as approximately $173 million of principal debt reduction through private exchange transactions. An unamortized premium of $87 million was recorded related to these exchanges and is not recognized on the statement of operations as a gain. As a result, total debt was reduced by $258 million, net of normal debt extinguishments and amortization. The private exchange transactions included exchanges of $392 million principal amount of Qwest Capital Funding (QCF) bonds (guaranteed by Qwest Communications International Inc.) for $218 million of new Qwest Services Corporation (QSC) notes and approximately 18 million shares of common stock.

Year-to-date (through 5/29/03), the company has reduced the principal amount of short- and long-term borrowings by approximately $500 million, through debt maturity payments of about $210 million, as well as approximately $290 million of principal debt reduction through private exchange transactions. An unamortized premium of $154 million was recorded related to these exchanges and is not recognized on the statement of operations as a gain. As a result, total estimated debt reduction is $360 million, net of estimated debt extinguishments and amortization. The private exchange transactions included exchanges of $697 million principal amount of QCF bonds for $406 million of new QSC notes and approximately 30 million shares of common stock.

Outlook
Based upon the economic and competitive trends experienced in the first quarter, Qwest's outlook for 2003 financial results is as follows:

- The rate of annual revenue decline is expected to be in the mid-single digit range.
- Cost of sales and SG&A expenses, in total, are expected to decline from 2002 levels.
- Free cash flow from continuing operations (cash provided by operating activities less capital expenditures) is expected to be approximately breakeven.
- Free cash flow expectations are based upon capital expenditures of approximately $2.5 billion, net interest expense of $1.7 billion, and a modest contribution from net working capital (changes in current liabilities, excluding short-term borrowings, less changes in current assets).
- Qwest will continue to monitor market conditions for opportunities to reduce total outstanding debt through strategic financing transactions.

The above discussion of 2003 outlook references forward-looking statements. As such, Qwest cautions that these statements should be considered in light of uncertainty surrounding its business, ongoing litigation and governmental investigations, the industry and competitive environment, the general macroeconomic outlook, and other issues detailed in the forward looking statement note at the end of this release. The above outlook also references free cash flow and net working capital, non-GAAP financial measures. Management believes these measures are useful in evaluating

financial performance and are commonly used by readers of financial information in assessing performance. Reconciliations of free cash flow and net working capital at year-end 2003 are not available as there is no current estimate of these measurement components.

Investigations Update

As previously announced, the U.S. Securities and Exchange Commission (SEC) has been conducting a formal investigation relating to the company for over a year. The investigation includes, without limitation, inquiry into several specifically identified accounting practices and transactions and related disclosures that were the subject of the initial restatement adjustments announced by the company. In addition, the investigation has been expanded to include inquiry into further adjustments and restatements the company has made as well as additional transactions. The U.S. Attorney's office for the District of Colorado has been conducting an investigation relating to the company and Qwest believes this investigation covers matters that include the subjects of the SEC investigation. Qwest continues in its efforts to cooperate with the government in connection with the investigations.

Accounting Impact of Adoption of SFAS 143

SFAS 143, "Accounting for Asset Retirement Obligations," provides new requirements for the recognition of costs of removal of long-lived assets. Under SFAS 143, companies are required to record a liability for the fair value of legal obligations to remove long-lived assets and capitalize that amount as part of the cost of the related assets. Prior to 2003, we recognized costs of removal, including estimated costs where no legal obligations exist, in the depreciation of long-lived assets. The favorable impact to net income resulting from the adoption of SFAS 143 is primarily attributable to the reversal of accumulated depreciation related to costs of removal that cannot be recognized under SFAS 143.

Update of Adjustments From Restatement and Audit Review

The following tables reflect an update on the audit and re-audit process and the resulting restatement adjustments for 2000, 2001 and 2002 for the impact on revenue, operating income and net income. These summary comments on the additional adjustments are meant to facilitate use of the data. Qwest can give no assurance that the aggregate adjustments to the financial information contained herein are final or that all adjustments necessary to present its financial statements in accordance with generally accepted accounting principles (GAAP) have been identified.

Further analysis identified adjustments that resulted in a net decrease in revenue of $27 million over the three-year period ended December 31, 2002. These adjustments increased revenue by $47 million in 2002, and decreased revenue by $69 million and $5 million in 2001 and 2000, respectively. None of the individual additional adjustments to revenue were significant.

The operating income and net loss adjustments are primarily related to adjustments to the purchase accounting for the U S WEST/Qwest merger in June 2000, additional asset impairments, and movements in the deferred tax accounts, including the application of a valuation allowance against previously recorded deferred tax assets.

The adjustments to the purchase accounting for the merger between U S WEST and Qwest, identified in the reaudit process, resulted in adjustments to the balances for goodwill and tangible assets as of June 30, 2000, and could result in adjustments to balances for other intangible assets. The adjustments reflected in the tables are based upon the differential identified to date between an ongoing, third-party appraisal as part of the re-audit, and an earlier third-party appraisal conducted at the time of the merger.

Another purchase accounting adjustment identified in the reaudit process involved the correction of the Black-Scholes valuation of the options outstanding at the time of the merger. As a result, goodwill at the merger date was increased by $1.4 billion.

Although these purchase accounting adjustments reflect balance sheet movements in prior periods, they are treated as additional adjustments because of their inclusion in the 2002 write-off of goodwill and long-lived assets made by Qwest in compliance with SFAS No. 142, "Goodwill and Other Intangible Assets," and SFAS No. 144, "Accounting for the Disposal of Long-Lived Assets."

Aggregating these purchase accounting adjustments with additional adjustments identified in the audit process for other impairments pursuant to SFAS No. 144 not previously recorded in 2002 results in an impact of $1.3 billion to operating income and $1.5 billion to net income.

Application of the revised valuation allowance resulted in an additional decrease in deferred tax assets in 2002 of $1.4 billion. The remaining deferred tax asset will be utilized in 2003 based on projected levels of income assuming completion of the QwestDex sale. For 2000 and 2001, the changes in operating income and net income are primarily the correction of revenue and expense items between years, asset write-downs, and merger expense and accrual adjustments.

Also included in the additional adjustments to operating income (loss) and net loss are adjustments resulting from corrections of accounting principles and the correction of errors. The aggregate of such adjustments are not significant in any of the periods presented.

The information set forth in the following tables is not presented on a comparative basis. The 2002 information has been adjusted for the impact of discontinued operations, whereas the 2001 and 2000 information has not been adjusted for discontinued operations. This information is presented to illustrate the impact of these adjustments on previously reported amounts of revenue, operating income and net income.

Adjustments to 2002, 2001 and 2000 Revenue

(Dollars in millions)	Year ended December 31, Adjusted for Discontinued Operations 2002	Not Adjusted for Discontinued Operations 2001	2000
Previously reported revenue	$ 15,487	$ 19,695	$ 16,610
Aggregate revenue adjustments previously disclosed	-	(1,325)	(889)
Additional revenue adjustments	47	(69)	(5)
Total impact of adjustments on revenue	47	(1,394)	(894)
Revenue, as restated	$ 15,534	$ 18,301	$ 15,716

Adjustments to 2002, 2001 and 2000 Operating (Loss)/Income

(Dollars in millions)	Year ended December 31, Adjusted for Discontinued Operations 2002	Not Adjusted For Discontinued Operations 2001	2000
Previously reported operating income (loss)	$ (18,176)	$ 820	$ 1,823
Aggregate operating income adjustments previously disclosed	-	(1,278)	(843)
Additional operating income adjustments	(1,467)	(406)	(86)
Total impact of adjustments on operating income	(1,467)	(1,684)	(929)
Operating income (loss), as restated	$ (19,643)	$ (864)	$ 894

Adjustments to 2002, 2001 and 2000 Net Loss

(Dollars in millions)	Year ended December 31, Adjusted For Discontinued Operations 2002	Not Adjusted for Discontinued Operations 2001	2000
Previously reported net loss	$ (35,913)	$ (4,023)	$ (81)
Aggregate net loss adjustments previously disclosed	-	(763)	(572)
Additional net loss adjustments	(2,872)	(186)	(14)
Total impact of adjustments on net loss	(2,872)	(949)	(586)
Net loss, as restated	$ (38,785)	$ (4,972)	$ (667)

Conference Call Today

As previously announced, Qwest will host a conference call for investors and the media today at 9:00 a.m. EST with Richard C. Notebaert, Qwest chairman and CEO and Oren G. Shaffer, Qwest vice chairman and CFO. The call can be heard on the Web at www.qwest.com/about/investor/meetings.

About Qwest

Qwest Communications International Inc. (NYSE: Q) is a leading provider of voice, video and data services to more than 25 million customers. The company's 50,000 employees are committed to the "Spirit of Service" and providing world-class services that exceed customers' expectations for quality, value and reliability. For more information, please visit the Qwest Web site at www.qwest.com.

Forward-looking statements made within this release contain risks and uncertainties, which could cause actual results to differ materially from those expressed or implied here and on the conference call. Those risks and uncertainties are on file with the SEC. Additionally, we do not adopt analysts' estimates nor do we necessarily commit to updating the forward-looking statements that we make here.

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Forward Looking Statement Note

This release may contain projections and other forward-looking statements that involve risks and uncertainties. These statements may differ materially from actual future events or results. Readers are referred to the documents filed by us with the Securities and Exchange Commission, specifically the most recent reports which identify important risk factors that could cause actual results to differ from those contained in the forward-looking statements, including but not limited to: unanticipated delays in completing the process of our restatement of historical financial statements and related audits; the duration and extent of the current economic downturn in our 14-state local service area, including its effect on our customers and suppliers; the effects of our anticipated restatement of historical financial statements including delays in or restrictions on our ability to access the capital markets or other adverse effects to our business and financial position; our substantial indebtedness, and our inability to complete any efforts to de-lever our balance sheet through asset sales or other transactions; any adverse outcome of the SEC's current investigation into our accounting policies, practices and procedures and certain transactions; any adverse outcome of the current investigation by the U.S. Attorney's office in Denver into certain matters relating to us; adverse results of increased review and scrutiny by Congress, regulatory authorities, media and others (including any internal analyses) of financial reporting issues and practices or otherwise; the failure of our chief executive and chief financial officers to provide certain certifications relating to certain public filings; delays in making required public filings with the SEC; rapid and significant changes in technology and markets; any adverse developments in commercial disputes or legal proceedings, including any adverse outcome of current or future legal proceedings related to matters that are the subject of governmental investigations, and, to the extent not covered by insurance, if any, our inability to satisfy any resulting obligations from funds available to us, if any; our future ability to provide interLATA services within our 14-state local service area; potential fluctuations in quarterly results; volatility of our stock price; intense competition in the markets in which we compete, including the likelihood of certain of our competitors emerging from bankruptcy court protection or otherwise reorganizing their capital structure and competing effectively against us; changes in demand for our products and services; dependence on new product development and acceleration of the deployment of advanced new services, such as broadband data, wireless and video services, which could require substantial expenditure of financial and other resources in excess of contemplated levels; higher than anticipated employee levels, capital expenditures and operating expenses; adverse changes in the regulatory or legislative environment affecting our business; and changes in the outcome of future events from the assumed outcome included in our significant accounting policies.

The information contained in this release is a statement of Qwest's present intention, belief or expectation and is based upon, among other things, the existing regulatory environment, industry conditions, market conditions and prices, the economy in general and Qwest's assumptions. Qwest may change its intention, belief or expectation, at any time and without notice, based upon any changes in such factors, in Qwest's assumptions or otherwise. The cautionary statements contained or referred to in this release should be considered in connection with any subsequent written or oral forward-looking statements that Qwest or persons acting on its behalf may issue. This release may include analysts' estimates and other information prepared by third parties for which Qwest assumes no responsibility.

Qwest undertakes no obligation to review or confirm analysts' expectations or estimates or to release publicly any revisions to any forward-looking statements to reflect events or circumstances after the date hereof or to reflect the occurrence of unanticipated events.

By including any information in this release, Qwest does not necessarily acknowledge that disclosure of such information is required by applicable law or that the information is material.

The Qwest logo is a registered trademark of, and CyberCenter is a service mark of, Qwest Communications International Inc. in the U.S. and certain other countries.

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EXHIBIT
AT&T-5
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ride the light

Qwest

4041 North Central Avenue
11th Floor
Phoenix, Arizona 85012
Office 602-630-8255
Fax 602-235-3107

Monica Luckritz
Manager – Public Policy

June 4, 2003

Richard S. Wolters
AT&T
1875 Lawrence Street, Suite 1503
Denver, CO 80202

Dear Mr. Wolters:

RE: Qwest Corporation
Docket No. T-01051B-02-0871

Enclosed please find Qwest Corporation's corrected response to AT&T 01-004S1 in AT&T's first set of data requests.

If you have questions, please contact me.

Very truly yours,

Monica Luckritz
(JA)

Enclosures

Arizona
T-01051B-02-0871
AT&T 01-004S1-Correction

INTERVENOR: AT&T Communications of the Mountain States, Inc.

REQUEST NO: 004S1-Correction

Of the 137 customers involved in the Arizona Cost Docket Implementation (page 11,lines 6-9),

a. Identify by name all 137 CLECs referred to by Mr. Easton.

b. Identify which of the 137 CLECs that did not purchase any interconnection, network elements, or wholesale services during the calendar year 2002.

c. Please indicate the number of those customers to which Qwest sent a wholesale bill during the last six months of 2002.

RESPONSE:

a. See Confidential Attachment A.

b. Qwest objects to this request on the grounds that it requests Highly Confidential CLEC-specific information. Notwithstanding and without waiving this objection, Qwest states:

62 CLECs did not purchase any interconnection, network elements, or wholesale services during the calendar year 2002.

c. None.

Respondent: Veronica Lopez, Barb Cornwell, Qwest Managers

SUPPLEMENTAL RESPONSE DATED 06/03/03:

c. 48 CLECs and 7 Wireless customers were sent a wholesale bill during the last six months of 2002.

Respondent: Sue Van Putten

CORRECTION DATED 06/04/03:

c. 54 CLECs and 7 Wireless customers were sent a wholesale bill during the last six months of 2002.

Respondent: Sue Van Putten

EXHIBIT
AT&T-6
admitted

Qwest

Larry Christensen
Director Business Development
1801 California, Room 2330
Denver, CO 80202
303-896-4686

August 27, 2002

Dear Idaho Interconnection Customer:

RE: Qwest Rate Changes for Certain UNEs

On May 24, 2002, Qwest Corporation ("Qwest") notified you that it had developed new, lower rates for certain Unbundled Network Elements and LIS elements that became effective on June 7, 2002. Although Qwest believed the prior rates complied with the Act in general and TELRIC in particular, it filed the revised, lower rates to eliminate any question in connection with Qwest's FCC 271 application that its rates satisfy the relevant provisions of the competitive checklist.

Qwest filed its 271 application with the FCC on June 13, 2002 and the Department of Justice issued its recommendation for approval on July 23, 2002. As a result of comments filed by CLECs concerning the Idaho prices in the application, Qwest has developed still lower rates. The Pricing Attachment included with this letter shows all rates that Qwest has proposed to reduce. On August 5, 2002, Qwest made a filing (USW-T-00-3) with the Commission and requested that the Commission allow the newly submitted rates to become effective on the same date as when the revised rates were made effective, June 7, 2002.

Qwest will incorporate these submitted rates into its Interconnection Agreements. Where a rate in the revised tariff page is lower than the rate currently in a CLEC's Interconnection Agreement, the lower rate will be effective prospectively. Customer bills will also be credited back to June 7, 2002.

Qwest intends that these new, lower rates will remain in effect for its CLEC customers until one of the following occurs: the Commission establishes a different rate in a cost docket; Qwest files with and receives the approval from the Commission of a mutually acceptable different rate; or a change in applicable law takes place triggering a rate change pursuant to any "change in law" provision of an applicable interconnection agreement.

If you have any questions about this letter and its impact on you, please call your Sales Executive.

Sincerely,

L.T. Christensen

303 670-1497

Pricing Attachment
Idaho

Rates Effective June 7, 2002		Recurring	Non-Recurring	Notes
Interconnection				
Exchange Service (EAS/Local) Traffic				
End office call termination, per Minute of Use		$0.001564		##
Tandem Switched Transport				
Tandem Switching, per Minute of Use		$0.000690		#
Unbundled Network Elements (UNEs)				
Unbundled Loops				
Analog Loops				
2-Wire Voice Grade				
Zone 1		$15.65		##
Zone 2		$23.76		##
Zone 3		$40.50		##
4-Wire Voice Grade				
Zone 1		$30.70		##
Zone 2		$46.63		##
Zone 3		$79.47		##
Non-loaded Loops				
2-wire Non-loaded Loop				
Zone 1		$15.65		##
Zone 2		$23.76		##
Zone 3		$40.50		##
4-wire Non-loaded Loop				
Zone 1		$30.70		##
Zone 2		$46.63		##
Zone 3		$79.47		##
Digital Capable Loops				
Basic Rate ISDN / xDSL-I Capable / ADSL Compatible Loop				
Zone 1		$15.65		##
Zone 2		$23.76		##
Zone 3		$40.50		##
DS1 Capable Loop				

Zone 1		$86.48		##
Zone 2		$86.46		##
Zone 3		$99.96		##
DS3 Capable Loop				
Zone 1		$941.95		##
Zone 2		$955.04		##
Zone 3		$1,264.56		##
Loop Installation Charges for 2 & 4 wire Analog / Non-Loaded, ADSL Compatible, ISDN BRI Capable and xDSL - I Capable Loops where conditioning is not required.				
Coordinated Installation with Cooperative Testing / Project Coordinated Installation (25 or more DS0 Unbundled Loops)				
First			$171.87	#
Each Additional			$94.09	#
Coordinated Installation without Cooperative Testing / Project Coordinated Installation (25 or more DS0 Unbundled Loops)				
First			$59.81	#
Each Additional			$53.32	#
Basic Installation with Cooperative Testing				
First			$142.10	#
Each Additional			$94.09	#
Subloop				
2-Wire Distribution Loop				
Each Additional 2-Wire Distribution Loop (applies to both analog and non-loaded)				
Zone 1		$11.00		##
Zone 2		$16.70		##
DS1 Capable Feeder Loop				
Each Addition DS1 Capable Feeder Loop				
Zone 1		$77.20		##
Zone 2		$77.17		##
Zone 3		$90.68		##
Line Sharing				
Shared Loop, per Loop		$0.00		#
	Recurring Fixed	Recurring Per Mile	Non Recurring	

Shared Transport				
Per Minute of Use - TELRIC Based Rate		$0.001110		#
Local Tandem Switching				
Per Minute of Use		$0.000690		#
Local Switching				
Local Usage, per Minute of Use		$0.001564		##
Enhanced Extended Loop (EEL)				
EEL Link / Loop with Multiplexing				
EEL DS0 2-Wire				
Loop with MUX DS0 2-Wire				
Zone 1		$15.65		##
Zone 2		$23.76		##
Zone 3		$40.50		##
EEL DS0 4-Wire				
Loop with MUX DS0 4-Wire				
Zone 1		$30.70		##
Zone 2		$46.63		##
Zone 3		$79.47		##
DS1 EEL				
Loop with MUX DS1				
Zone 1		$86.48		##
Zone 2		$86.46		##
Zone 3		$99.96		##
DS3 EEL				
Zone 1		$941.95		##
Zone 2		$955.04		##
Zone 3		$1,264.56		##

NOTES:

# Denotes voluntary rate reduction.

Additional reduction required to voluntarily reduce rates to reflect the fact that certain sold exchanges had not been removed from the FCC Synthesis Model results.

EXHIBIT
ATT-7
admitted

Qwest

Larry Christensen
Director Business Development
1801 California, Room 2330
Denver, CO 80202
303-896-4686

August 5, 2002

Dear Iowa Interconnection Customer:

RE: Qwest Rate Changes for Certain UNEs

On May 16, 2002, Qwest Corporation ("Qwest") notified you that it had developed new, lower rates for certain Unbundled Network Elements and LIS elements that became effective on June 7, 2002, in accordance with the Iowa Utilities Board ("Board") Order Approving Tariff in Docket No. TF-02-202. Although Qwest believed the prior rates complied with the Act in general and TELRIC in particular, it filed the revised, lower rates to eliminate any question in connection with Qwest's FCC 271 application that its rates satisfy the relevant provisions of the competitive checklist.

Qwest filed its 271 application with the FCC on June 13, 2002 and the Department of Justice issued its recommendation for approval on July 23, 2002. As a result of comments filed by CLECs concerning the Iowa prices in the application, Qwest has developed still lower rates. The Pricing Attachment included with this letter shows all rates that Qwest has proposed to reduce. On August 5, 2002, Qwest made a filing with the Board and requested that the Board allow the newly submitted rates to become effective on the same date as when the revised rates were made effective, June 7, 2002.

Qwest will incorporate these submitted rates into its Interconnection Agreements. Where a rate in the revised tariff page is lower than the rate currently in a CLEC's Interconnection Agreement, the lower rate will be effective prospectively. Customer bills will also be credited back to June 7, 2002.

Qwest intends that these new, lower rates will remain in effect for its CLEC customers until one of the following occurs: the Board establishes a different rate in a cost docket; Qwest files with and receives the approval from the Board of a mutually acceptable different rate; or a change in applicable law takes place triggering a rate change pursuant to any "change in law" provision of an applicable interconnection agreement.

If you have any questions about this letter and its impact on you, please call your Sales Executive.

Sincerely,

L.T. Christensen

Pricing Attachment
Iowa

Rate Effective June 7, 2002	Recurring Fixed	Recurring Per Mile	Nonrecurring	Notes
Interconnection				
Direct Trunk Transport				
DS3 0 Miles	$219.24	$0.00		#
DS3 Over 0 to 8 Miles	$219.24	$54.79		#
DS3 Over 8 to 25 Miles	$222.65	$17.32		#
DS3 Over 25 to 50 Miles	$204.76	$21.47		#
DS3 Over 50 Miles	$216.42	$14.86		#
	Rate	Recurring	Nonrecurring	
Exchange Service (EAS/Local) Traffic				
End office call termination, per Minute of Use		$0.001710		##
Tandem Switched Transport				
Tandem Switching, per Minute of Use		$0.000690		#
Unbundled Network Elements (UNEs)				
Unbundled Loops				
Analog Loops				
2-Wire Voice Grade				
Zone 1		$12.69		##
Zone 2		$15.14		##
Zone 3		$26.39		##
4-Wire Voice Grade				
Zone 1		$24.90		##
Zone 2		$29.71		##
Zone 3		$51.78		##
Non-loaded Loops				
2-wire Non-loaded Loop				
Zone 1		$12.69		##
Zone 2		$15.14		##
Zone 3		$26.39		##
4-wire Non-loaded Loop				
Zone 1		$24.90		##
Zone 2		$29.71		##

Zone 3		$51.78		##
Digital Capable Loops				
Basic Rate ISDN / xDSL - I Capable / ADSL Compatible Loop				
Zone 1		$12.69		##
Zone 2		$15.14		##
Zone 3		$26.39		##
DS1 Capable Loop				
Zone 1		$85.92		##
Zone 2		$88.74		##
Zone 3		$103.75		##
DS3 Capable Loop				
Zone 1		$931.74		##
Zone 2		$1,006.85		##
Zone 3		$1,365.22		##
Loop Installation Charges for 2 & 4 wire Analog / Non-Loaded, ADSL Compatible, ISDN BRI Capable and xDSL - I Capable Loops where conditioning is not required.				
Coordinated Installation with Cooperative Testing / Project Coordinated Installation (25 or more DS0 Unbundled Loops)				
Each Additional			$94.09	#
Coordinated Installation without Cooperative Testing / Project Coordinated Installation (25 or more DS0 Unbundled Loops)				
First			$59.81	#
Each Additional			$53.32	#
Subloop				
2-Wire Distribution Loop				
Zone 2		$10.64		##
Zone 3		$18.55		##
DS1 Capable Feeder Loop				
Zone 1		$76.77		##
Zone 2		$79.59		##
Zone 3		$94.60		##
Line Sharing				
Shared Loop, per Loop		$0.00		#

	Recurring Fixed	Recurring Per Mile	Nonrecurring	
Unbundled Dedicated Interoffice Transport (UDIT)				
DS3 UDIT				
DS3 0 to 8 Miles	$219.24	$54.79		#
DS3 Over 8 to 25 Miles	$222.65	$17.32		#
DS3 Over 25 to 50 Miles	$204.76	$21.47		#
DS3 Over 50 Miles	$216.42	$14.86		#
Shared Transport				
Per Minute of Use - TELRIC Based Rate		$0.00111		#
Local Tandem Switching				
Per Minute of Use		$0.00069		#
Local Switching				
Local Usage, per Minute of Use		$0.001710		##
All Features		$0.00		#
Enhanced Extended Loop (EEL)				
EEL Link / Loop with Multiplexing				
EEL DS0 2-Wire				
Loop with MUX DS0 2-Wire				
Zone 1		$12.69		##
Zone 2		$15.14		##
Zone 3		$26.39		##
EEL DS0 4-Wire				
Loop with MUX DS0 4-Wire				
Zone 1		$24.90		##
Zone 2		$29.71		##
Zone 3		$51.78		##
EEL DS1				
Loop with MUX DS1				
Zone 1		$85.92		##
Zone 2		$88.74		##

Zone 3		$103.75		##
EEL DS3				
Zone 1		$931.74		##
Zone 2		$1,006.85		##
Zone 3		$1,365.22		##
	Recurring Fixed	Recurring Per Mile	Nonrecurring	
EEL Transport				
DS3				
DS3 0 to 8 Miles	$219.24	$54.79		#
DS3 Over 8 to 25 Miles	$222.65	$17.32		#
DS3 Over 25 to 50 Miles	$204.76	$21.47		#
DS1 Over 50 Miles	$216.42	$14.86		#

NOTES:

# Denotes voluntary rate reduction.

Additional reduction to voluntarily reduce rates to reflect the fact that certain sold exchanges had not been removed from the FCC Synthesis Model results.

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT

Chief Commercial Counsel
1875 Lawrence Street, 15th Floor
Denver, Colorado 80202

220 North Fifth Street
Bismarck, ND 58501

EXHIBIT
AT&T-8
admitted

Qwest.

RECEIVED
AT&T Corp. Legal - Denver
n079
AUG 09 2002

OV-NIT ____ PRO SER ____
MEMO ____ REG MAIL ✓
INTER-OF ____ FAX ____
OTHER ____ INITIALS ____

August 5, 2002

Mr. Jon Mielke
Executive Secretary
ND Public Service Commission
600 East Boulevard Avenue - 12th Floor
Bismarck, ND 58505-0480

Re: Qwest Corporation § 271 Compliance Investigation - Case No. PU-314-97-193; U S West Communications, Inc. Section 252(f) Statement of Generally Available Terms Compliance - Case No. PU-314-00-282; Qwest Corporation Interconnection/Wholesale Price Investigation - Case No. PU-2342-01-296

Dear Mr. Mielke:

Enclosed for filing are the original and nine copies of a revised Exhibit A to Qwest's North Dakota SGAT providing lower rates for some Unbundled Network Elements ("UNEs") and Local Interconnection Services ("LIS") than the current rates contained in Exhibit A.

Also enclosed for filing, are the original and nine copies of Qwest's Application to Approve Effective Date of SGAT Price Changes. By this application, Qwest requests that the Commission approve the effective date of the rate revisions on a retroactive basis as of June 7, 2002. In all instances, rates in the revised Exhibit A are equal or lower than the current rates contained in Exhibit A for the applicable element or service.

Please feel free to contact me if you have any questions regarding this filing.

Sincerely,

Scott A. Macintosh
Vice President – North Dakota

SAM/gkb
Enclosures

USA
Proud Sponsor

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Qwest Corporation Section 271 Compliance Investigation	)))	Case No. PU-314-97-193
U S WEST Communications, Inc. Section 252(f) Statement of Generally Available Terms Compliance	)))	Case No. PU-314-00-282
Qwest Corporation Interconnection/Wholesale Price Investigation	)))	Case No. PU-2342-01-296

APPLICATION TO APPROVE EFFECTIVE DATE OF SGAT PRICE CHANGES

Qwest Corporation ("Qwest"), by and through its counsel, hereby files a revised Exhibit A to Qwest's North Dakota SGAT providing for lower rates for some Unbundled Network Elements ("UNEs") and Local Interconnection Services (LIS") elements.

On May 16, 2002, Qwest filed new, lower rates for certain Unbundled Network Elements and LIS elements that became effective on June 7, 2002 in accordance with the Commission motion of June 6, 2002. Although Qwest believed its prior rates complied with the Telecommunications Act of 1996 in general and TELRIC in particular, it filed the revised, lower rates to eliminate any question in connection with Qwest's FCC 271 application that its rates satisfied the relevant provisions of the competitive checklist.

Qwest filed its 271 application with the FCC on June 13, 2002 and the Department of Justice issued its recommendation for approval on July 23, 2002. As a result of comments filed by CLECs concerning the North Dakota prices in the application, in particular those made by AT&T and MCI WorldCom with respect to the

prior sale of exchanges in North Dakota, Qwest has developed still lower rates to accommodate the removal of the sale of exchanges in the FCC's synthesis model. In addition, Qwest has made a few clarifications in Exhibit A, relating to the application of the Quote Preparation Fee for caged and cageless collocation and the applicability of the Wholesale Discount Rate to the PAL product. Finally, in response to CLEC requests for a rate associated with collocation augments, Qwest is submitting a rate for this product. Qwest requests that the submitted rates and clarifications become effective on the same date as when the revised rates were made effective, June 7, 2002.

Qwest will incorporate these submitted rates and clarifications into its Interconnection Agreements. Where a rate in the revised Exhibit A is lower than the rate currently in a CLEC's Interconnection Agreement, the lower rate will be effective prospectively. Customer bills will also be credited back to June 7, 2002. The net effect of this action is to maintain or reduce wholesale rates in North Dakota. In no case will the action result in increased rates to Qwest CLEC customers. Qwest's CLEC customers are being notified of these changes. A copy of the notice is attached for the Commission's information.

Qwest intends that these new, lower rates would remain in effect for its CLEC customers until one of the following occurs: the Commission establishes a different rate in a cost docket; Qwest files with and receives the approval from the Commission of a mutually acceptable different rate; or a change in applicable law takes place triggering a rate change pursuant to any "change in law" provision of an applicable interconnection agreement.

Qwest requests that the Commission approve the effective date of these rates on a retroactive basis as of June 7, 2002.

Dated this 1st day of August, 2002.

Respectfully submitted,

By: _____

Daniel S. Kuntz (ID #03490)
Zuger Kirmis & Smith
P.O. Box 1695
Bismarck, ND 58502-1695
(701) 223-2711

Wendy Moser
Roy Hoffinger
1801 California Street, Suite 4900
Denver, CO 80202

Attorneys for Qwest Corporation

Exhibit A
NorthDakota*

		Recurring	Nonrecurring	Notes
6.0 Resale		Wholesale Discount Percentage Recurring Charges	Wholesale Discount Percentage Nonrecurring Charges	
6.1 Wholesale Discount Rates				
6.1.1	Basic Exchange Residence Line Service	16.15%		
6.1.2	Basic Exchange Business Line Service/PBX/PAL	16.15%		
6.1.3	Interlata Toll	16.15%		
6.1.4	Package/Special Services (e.g., Centrex, ISDN, DSS, Frame Relay Service, ACS)	16.15%		
6.1.5	Listings, CO Features Information Services	16.15%		
6.1.6	Private Line	16.15%		
6.1.7	Volume Packaged Services	8.15%		
6.2 Customer Transfer Charge (CTC)				
6.2.1	CTC for POTS Service			
	First Line (Mechanized)		$5.00	
	Each Additional Line (Mechanized)		$5.00	
	First Line (Manual)		$5.00	
	Each Additional Line (Manual)		$5.00	
6.2.2	CTC for Private Line Transport Services			
	First Circuit		$42.75	1
	Additional Circuit, per circuit, same CSR		$42.75	1
6.2.3	CTC for Advanced Communications Services, per Circuit		$53.70	1
7.0 Interconnection				
7.1 Entrance Facilities				
7.1.1	DS1	$102.22	$513.56	
7.1.2	DS3	$403.34	$609.20	
7.2 LIS EICT				
7.2.1	Per DS1	$0.00	$0.00	
7.2.2	Per DS3	$0.00	$0.00	
		Recurring Fixed	Recurring Per Mile	Nonrecurring	
7.3 Direct Trunked Transport					
7.3.1	DS1 0 to 8 Miles	$42.03	$3.84		1
	DS1 Over 8 to 25 Miles	$42.99	$3.86		1
	DS1 Over 25 to 50 Miles	$45.14	$2.14		1
	DS1 Over 50 Miles	$43.58	$0.93		1
7.3.2	DS3 0 to 8 Miles	$275.29	$64.92		1
	DS3 Over 8 to 25 Miles	$279.23	$21.28		1
	DS3 Over 25 to 50 Miles	$258.29	$25.57		1
	DS3 Over 50 Miles	$271.86	$17.62		1
			Recurring	Nonrecurring	
7.4 Multiplexing					
7.4.1	DS3 to DS1		$236.79	$286.18	
7.4.2	DS1 to DS0		$225.18	$279.55	
7.5 Trunk Nonrecurring Charges					
7.5.1	DS1 Interface, First Trunk			$369.91	1
7.5.2	DS1 Interface, Each Additional Trunk			$6.17	1
7.5.3	DS3 Interface, First Trunk			$377.01	1
7.5.4	DS3 Interface, Each Additional Trunk			$13.28	1
7.6 Exchange Service (EAS/Local) Traffic					
7.6.1	End office call termination, per Minute of Use		$0.001785		##
7.6.2	Tandem Switched Transport				
	Tandem Switching, per Minute of Use		$0.000690		#
		Recurring Fixed	Recurring Per Mile	Nonrecurring	
	Tandem Transmission, per Minute of Use				
	0 to 8 Miles	$0.00069	$0.00		
	Over 8 to 25 Miles	$0.00069	$0.00		
	Over 25 to 50 Miles	$0.00069	$0.00		
	Over 50 Miles	$0.00069	$0.00		

Exhibit A
NorthDakota*

		Recurring	Nonrecurring	Notes
		Recurring	Nonrecurring	
7.7 Local Traffic-FCC-ISP Rate Caps				
7.7.1	MOU for 6 mo. June 14-Dec. 13,2001	N/A		
7.7.2	MOU for 18 mo. Dec. 14,2001-June 13,2003	$0.001		4
7.7.3	MOU for 36 mo. June 14, 2003-June 13, 2006	$0.0007		4
7.8 Miscellaneous Charges				
7.8.1	Expedite Charge (LIS Trunks)	Qwest's North Dakota Access Service Catalog		
7.8.2	Cancellation Charge (LIS Trunks)	Qwest's North Dakota Access Service Catalog		
7.8.3	Additional Testing (LIS Trunks)	Qwest's North Dakota Access Service Catalog		
7.8.4	Construction Charges	ICB	ICB	3
7.9 Transit Traffic				
7.9.1	Local Transit	See Tandem Switching and Tandem Transmission Rates Above.		
	Local Transit Assumed Mileage	15 Miles		
7.9.2	IntraLATA Toll	Qwest's North Dakota Access Service Catalog		
	IntraLATA Toll Assumed Mileage	15 Miles		
7.9.3	Jointly Provided Switched Access	Qwest's North Dakota Access Service Catalog		
7.9.4	Category 11 Mechanized Record Charge, Per Record	$0.001903		1
8.0 Collocation				
8.1 All Collocation				
8.1.1	Quote Preparation Fee		$1,684.80	* & 12
	Quote Preparation Fee- Augment		$1,445.39	1
8.1.2	Collocation Entrance Facility, per Fiber Pair	$1.97	$1,444.80	
8.1.3	Cable Splicing			
	Fiber - Per Set-Up		$457.80	
	Per Fiber Spliced		$19.25	
8.1.4	-48 Volt DC Power Usage, per Ampere, per Month	$10.26		
8.1.5	-48 Volt DC Power Cable, per Foot Per A And B Feeder			
	20 Amp Feed	$4.66	$3,167.21	
	40 Amp Feed	$6.42	$4,359.71	
	60 Amp Feed	$8.06	$5,475.62	
	100 Amp Feed	$0.26	$136.47	1
	200 Amp Feed	$0.41	$213.78	1
	300 Amp Feed	$0.56	$295.24	1
	400 Amp Feed	$0.73	$381.83	1
8.1.6	AC Power Feed			
	AC			
	120 V	$20.53		1
	208 V, Single Phase	$35.59		1
	208 V, Three Phase	$61.56		1
	240 V, Single Phase	$41.06		1
	240 V, Three Phase	$71.04		1
	480 V, Three Phase	$142.07		1
	AC			
	20 Amp, Single Phase	$0.0188	$8.35	1
	20 Amp, Three Phase	$0.0234	$10.35	1
	30 Amp, Single Phase	$0.0203	$9.00	1
	30 Amp, Three Phase	$0.0279	$12.36	1
	40 Amp, Single Phase	$0.0239	$10.59	1
	40 Amp, Three Phase	$0.0329	$14.57	1
	50 Amp, Single Phase	$0.0283	$12.56	1
	50 Amp, Three Phase	$0.0396	$17.53	1
	60 Amp, Single Phase	$0.0320	$14.20	1
	60 Amp, Three Phase	$0.0455	$20.18	1
	100 Amp, Single Phase	$0.0397	$17.58	1
	100 Amp, Three Phase	$0.0619	$27.45	1
8.1.7	Inspector Labor, per Half Hour			
	Regular Hours Rate		$22.00	
	After Hours Rate, minimum 3 hours		$37.41	
8.1.8	Channel Regeneration			
	DS1 Regeneration	$2.54	$500.41	1
	DS3 Regeneration	$7.84	$1,893.09	1

Exhibit A
NorthDakota*

		Recurring	Nonrecurring	Notes
8.1.9	Collocation Terminations			
	DS0 Cable Placement, Per 100 Pair Block, or	$0.3869	$254.53	1
	DS0 Cable Placement, Per Termination	$0.0073	$4.78	1
	DS0 Cable Per 100 Pair Block, or	$0.5272	$346.85	1
	DS0 Cable, Per Termination	$0.0072	$4.75	1
	DS0 Blocks, Per 100 Pair Block, or	$0.9129	$600.61	1
	DS0 Blocks, Per Termination	$0.0125	$8.23	1
	DS0 Block Placement, Per 100 Pair Block, or	$0.4012	$263.99	1
	DS0 Block Placement, Per Termination	$0.0055	$3.62	1
	DS1 Cable Placement, Per 28 DS1 Block, or	$0.9551	$423.34	1
	DS1 Cable Placement, Per Termination	$0.1027	$45.52	1
	DS1 Cable Per 28 DS1 Block, or	$0.9034	$400.43	1
	DS1 Cable, Per Termination	$0.0971	$43.06	1
	DS1 Blocks, Per 28 Block, or	$1.0238	$453.77	1
	DS1 Blocks, Per Termination	$0.1229	$54.48	1
	DS1 Block Placement, Per 28 DS1Block, or	$0.2038	$90.33	1
	DS1 Block Placement, Per Termination	$0.0219	$9.71	1
	DS3 Cable Placement, Per Termination	$0.3889	$172.36	1
	DS3 Cable, Per Termination	$0.5834	$258.58	1
	DS3 Panel/Connector, Per Termination	$0.5972	$264.69	1
	DS3 Panel / Connector Placement, Per Termination	$0.0585	$25.95	1
	OCn Termination			
	OCn Terminations, Per 12 Fibers	$3.71	$1,622.40	
	Cable Racking for OCn Terminations, 1st 12 fibers	$6.75	$2,952.53	
	CONNECTOR Additional	$1.01	$441.16	
	Direct Connect		ICB	3
8.1.10	Security			
	Access Card per Employee	$0.94		1
	Card Access per Employee, per Office	$8.73		1
8.1.11	Composite Clock / Central Office Synchronization			
	Synchronization – Composite Clock, per Port	$10.50		
8.1.12	Space Availability Charge		$348.87	1
8.1.13	Collocation Space Reservation Fee	The charge will be 25% of the Non-Recurring Fee		
8.1.14	Collocation Space Option Administration Fee		$1,915.65	1
8.1.15	Collocation Space Option Fee	$2.00		8
8.2 Virtual Collocation				
8.2.1	Maintenance Labor, per Half Hour			
	Regular Hours Rate		$20.48	
	After Hours Rate		$31.33	
8.2.2	Training Labor, per Half Hour			
	Regular Hours Rate		$23.98	
8.2.3	Equipment Bay -recurring, per Shelf	$10.75		
8.2.4	Engineering Labor, per Half Hour			
	Regular Hours Rate		$23.73	
	After Hours Rate		$36.16	
8.2.5	Installation Labor, per Half Hour			
	Regular Hours Rate		$27.50	
	After Hours Rate		$41.22	
8.2.6	Floor Space Lease, per Square Foot	$3.70		1
8.3 Caged Physical Collocation				
8.3.1	Quote Preparation Fee, Per Collocation		$4,626.54	1 & 12
8.3.2	Space Construction			
	Cage Up to 100 sq Ft (Cage and 1 60 Amp Feed)	$118.06	$52,328.03	1
	Cage - 101 Sq Ft to 200 Sq Ft (Cage and 1 60 Amp Feed)	$122.66	$54,366.18	1
	Cage - 201 Sq Ft to 300 Sq Ft (Cage and 1 60 Amp Feed)	$126.23	$55,951.09	1

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			Recurring	Nonrecurring	Notes
	Cage - 301 Sq Ft to 400 Sq Ft (Cage and 1 60 Amp Feed)		$130.71	$57,937.27	1
	Space Construction - Fencing Credit				
	Cage - Up to 100 Sq Ft		($12.93)	($5,730.49)	1
	Cage - 101 - 200 Sq. Ft		($16.12)	($7,145.07)	1
	Cage - 201 - 300 Sq. Ft		($18.11)	($8,025.57)	1
	Cage - 301 - 400 Sq. Ft		($20.00)	($8,862.77)	1
	Adjustment for DC Power Cable - Change to Standard Design				
	20 Amp Initial Feed Only, Per Initial Power Feed		($17.59)	($7,795.53)	1
	30 Amp Initial Feed Only, Per Initial Power Feed		($16.07)	($7,123.61)	1
	40 Amp Initial Feed Only, Per Initial Power Feed		($12.88)	($5,707.84)	1
	100 Amp Initial Feed Only, Per Initial Power Feed		$21.45	$9,506.58	1
	200 Amp Initial Feed Only, Per Initial Power Feed		$69.25	$30,694.33	1
	300 Amp Initial Feed Only, Per Initial Power Feed		$133.71	$59,266.54	1
	400 Amp Initial Feed Only, Per Initial Power Feed		$204.77	$90,761.94	1
	DC Power Cable - Added Power Feeds				
	20 Amp - Each Additional Power Feed		$14.44	$6,399.82	1
	30 Amp - Each Additional Power Feed		$15.95	$7,071.73	1
	40 Amp - Each Additional Power Feed		$19.15	$8,487.50	1
	60 Amp - Each Additional Power Feed		$32.03	$14,195.35	1
	100 Amp - Each Additional Power Feed		$53.47	$23,701.93	1
	200 Amp - Each Additional Power Feed		$101.28	$44,889.68	1
	300 Amp - Each Additional Power Feed		$165.74	$73,461.89	1
	400 Amp - Each Additional Power Feed		$236.80	$104,957.29	1
8.3.3	Floor Space Lease, per square foot		$3.70		1
8.3.4	Grounding				
	2/0 AWG – per foot		$0.0254	$11.26	1
	1/0 AWG – per foot		$0.0435	$19.27	1
	4/0 AWG – per foot		$0.0501	$22.20	1
	350 kcmil – per foot		$0.0675	$29.91	1
	500 kcmil – per foot		$0.0764	$33.86	1
	750 kcmil – per foot		$0.1321	$58.54	1
8.4 Cageless Physical Collocation					
8.4.1	Quote Preparation Fee, Per Collocation Ordered			$4,981.81	1 & 12
8.4.2	Space Construction				
	Bays and 1 - 40AMP Power Feed - 90 Day		$65.72	$29,129.94	1
	Adjustment for DC Power Cable - Change to Standard Design				
	20 Amp-Initial Feed Only, Per Initial Power Feed		($4.43)	($1,964.73)	1
	30 Amp-Initial Feed Only, Per Initial Power Feed		($2.81)	($1,246.60)	1
	60 Amp-Initial Feed Only, Per Initial Power Feed		$4.94	$2,190.11	1
	100 Amp Initial Feed Only, Per Initial Power Feed		$21.45	$9,506.58	1
	200 Amp Initial Feed Only, Per Initial Power Feed		$69.25	$30,694.33	1
	300 Amp Initial Feed Only, Per Initial Power Feed		$133.71	$59,266.54	1
	400 Amp Initial Feed Only, Per Initial Power Feed		$204.77	$90,761.94	1
	Each Additional Bay, Per Bay		$5.89	$2,610.69	1
	Adjustment for Single Bay - Change to Standard Design		($5.89)	($2,610.69)	1
	Adjustment for DC Power Cable - Additional Power Cables				
	20 Amp-Each Additional Power Feed		$11.53	$5,110.31	1
	30 Amp-Each Additional Power Feed		$13.15	$5,828.45	1
	40 Amp-Each Additional Power Feed		$15.96	$7,075.04	1
	60 Amp-Each Additional Power Feed		$20.90	$9,265.16	1
	100 Amp - Each Additional Power Feed		$53.47	$23,701.93	1
	200 Amp - Each Additional Power Feed		$101.28	$44,889.68	1
	300 Amp - Each Additional Power Feed		$165.74	$73,461.89	1
	400 Amp - Each Additional Power Feed		$236.80	$104,957.29	1
8.4.3	Floor Space Lease, per square foot		$3.70		1
8.5 Adjacent Collocation				ICB	3
8.6 Remote Collocation					
8.6.1	Physical Remote Collocation				
	Space (per Standard Mounting Unit)		$0.99	$862.76	8
	FDI Terminations (per binder group)		$0.58	$555.53	8

		Recurring	Nonrecurring	Notes
	Power		See Collocation Rates	
8.6.2	Adjacent Remote Collocation (New)		ICB	3
	Adjacent Remote Collocation (Existing)	See Physical Remote Collocation		
8.6.3	Virtual Remote Collocation			
	Space	$0.99	$862.76	8
	FDI Terminations (per binder group)	$0.58	$555.53	8
	Power		See Collocation Rates	
	Flat Labor Rate, per Job		$36.16	1
	Engineering Labor (per 1/2 hour)		$35.65	1
	Maintenance Labor (per 1/2 hour)		$29.40	1
	Installation Labor (per 1/2 hour)		$29.40	1
	Training, (per 1/2 hour)		$29.40	1
8.7 CLEC-to-CLEC				
8.7.1	Flat Charge (Design Engineering & Installation - No Cables)		$826.45	1
8.7.2	Cable Racking (per Foot)			
	DS0	$0.22349		1
	DS1	$0.23649		1
	DS3	$0.20638		1
8.7.3	Virtual Connections (if applicable Connections only; No Cables)			
	DS0 (Per 100 Connections		$233.27	1
	DS1 (Per 28 Connections)		$106.40	1
	DS3 (Per 1 Connection)		$9.20	1
8.7.4	Cable Hole (if Applicable)		$469.01	1
8.7.5	CLEC to CLEC Cross-Connection		$266.98	1
8.8 Microwave Entrance Facility			Under Development	
9.0 Unbundled Network Elements (UNEs)				
9.1 Interconnection Tie Pairs (ITP) – Per Termination				
DS0 2-wire		$0.45		1
DS0 4-wire		$1.32		1
DS1 Per each Termination		$5.98		
DS3 Per each Termination		$26.26		
9.2 Unbundled Loops				
9.2.1	Analog Loops			
	2-Wire Voice Grade		See Installation options, Section 9.2.4	
	Zone 1	$13.53		##
	Zone 2	$22.80		##
	Zone 3	$51.65		##
	4-Wire Voice Grade		See Installation options, Section 9.2.4	
	Zone 1	$28.54		##
	Zone 2	$44.74		##
	Zone 3	$101.35		##
	Unbundled Loop Grooming (2-Wire)	$0.19		1, #
	Unbundled Loop Grooming (4-Wire)	$0.38		1, #
9.2.2	Non-loaded Loops			
	2-wire Non-loaded Loop		See Installation options, Section 9.2.4 and See also Section 9.2.2.3	
	Zone 1	$13.53		##
	Zone 2	$22.80		##

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		Recurring	Nonrecurring	Notes
	Zone 3		$51.65		##
	4-wire Non-loaded Loop			See Installation options, Section 9.2.4 and See also Section 9.2.2.3	
	Zone 1		$26.54		##
	Zone 2		$44.74		##
	Zone 3		$101.35		##
	Cable Unloading/Bridge Tap Removal			$538.16	
9.2.3	Digital Capable Loops				
	Basic Rate ISDN / xDSL-I Capable / ADSL Compatible Loop			See Installation options, Section 9.2.4 and See also Section 9.2.2.3	
	Zone 1		$13.53		##
	Zone 2		$22.80		##
	Zone 3		$51.65		##
	DS1 Capable Loop			See Installation options, Section 9.2.5	
	Zone 1		$88.63		##
	Zone 2		$94.39		##
	Zone 3		$98.60		##
	DS3 Capable Loop			See Installation options, Section 9.2.6	
	Zone 1		$960.74		##
	Zone 2		$1,131.65		##
	Zone 3		$1,226.40		##
	OC - n Capable Loop			See Installation options, Section 9.2.7	
	OC - 3		$908.58		1
	OC - 12		$1,472.06		1
	OC - 48		$4,115.92		1
	2-Wire Extension Technology		$22.67		
9.2.4	Loop Installation Charges for 2 & 4 wire Analog / Non - Loaded, ISDN BRI Capable, xDSL - I Capable, and ADSL Compatible Loop where conditioning is not required.		See related monthly recurring Loop charges above.		
9.2.4.1	Basic Installation				
	First Loop			$55.27	#
	Each Additional			$48.77	#
9.2.4.2	Basic Installation with Performance Testing				
	First Loop			$142.10	#
	Each Additional			$86.24	
9.2.4.3	Coordinated Installation with Cooperative Testing / Project Coordinated Installation (25 or more DS0 Unbundled Loops)				
	First Loop			$171.87	#
	Each Additional			$94.09	#
9.2.4.4	Coordinated Installation without Cooperative Testing / Project Coordinated Installation (25 or more DS0 Unbundled Loops)				
	First Loop			$59.81	#
	Each Additional			$53.32	#

			Recurring	Nonrecurring	Notes
	9.2.4.5	Basic Installation with Cooperative Testing			
		First Loop		$142.10	#
		Each Additional		$94.09	#
9.2.5	DS1 Loop Installation Charges		See related monthly recurring Loop charges above.		
	9.2.5.1	Basic Installation			
		First Loop		$184.32	1
		Each Additional		$125.93	1
	9.2.5.2	Basic Installation with Performance Testing			
		First Loop		$323.90	1
		Each Additional		$222.69	1
	9.2.5.3	Coordinated Installation with Cooperative Testing / Project Coordinated Installation			
		First Loop		$365.51	1
		Each Additional		$222.69	1
	9.2.5.4	Coordinated Installation without Cooperative Testing / Project Coordinated Installation			
		First Loop		$193.81	1
		Each Additional		$135.39	1
	9.2.5.5	Basic Installation with Cooperative Testing			
		First Loop		$323.90	1
		Each Additional		$222.69	1
9.2.6	DS3 Loop Installation Charges		See related monthly recurring Loop charges above.		
	9.2.6.1	Basic Installation			
		First Loop		$184.32	1
		Each Additional		$125.93	1
	9.2.6.2	Basic Installation with Performance Testing			
		First Loop		$323.90	1
		Each Additional		$222.69	1
	9.2.6.3	Coordinated Installation with Cooperative Testing / Project Coordinated Installation			
		First Loop		$365.51	1
		Each Additional		$222.69	1
	9.2.6.4	Coordinated Installation without Cooperative Testing / Project Coordinated Installation			
		First Loop		$193.81	1
		Each Additional		$135.39	1
	9.2.6.5	Basic Installation with Cooperative Testing			
		First Loop		$323.90	1
		Each Additional		$222.69	1
9.2.7	OC - 3, 12 , & 48 Loop Installation Charges		See related monthly recurring Loop charges above.		
	9.2.7.1	Basic Installation			
		First Loop		$184.32	1
		Each Additional		$125.93	1
	9.2.7.2	Basic Installation with Performance Testing			
		First Loop		$323.90	1
		Each Additional		$222.69	1
	9.2.7.3	Coordinated Installation with Cooperative Testing			

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			Recurring	Nonrecurring	Notes
		First Loop		$365.51	1
		Each Additional		$222.69	1
	9.2.7.4	Coordinated Installation without Cooperative Testing			
		First Loop		$193.81	1
		Each Additional		$135.39	1
	9.2.7.5	Basic Installation with Cooperative Testing			
		First Loop		$323.90	1
		Each Additional		$222.69	1
9.2.8		**Private Line to Unbundled Loop Conversions**		$40.17	1
9.3 Subloop					
9.3.1		2-Wire Distribution Loop [11]		$115.44	1
		Each Addl 2 -Wire Distribution Loop (applies to both analog and non-loaded)		$33.13	1
		Zone 1	$9.51		##
		Zone 2	$16.02		##
		Zone 3	$32.18		1
9.3.2		Intra Building Cable	$0.00	$0.00	10
9.3.3		DS1 Capable Feeder Loop		$337.11	1
		Each Addition DS1 Capable Feeder Loop		$239.11	1
		Zone 1	$79.26		##
		Zone 2	$85.02		##
		Zone 3	$89.23		##
9.3.4		MTE Terminal Subloop Access			
		Subloop MTE - POI Site Inventory (per request)		$0.00	1
		MTE - POI Rearrangement of Facilities		ICB	3
		MTE - POI Construction of new SPOI	ICB		3
9.3.5		Trouble Isolation Charge		See MSC Charges	
9.3.6		Feasibility Fee/Quote Preparation Fee		$1,706.60	1
9.3.7		Construction Fee		ICB	3
9.4 Line Sharing					
9.4.1		Shared Loop, per Loop	$0.00	$38.20	# and 1
9.4.2		OSS, per Order	$3.49		1
9.4.3		Reclassification Charge		ICB	3
9.4.4		Splitter Shelf Charge	$5.40	$556.40	1
9.4.5		Splitter TIE Cable Connections			
		Splitter in the Common Area - Data to 410 Block	$7.39	$3,321.82	1
		Splitter in the Common Area - Data direct to CLEC	$7.75	$3,486.28	1
		Splitter on the IDF - Data to 410 Block	$2.42	$1,087.57	1
		Splitter on the IDF - Data direct to CLEC	$5.19	$2,335.64	1
		Splitter on the MDF - Data to 410 Block	$2.35	$1,057.26	1
		Splitter on the MDF - Data direct to CLEC	$4.40	$1,979.53	1
9.4.6		Engineering		$1,333.17	1
9.5 Network Interface Device (NID)			$1.14	$58.32	1 & *
			Recurring Fixed	Recurring Per Mile	Nonrecurring	Notes
9.6 Unbundled Dedicated Interoffice Transport (UDIT)						
9.6.1		DS0 UDIT			$320.69	1
		DS0 0 to 8 Miles	$28.20	$0.39		1
		DS0 Over 8 to 25 Miles	$28.61	$0.21		1
		DS0 Over 25 to 50 Miles	$28.66	$0.17		1
		DS0 Over 50 Miles	$28.38	$0.06		1
9.6.2		DS1 UDIT			$367.52	1
		DS1 0 to 8 Miles	$42.03	$3.84		1
		DS1 Over 8 to 25 Miles	$42.99	$3.86		1
		DS1 Over 25 to 50 Miles	$45.14	$2.14		1
		DS1 Over 50 Miles	$43.58	$0.93		1

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			Recurring	Nonrecurring	Notes
9.6.3	DS3 UDIT			$367.52	1
	DS3 0 to 8 Miles	$275.29	$64.92		1
	DS3 Over 8 to 25 Miles	$279.23	$21.28		1
	DS3 Over 25 to 50 Miles	$258.29	$25.57		1
	DS3 Over 50 Miles	$271.86	$17.62		1
9.6.4	OC-3 UDIT			$367.52	1
	OC-3 0 to 8 Miles	$887.62	$228.43		1
	OC-3 Over 8 to 25 Miles	$893.94	$76.13		1
	OC-3 Over 25 to 50 Miles	$859.18	$94.80		1
	OC-3 Over 50 Miles	$881.23	$65.82		1
9.6.5	OC-12 UDIT			$367.52	1
	OC-12 0 to 8 Miles	$2,476.04	$97.41		1
	OC-12 Over 8 to 25 Miles	$2,476.04	$105.36		1
	OC-12 Over 25 to 50 Miles	$2,476.04	$111.33		1
	OC-12 Over 50 Miles	$2,476.04	$131.93		1
9.6.6	OC-48 UDIT			$367.52	1
	OC-48 0 to 8 Miles	$8,166.93	$324.68		1
	OC-48 Over 8 to 25 Miles	$8,166.93	$352.08		1
	OC-48 Over 25 to 50 Miles	$8,166.93	$401.71		1
	OC-48 Over 50 Miles	$8,166.93	$509.75		1
			Recurring	Nonrecurring	
9.6.7	DS0 UDIT Low Side Channelization		$14.67		1
9.6.8	Multiplexing				
	DS3 to DS1		$225.18	$2,675.76	* &1
	DS1 to DS0, High Side		$273.66	$285.00	1
	DS1 to DS0, Low Side		$8.37	$249.76	1
9.6.9	Extended Unbundled Dedicated Interoffice Transport		See UDIT Section		
9.6.10	UDIT Rearrangement				
	DS0 Single Office			$183.55	1
	DS0 Dual Office			$248.25	1
	UDIT HICAP Rearrangement Dual Office			$277.03	1
	UDIT HICAP Rearrangement Single Office			$248.25	1
9.6.11	Remote Node/Remote Port				
	OC-3 UDIT Remote Node		$643.32		1
	DS1 Remote Port		$5.27	$222.92	1
	DS3 Remote Port		$72.04	$222.92	1
	OC-12 UDIT Remote Node		$1,261.70		1
	DS1 Remote Port		$16.15	$222.92	1
	DS3 Remote Port		$59.68	$222.92	1
	OC-3 Remote Port		$159.73	$222.92	1
	OC-48 UDIT Remote Node		$3,959.14		1
	DS3 Remote Port		$46.85	$222.92	1
	OC-3 Remote Port		$180.33	$222.92	1
	OC-12 Remote Port		$710.81	$222.92	1
9.7	**Unbundled Dark Fiber (UDF)**				
9.7.1	Single Strand Increments - 1 Fiber				
	Termination, Fixed 1 Fiber/Office		$5.69		1
	Fiber Transport, per Mile / 1 Fiber		$98.68		1
	Fiber Cross-Connect / 1 Fiber		$5.00		1
	UDF-Loop Charges - 1 Fiber				
	Termination, Fixed 1 Fiber/Office		$5.69		1
	Termination, Fixed 1 Fiber /Prem		$81.90		1
	Fiber Loop, per Route/ 1 Fiber		$2.36		1
	Extended Unbundled Dark Fiber (E-UDF) - 1 Fiber				
	Termination, Fixed 1 Fiber/Office		$5.69		1
	Termination, Fixed 1 Fiber /Prem		$81.90		1
	Fiber Transport, per Route/ 1 Fiber		$2.36		1
9.7.2	Initial Records Inquiry (IRI)				

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			Recurring	Nonrecurring	Notes
	Simple			$262.71	1
	Complex			$308.40	1
9.7.3	Field Verification and Quote Preparation (FVQP)			$1,051.28	1
9.7.4	Field Verification (Engineering Verification)			$361.11	1
9.7.5	UDF-IOF Charges				
	Order Charge per 1st Pair Route/Order			$619.01	1
	Order Charge each. Addl. Pair Same Route			$283.13	1
	Termination, Fixed Per Pair Office		$9.11		1
	Fiber Transport, per Mile/Pair		$73.01		1
	Fiber Cross-Connect Per Pair/Office		$5.06	$22.45	1
9.7.6	UDF-Loop Charges				
	Order Charge per 1st Pair Route/Order			$619.01	1
	Order Charge each. Addl. Pair Same Route			$283.13	1
	Termination, Fixed Per Pair/Office		$9.55		1
	Termination, Fixed Per Pair/Prem		$7.91		1
	Fiber Loop, per Route/Per Pr		$85.25		1
	Fiber Cross-Connect Per Pair/Office		$5.06	$22.45	1
9.7.7	Extended Unbundled Dark Fiber (E-UDF)				
	Order Charge per 1st Pair Route/Order			$619.01	1
	Order Charge each. Addl. Pair Same Route			$283.13	1
	Termination, Fixed Per Pair/Office		$9.55		1
	Termination Fixed Per Pair/Prem.		$7.91		1
	Fiber Transport, per Route/Per Pr.		$85.25		1
	Fiber Cross-Connect Per Pair/Office		$5.06	$22.45	1
9.8 Shared Transport, Per Minute of Use			$0.001110		#
9.9 Unbundled Customer Controlled Rearrangement Element (UCCRE)					
9.9.1	DS1 Port		ICB	ICB	3
9.9.2	DS3 Port		ICB	ICB	3
9.9.3	Dial Up Access		ICB		3
9.9.4	Attendant Access		ICB		3
9.9.5	Virtual Ports			ICB	3
9.10 Local Tandem Switching					
9.10.1	DS1 Local Message Trunk Port			$231.64	1
9.10.2	DS1 Trunk Group – First Trunk - Per Order			$226.96	1
9.10.3	DS1 Trunk Group – Each Additional - Per Order			$25.50	1
9.10.4	Per Minute of Use		$0.000690		#
9.11 Local Switching					
9.11.1	Local Switching - TELRIC Based Rates				
	Analog Line Side Port, First Port		$1.27	$97.97	
	Each Additional Port (ordered concurrently with an unbundled loop)		$1.27	$52.71	
9.11.4	Vertical Features				
	10XXX Direct Dialed Blocking		$0.00		
	Account Codes - per system		$0.00	$83.32	1
	Attendant Access Line - per station line		$0.00	$1.20	1
	Audible Message Waiting		$0.00	$1.05	1
	Authorization Codes - per system		$0.00	$249.19	1
	Auto Callback		$0.00		
	Automatic Line		$0.00	$0.36	1
	Automatic Route Selection - Common Equip. per system		$0.00	$2,186.42	1
	Blocking of pay per call services		$0.00		
	Bridging		$0.00		
	Call Drop		$0.00	$0.36	1
	Call Exclusion - Automatic		$0.00	$1.05	1
	Call Exclusion - Manual		$0.00	$0.70	1
	Call Forward Don't Answer - All Calls		$0.00		
	Call Forwarding Incoming Only		$0.00		
	Call Forwarding Intra Group Only		$0.00		
	Call Forwarding Variable Remote		$0.00		
	Call Forwarding: Busy Line (Expanded)		$0.00		
	Call Forwarding: Busy Line (External)		$0.00		
	Call Forwarding: Busy Line (External) Don't Answer		$0.00		
	Call Forwarding: Busy Line (Overflow)		$0.00		
	Call Forwarding: Busy Line (Overflow) Don't Answer		$0.00		
	Call Forwarding: Busy Line (Programmable)		$0.00		
	Call Forwarding: Busy Line/Don't Answer Programmable Svc. Establishment			$16.31	1

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		Recurring	Nonrecurring	Notes
CF DON'T ANSWER/CF BUSY CUSTOMER PROGRAMMABLE - PER LINE			$1.05	1
Call Forwarding: Busy Line/Don't Answer (Expanded)		$0.00		
Call Forwarding: Don't Answer		$0.00		
Call Forwarding: Don't Answer (Expanded)		$0.00		
Call Forwarding: Don't Answer (Programmable)		$0.00		
Call Forwarding: Variable		$0.00		
Call Forwarding: Variable - no call complete option		$0.00		
Call Hold		$0.00		
Call Hold/3-Way/Call Transfer		$0.00		
Call Park (Basic - Store & Retrieve)		$0.00		
Call Pickup		$0.00		
Call Transfer		$0.00		
Call Waiting Dial Originating		$0.00		
Call Waiting Indication - per timing state		$0.00	$1.05	1
Call Waiting Originating		$0.00		
Call Waiting Terminating - All Calls		$0.00		
Call Waiting Terminating - Incoming Only		$0.00		
Call Waiting/ Cancel Call Waiting		$0.00		
CENTREX COMMON EQUIPMENT			$1,256.13	1
Centrex Management System (CMS)		$0.00		
Centrex Plus DID numbers per number		$0.00		
Centrex Plus to Centrex Plus		$0.00		
Centrex Plus to IC Carrier		$0.00		
Centrex Plus to PBX/Key Blocked		$0.00		
Centrex Plus to PBX/Key Non-Blocked		$0.00		
CFBL - All Calls		$0.00		
CFBL - Incoming Only		$0.00	$39.49	1
CFDA Incoming Only		$0.00	$39.49	1
CLASS - Anonymous Call Rejection		$0.00		
CLASS - Call Waiting ID		$0.00		
CLASS - Calling Name & Number		$0.00		
CLASS - Calling Number Delivery		$0.00		
CLASS - Calling Number Delivery - Blocking		$0.00		
CLASS - Continuous Redial		$0.00		
CLASS - Last Call Return		$0.00		
CLASS - Priority Calling		$0.00		
CLASS - Selective Call Forwarding		$0.00		
CLASS - Selective Call Rejection		$0.00		
Conference Calling - Meet Me		$0.00	$44.23	1
Conference Calling - Preset		$0.00	$44.23	1
Custom Ringing First Line (Short/Long/Short)		$0.00		
Custom Ringing First Line (Short/Short)		$0.00		
Custom Ringing First Line (Short/Short/Long)		$0.00		
Custom Ringing Second Line (Short/Long/Short)		$0.00		
Custom Ringing Second Line (Short/Short)		$0.00		
Custom Ringing Second Line (Short/Short/Long)		$0.00		
Custom Ringing Third Line (Short/Long/Short)		$0.00		
Custom Ringing Third Line (Short/Short)		$0.00		
Custom Ringing Third Line (Short/Short/Long)		$0.00		
Data Call Protection (DMS 100)		$0.00		
Dir Sta Sel/Busy Lamp Fld per arrangement		$0.00	$0.36	1
Directed Call Pickup with Barge-in		$0.00	$21.00	1
Directed Call Pickup without Barge-in		$0.00	$21.00	1
Distinctive Ring/Distinctive Call Waiting		$0.00	$41.98	1
Distinctive Ringing		$0.00		
EBS - Set Interface - per station line		$0.00		
Executive Busy Override		$0.00		
Expensive Route Warning Tone- per system		$0.00	$74.89	1
Facility Restriction Level - per system		$0.00	$46.07	1
Feature Display		$0.00		
Group Intercom		$0.00	$0.48	1
Hot Line - per line		$0.00	$1.05	1
Hunting: Multiposition Circular Hunting		$0.00		
Hunting: Multiposition Hunt Queuing		$0.00	$40.18	1
Hunting: Multiposition Series Hunting		$0.00		
Hunting: Multiposition with Announcement in Queue		$0.00	$40.18	1
Hunting: Multiposition with Music in Queue		$0.00	$42.43	1
Incoming Calls Barred		$0.00		
International Direct Dial Blocking		$0.00		
ISDN Short Hunt		$0.00	$1.77	1
Line Side Answer Supervision		$0.00		
Loudspeaker Paging - per trunk group		$0.00	$183.84	1
Make Busy Arrangements - per group		$0.00	$0.70	1
Make Busy Arrangements - per line		$0.00	$0.70	1

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		Recurring	Nonrecurring	Notes
	Message Center - per main station line	$0.00	$0.36	1
	Message Waiting Indication Audible/Visual	$0.00		
	Message Waiting Visual	$0.00	$0.36	1
	Music On Hold - per system	$0.00	$24.09	1
	Network Speed Call	$0.00		
	Night Service Arrangement	$0.00		
	Outgoing Calls Barred	$0.00		
	Outgoing Trunk Queuing	$0.00		
	Privacy Release	$0.00	$0.49	1
	Query Time	$0.00	$0.36	1
	Speed Calling 1 Digit Controller	$0.00		
	Speed Calling 1 Digit User	$0.00		
	Speed Calling 1# List Individual	$0.00		
	Speed Calling 2 Digit Controller	$0.00		
	Speed Calling 2 Digit User	$0.00		
	Speed Calling 2# List Individual	$0.00		
	Speed Calling 30 Number	$0.00		
	Speed Calling 8 Number	$0.00		
	Station Camp-On Service - per main station	$0.00	$0.36	1
	Station Dial Conferencing (6 Way)	$0.00		
	Station Message Detail Recording (SMDR)	$0.00		
	Three Way Calling	$0.00		
	Time and Date Display	$0.00		
	Time of Day Control for ARS - per system	$0.00	$131.03	1
	Time of Day NCOS Update	$0.00	$0.56	1
	Time of Day Routing - per line	$0.00	$0.54	1
	Toll Restriction Service	$0.00		
	Trunk Answer Any Station	$0.00		
	Trunk Verification from Designated Station	$0.00	$0.41	1
	UCD in hunt group - per line	$0.00	$0.70	1
	UCD with Music After Delay	$0.00		
	CLASS - Call Trace		$2.51	1
	CMS - SYSTEM ESTABLISHMENT - INITIAL INSTALLATION		$1,011.80	1
	CMS - SYSTEM ESTABLISHMENT - SUBSEQUENT INSTALLATION		$505.90	1
	CMS - PACKET CONTROL CAPABILITY, PER SYSTEM		$505.90	1
	SMDR-P - SERVICE ESTABLISHMENT CHARGE, INITIAL INSTALLATION		$353.33	1
	SMDR-P - ARCHIVED DATA		$184.63	1
9.11.3	Subsequent Order Charge		$14.13	1
9.11.4	Digital Line Side Port (Supporting BRI ISDN)			
	First Port	$21.16	$243.85	1
	Each Additional Port		$243.85	1
9.11.5	Digital Trunk Ports			
	DS1 Local Message Trunk Port	42.15		1
	Message Trunk Group, First Trunk		$178.67	1
	Message Trunk Group, Each Additional		$49.85	1
	DS1 PRI ISDN Trunk Port	$220.77	$653.10	1
	DID / PBX Trunk Port per DS0	$2.55	$218.59	1
9.11.6	DS0 Analog Trunk Port			
	Unbundled Analog DSO Trunk Port, First Port	$15.92	$127.20	1
	Unbundled Analog DS0 Trunk Port, Each Additional		$35.34	1
9.11.7	Local Usage, per Minute of Use	$0.001785		##
9.12	**Local Switching - Market Based Rates**	These rates are only available in Zone 1 Wire Centers		
9.13	**Customized Routing**			
9.13.1	Development of Custom Line Class Code – Directory Assistance or Operator Services Routing Only		$328.93	1
9.13.2	Installation Charge, per Switch – Directory Assistance or Operator Service Routing Only		$240.95	1
9.13.3	All Other Custom Routing	ICB	ICB	3
9.14	**Common Channel Signaling/SS7**			
9.14.1	CCSAC STP Port	$236.33	$458.49	1
9.14.2	CCSAC Options Activation Charge			
	Basic Translations			
	First Activation, per Order		$120.11	1
	Each Additional Activation, per Order		$9.97	1

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		Recurring	Nonrecurring	Notes
	CCSAC Options Database Translations			
	First Activation per Order		$140.05	1
	Each additional Activation per Order		$59.83	1
9.14.3	Signal Formulation, ISUP, Per Call Set-Up Request	$0.0005764		1
9.14.4	Signal Transport, ISUP, Per Call Set-Up Request	$0.0001871		1
9.14.5	Signal Transport, TCAP, per Data Request	$0.0000208		1
9.14.6	Signal Switching, ISUP, Per Call Set-Up	$0.0011294		1
9.14.7	Signal Switching, TCAP, Per Data Request	$0.0009688		1
9.15	**Advanced Intelligent Network (AIN)**			
9.15.1	AIN Customized Services (ACS)		ICB	3
9.15.2	AIN Platform Access (APA)	ICB	ICB	3
9.15.3	AIN Query Processing, per Query	ICB		3
9.16	**Line Information Database (LIDB)**			
9.16.1	LIDB Storage		No Charge	
9.16.2	Line Validation Administration System Access (LVAS)		ICB	3
	LIDB/ICNAM Line Record Initial Load			
	Up to 20,000 Line Records		$2,601.00	1
	Over 20,000 Line Records		ICB	3
	Mechanized Service Account Update, per Addition or Update Processed		ICB	3
	Individual Line Record Audit		ICB	3
	Account Group Audit		ICB	3
	Expedited Request Charge for Manual Updates		ICB	3
9.16.3	LIDB Query Service, per Query	$0.0008598		1
9.16.4	Fraud Alert Notification, per Alert	No Charge		
9.17	**8XX Database Query Service**			
9.17.1	Basic Query, per Query	$0.02088287		1
9.17.2	POTS Translation	$0.00000052		1
9.17.3	Call Handling & Destination Feature	$0.00000157		1
9.18	**ICNAM, Per Query**	$0.000778		1
9.19	**Construction Charges**	ICB	ICB	3
9.20	**Miscellaneous Charges**			
	*** Per 1/2 hour or fraction thereof**			
	* Additional Engineering – Basic		$33.16	1
	* Additional Engineering – Overtime		$41.01	1
	* Additional Labor Installation – Overtime		$9.43	1
	* Additional Labor Installation – Premium		$18.85	1
	* Additional Labor Other – Basic		$28.90	1
	* Additional Labor Other – Overtime		$38.60	1
	* Additional Labor Other – Premium		$48.31	1
	* Testing and Maintenance – Basic		$30.70	1
	* Testing and Maintenance – Overtime		$41.01	1
	* Testing and Maintenance – Premium		$51.31	1
	* Maintenance of Service – Basic		$28.90	1
	* Maintenance of Service – Overtime		$38.60	1
	* Maintenance of Service – Premium		$48.31	1
	* Additional COOP Acceptance Testing – Basic		$30.70	1
	* Additional COOP Acceptance Testing – Overtime		$41.01	1
	* Additional COOP Acceptance Testing – Premium		$51.31	1
	* NonScheduled COOP Testing - Basic		$30.70	1
	* NonScheduled COOP Testing – Overtime		$41.01	1
	* NonScheduled COOP Testing – Premium		$51.31	1
	* NonScheduled Manual Testing – Basic		$30.70	1
	* NonScheduled Manual Testing – Overtime		$41.01	1
	* NonScheduled Manual Testing – Premium		$51.31	1
	Cooperative Scheduled Testing – Loss	$0.09		1
	Cooperative Scheduled Testing – C-Message Noise	$0.09		1
	Cooperative Scheduled Testing – Balance	$0.35		1
	Cooperative Scheduled Testing – Gain Slope	$0.09		1
	Cooperative Scheduled Testing – C-Notched Noise	$0.09		1

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		Recurring	Nonrecurring	Notes
Manual Scheduled Testing – Loss		$0.17		1
Manual Scheduled Testing – C-Message Noise		$0.17		1
Manual Scheduled Testing – Balance		$0.69		1
Manual Scheduled Testing – Gain Slope		$0.17		1
Manual Scheduled Testing – C-Notched Noise		$0.17		1
Additional Dispatch			$88.10	1
Date Change			$10.83	1
Design Change			$77.17	1
Expedite Charge			ICB	3
Cancellation Charge			ICB	3
9.21 Channel Regeneration				
DS1 Regeneration		$2.54	$500.41	1
DS3 Regeneration		$7.84	$1,893.09	1
9.22 Reserved for future use				
9.23 UNE Combinations				
9.23.1 UNE - P Line Splitting				
Basic Installation Charge for UNE-P Line Splitting			$38.20	1
9.23.2 UNE-P Conversion Non-Recurring Charges				
UNE-P POTS, CENTREX, Analog PBX Trunks				
First			$0.71	1
Each Additional			$0.14	1
UNE-P PAL Manual				
First			$16.96	1
Each Additional			$2.83	1
UNE-P PBX DID Trunks				
First			$25.89	1
Each Additional			$3.26	1
UNE-P ISDN BRI				
First			$27.82	1
Each Additional			$3.26	1
UNE-P ISDN PRI, DSS per DS1 Facility			$24.93	1
UNE-P ISDN PRI, DSS - per Trunk				
First			$25.89	1
Each Additional			$3.26	1
9.23.3 UNE-P New Connection Non-Recurring Charges				
UNE-P POTS Centrex, Analog PBX Trunks				
First			$57.85	1
Each Additional			$16.60	1
UNE-P PAL Manual				
First			$85.88	1
Each Additional			$19.29	1
UNE - P PBX DID - per Trunk			$186.57	1
UNE - P ISDN BRI			$325.30	1
UNE - P Trunks				
DSS Basic Trunk - In Only, Out Only, or Two Way			$82.71	1
DSS, ISDN PRI Adv. Trunk - In only w/DID & Hunting, or 2 Way w/DID, Hunting & Answer Sup'v			$81.85	1
DSS, ISDN PRI Adv. Trunk - Out Only w/Answer Sup'v			$83.14	1
Complex Translations Digits Outpulsed Change Signaling			14.96	1
DID Complex Translations Signaling Change			$34.90	1
DID Block Compromise			$26.34	1
DID Group of 20 Numbers			$35.04	1
DID Reserve Sequential # Block			26.18	1
DID Reserve Non Sequential TN			24.44	1
DID Trunk Termination			24.58	1
DID NonSequential TN			36.77	1
Facilities for UNE - P DSS, UNE - P ISDN PRI				
DS1 Loop Facility (for Basic Trunk)			$323.90	1

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		Recurring	Nonrecurring	Notes
	DS1 Loop Facility (for Advanced Trunks)		$323.90	1
	DS3 Loop Facility		$323.90	1
	UNE - P PRI Configurations			
	UNE-P PRI Dedicated PRI 23 + D		$717.37	1
	UNE-P PRI Dedicated PRI 24		$692.84	1
	UNE-P PRI Dedicated PRI 23B + Back-Up D Configuration - 5E		$691.84	1
9.23.4	UNE - P Qwest DSL		See applicable Qwest retail Tariff, catalog, or price list	
9.23.5	UNE-Combination Private Line			
	DS0/DS1/DS3./OCN/Integrated T-1 Existing Service		$34.08	1
9.23.6	Enhanced Extended Loop (EEL)			
	EEL Link / Loop with Multiplexing			
	EEL DSO 2-Wire		$267.28	1
	EEL DS0 2/4 Wire Each Additional		$199.17	1
	Loop with MUX DS0 2-Wire		$239.91	1
	Loop with MUX 2/4 Wire DS0 Each Additional		$156.57	1
	Zone 1	$13.53		##
	Zone 2	$22.80		##
	Zone 3	$51.65		##
	EEL DSO 4-Wire		$267.28	1
	EEL DS0 2/4 Wire Each Additional		$199.17	1
	Loop with MUX DS0 2-Wire		$239.91	1
	Loop with MUX 2/4 Wire DS0 Each Additional		$156.57	1
	Zone 1	$26.54		##
	Zone 2	$44.74		##
	Zone 3	$101.35		##
	EEL DS1		$327.68	
	EEL DS1 Each Additional		$244.46	1
	Loop with MUX DS1		$303.47	1
	Loop with MUX DS1 Each Additional		$222.19	1
	Zone 1	$88.63		##
	Zone 2	$94.39		##
	Zone 3	$98.60		##
	EEL DS3		$353.16	
	EEL DS3 Each Additional		$269.95	1
	Zone 1	$960.74		##
	Zone 2	$1,131.65		##
	Zone 3	$1,226.40		##
9.23.7	EEL C and Loop MUX Conversion		$40.17	1
		Recurring Fixed	Recurring Per Mile	Nonrecurring	Notes
9.23.8	EEL				
	DS0 EEL Transport				
	DS0 0 to 8 Miles	$28.20	$0.39		1
	DS0 Over 8 to 25 Miles	$28.61	$0.21		1
	DS0 Over 25 to 50 Miles	$28.66	$0.17		1
	DS0 Over 50 Miles	$28.38	$0.06		1
	DS1				
	DS1 0 to 8 Miles	$42.03	$3.84		1
	DS1 Over 8 to 25 Miles	$42.99	$3.86		1
	DS1 Over 25 to 50 Miles	$45.14	$2.14		1
	DS1 Over 50 Miles	$43.58	$0.93		1
	DS3				

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		Recurring	Nonrecurring	Notes
	DS3 0 to 8 Miles	$275.29	$64.92	1
	DS3 Over 8 to 25 Miles	$279.23	$21.28	1
	DS3 Over 25 to 50 Miles	$258.29	$25.57	1
	DS3 Over 50 Miles	$271.86	$17.62	1
	OC-3			
	OC-3 0 to 8 Miles	$887.62	$228.43	1
	OC-3 Over 8 to 25 Miles	$893.94	$76.13	1
	OC-3 Over 25 to 50 Miles	$859.18	$94.80	1
	OC-3 Over 50 Miles	$881.23	$65.82	1
	OC-12			
	OC-12 0 to 8 Miles	$2,476.04	$97.41	1
	OC-12 Over 8 to 25 Miles	$2,476.04	$105.36	1
	OC-12 Over 25 to 50 Miles	$2,476.04	$111.33	1
	OC-12 Over 50 Miles	$2,476.04	$131.93	1
	OC-48			
	OC-48 0 to 8 Miles	$8,166.93	$324.68	1
	OC-48 Over 8 to 25 Miles	$8,166.93	$352.08	1
	OC-48 Over 25 to 50 Miles	$8,166.93	$401.71	1
	OC-48 Over 50 Miles	$8,166.93	$509.75	1
		Recurring	Nonrecurring	Notes
9.23.9	Multiplexing			
	DS3 to DS1		$291.43	$275.58	1
	DS1 to DS0		$237.66	$275.58	1
	Loop MUX DS3 to DS1			$201.95	1
	Loop MUX DS1 to DS0			$201.95	1
9.23.10	DS0 Channel Performance			
	DS0 Low Side Channelization		$14.67		1
	DS1/DS0 MUX, Low Side Channelization		$8.37		1
9.23.11	Concentration Capability		ICB		3
9.24	**Unbundled Packet Switching**			
9.24.1	Unbundled Packet Switch Customer Channel Without Subloop			$61.17	1
	Unbundled Packet Switch Customer Channel with Subloop			$129.36	1
	Unbundled Packet Switch Customer Channel with Shared Subloop			$61.17	1
	DSLAM		$23.55	Special Request	9
	Virtual Transport		$3.67		
9.24.2	Unbundled Packet Switch Interface Port			
	DS1		$149.97	$231.40	1
	DS3		$231.29	$231.40	1
10.0	**Ancillary Services**			
10.1	**Local Number Portability**			
10.1.1	LNP Queries	See FCC Tariff #1 Section 20.3.1 & 20.3.3			1
10.1.2	LNP Managed Cuts			
	Standard Managed Cuts per person per 1/2 Hr.			$27.38	6
	Overtime Managed Cuts per person per 1/2 Hr.			$35.43	6
	Premium Managed Cuts per person per 1/2 Hr.			$43.49	6
10.2	**911/E911**		No Charge		
10.3	**White Pages Directory Listings, Facility Based Providers**			
10.3.1	Primary Listing		No Charge		
10.3.2	Premium/Privacy Listings		General Exchange Tariff Rate, less wholesale discount		
10.4	**Directory Assistance, Facility Based Providers**			
10.4.1	Local Directory Assistance, Per Call		$0.34		
10.4.2	National Directory Assistance, per Call		$0.36		
10.4.3	Call Branding, Set- Up and Recording			$10,500.00	2
10.4.4	Loading Brand /Per Switch			$175.00	2
10.4.5	Call Completion Link, per Call		$0.09		2

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		Recurring	Nonrecurring	Notes
10.5 Directory Assistance List Information				
10.5.1 Initial Database Load, per Listing		$0.0250		2
10.5.2 Reload of Database, per Listing		$0.0200		2
10.5.3 Daily Updates, per Listing		$0.0500		2
10.5.4 One-time Set-Up Fee		$77.44		1
10.5.5 Media Charges for File Delivery				
Electronic Transmission		$0.0020		2
Tapes (charges only apply if this is selected as the normal delivery medium for daily updates) (per tape)		$30.00		
Shipping Charges (for tape delivery)			ICB	3
10.6 Toll and Assistance Operator Services, Facility Based Providers,				
10.6.1 **Option A** – Per Message				
Operator Handled Calling Card		$1.45		2
Machine Handled Calling Card		$0.60		2
Station Call		$1.50		2
Person Call		$3.50		2
Connect to Directory Assistance		$0.75		2
Busy Line Verify, per Call		$0.72		
Busy Line Interrupt		$0.87		
Operator Assistance, per Call		$0.50		2
10.6.2 **Option B** – Per Operator Work Second and Computer Handled Calls				
Operator Handled, per Operator Work Second		$0.0280		2
Machine Handled, per Call		$0.2500		2
Call Branding, Set-Up & Recording			$10,500.00	2
Loading Brand/Per Switch			$175.00	2
10.7 Access to Poles, Ducts, Conduits and Rights of Way				
10.7.1 Pole Inquiry Fee, per Mile			$336.35	1
10.7.2 Innerduct Inquiry Fee, per Mile			$404.31	1
10.7.3 ROW Inquiry Fee			$149.43	1
10.7.4 ROW Doc Prep Fee			$149.43	1
10.7.5 Field Verification Fee, per Pole			$37.36	1
10.7.6 Field Verification Fee, per Manhole			$485.63	1
10.7.7 Planner Verification, Per Manhole			$16.66	1
10.7.8 Manhole Verification Inspector Per Manhole			$298.85	1
10.7.9 Manhole Make-Ready Inspector, per Manhole			$448.28	1
10.7.10 Pole Attachment Fee, per Foot, per Year				
Urban				
2002		$1.34		4
2003		$1.46		4
2004		$1.57		4
2005		$1.69		4
Non-Urban				
2002		$1.69		4
2003		$1.97		4
2004		$2.26		4
2005		$2.54		4
10.7.11 Innerduct Occupancy Fee, per Foot, per Year		$0.33		4
10.7.12 Access Agreement Consideration			$10.00	2
10.7.13 Make Ready			ICB	3
12.0 Operational Support Systems				
12.1 Development and Enhancements, per Order			No charge at this time	13
12.2 Ongoing Maintenance, per Order			No charge at this time	13
12.3 Daily Usage Record File, per Record		$0.0011		1
12.4 Trouble Isolation Charges			See MSC Charges	
17.0 Bona Fide Request Process				
17.1 Processing Fee			$2,510.29	1

NOTES:

* Unless otherwise indicated, all rates are pursuant to the U S WEST and AT&T Interconnection Agreement approved by the North Dakota Public Utilities Commission in Docket Number PU-453-96-497, effective June 23, 1997.

\# Denotes voluntary rate reduction.

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		Recurring	Nonrecurring	Notes

Additional reduction required to voluntarily reduce rates to reflect the fact that certain sold exchanges had not been removed from the FCC Synthesis Model results.

[1] Rates not addressed in AT&T Arbitration. (TELRIC)
[2] Market-based rates.
[3] ICB, Individual Case Basis pricing.
[4] Rates per FCC Guidelines.
[5] Intentionally Left Blank
[6] Estimated TELRIC.
[7] Deaveraged rates approved per Stipulated Agreement in Docket PU-314-97-12. Below is a breakdown of wire center per zone:
Zone 1- Fargo, Grand Forks, Bismarck, West Fargo, Jamestown, Williston, Wahpeton, Manden, Dickinson.
Zone 2- Valley City, Grafton, Mayville, Larimore, Lisbon, Casselton
Zone 3- Emerado, Pembina, Hatton, Belfield, Minto, Watford City, Hillsboro, Kindred, Thompson, Northwood, Gwinner, Reynolds, Gardner, Manvel, Fairmount, Wyndmere, Leonard, Alexander
[8] Regional TELRIC
[9] A special request is a request by the customer to perform something that is technically feasible but the process and pricing are not yet in place.
[10] Rate agreed to with staff pending resolution of wire cable termination policy review.
[11] When distribution is purchased only for the purpose of campus wire, no recurring or nonrecurring charges will be assessed. This does not include collocation charges or FCP placement.
[12] The preliminary engineering and planning costs are included in the caged and cageless space construction charges. These engineering and planning charges are also included in the caged and cageless quote preparation fees. Upon completion of the collocation construction, the quote preparation fee (QPF) will be credited to the final space construction charge for the collocation job. The credit will apply to whichever QPF is applied. This exhibit currently lists multiple QPFs based on what has been proposed on the cost docket and what was approved in the AT&T interconnection agreement. CLEC may choose either QPF at this time.
[13] Qwest will not charge for this element until the Commission has an opportunity to review and approve a rate in a cost proceeding.

STATE OF NORTH DAKOTA

BEFORE THE PUBLIC SERVICE COMMISSION

U S WEST Communications, Inc. Section 252(f) Statement of Generally Available Terms Compliance	)))	Case No. PU-314-00-282

AFFIDAVIT OF MAILING

STATE OF NORTH DAKOTA)
: ss.
COUNTY OF BURLEIGH)

The undersigned, being duly sworn, deposes and says that: I am a United States citizen, over 18 years of age, and on August 5, 2002, I served a copy of the attached:

Application to Approve Effective Date of SGAT Price Changes

by placing a true copy in a postage paid envelope or envelopes addressed to each person named below, at the address stated below, which is the last known address of the addressee, and by depositing said envelope in the United States mail at Bismarck, North Dakota.

Mary Tribbe
AT&T Corp.
1875 Lawrence Street
Denver, CO 80202-1847

Mark P. Trinchero/Lise K. Strom
Davis Wright Tremaine LLP
Suite 2300
1300 SW Fifth Avenue
Portland, OR 97201-5682

Andrew O. Isar
Director - State Affairs
Ascent
7901 Skansie Avenue #240
Gig Harbor, WA 98335-8349

Karol A. Cossette

Subscribed and sworn to before me, today, August 5, 2002.

NOTARY PUBLIC
State of North Dakota
My commission expires: 1/24/08

KATHI OSTEEN
Notary Public
State of North Dakota
My Commission Expires Jan. 24, 2008

kac:\dkuntz\9508\aom.

ALL-STATE LEGAL®
EXHIBIT
S-1

DIRECT

TESTIMONY

OF

MATTHEW J. ROWELL

ARIZONA CORPORATION COMMISSION
Complainant
Vs.
QWEST CORPORATION
Respondent

DOCKET NO. T-01051B-02-0871

APRIL 17, 2003

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

MARC SPITZER – Chairman
JIM IRVIN
WILLIAM A. MUNDELL
MIKE GLEASON
JEFF HATCH-MILLER

ARIZONA CORPORATION COMMISSION Complainant,	)	DOCKET NO. T-01051B-02-0871
V.	)	
QWEST CORPORATION Respondent	)	

DIRECT

TESTIMONY

OF

MATTHEW ROWELL

CHIEF: TELECOMMUNICATIONS AND ENERGY SECTION

UTILITIES DIVISION

ARIZONA CORPORATION COMMISSION

MARCH 27, 2003

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I. INTRODUCTION

Q. Please state your name and business address for the record.

A. My name is Matthew Rowell. My business address is: Arizona Corporation Commission, 1200 W. Washington St., Phoenix, AZ 85007.

Q. What is your position at the commission?

A. I am the Chief of the Telecommunications and Energy section of the Commission's Utilities Division.

Q. Please describe your education and professional background.

A. I received a BS degree in economics from Florida State University in 1992. I spent the following four years doing graduate work in economics at Arizona State University where I received a MS degree and successfully completed all course work and exams necessary for a Ph.D. My specialized fields of study were Industrial Organization and Statistics. I was hired by the Commission in October of 1996 as an Economist II. I was promoted to the position of Senior Rate Analyst in November of 1997 and to my current position in July of 2001. Prior to my Commission employment I was employed as a lecturer in economics at Arizona State University, as a statistical analyst for Hughes Technical Services, and as a consulting research analyst at the Arizona Department of Transportation.

Q. What is the purpose of your testimony?

A. The purpose of my testimony is to discuss the Arizona Corporation Commission's ("Commission") Complaint and Order to Show Cause ("OSC") against Qwest Corporation

("Qwest") regarding their failure to implement wholesale rates ordered in Decision No. 64922 in a timely fashion. I will provide evidence concerning each of the three counts contained in the OSC and will offer recommendations regarding remedial action.

Q. Please discuss the history regarding Decision No. 64922

A. Sections 251 and 252 of the 1996 Telecommunications Act ("1996 Act") established requirements and obligations on Incumbent Local Exchange Carriers (in this case Qwest) designed to allow Competitive Local Exchange Carriers ("CLECs") to use portions or all of the incumbent's network to provide services in competition with the ILEC. These requirements and obligations are set forth in Section 251(c) of the Act and require the ILEC to provide to competitors interconnection, unbundled network elements ("UNEs"), and telecommunications services for resale at wholesale rates on a nondiscriminatory basis.

As required by the 1996 Act, the FCC adopted rules, inter alia, implementing Section 251(d) which requires that the prices for interconnection and UNEs be calculated using a forward-looking cost methodology that is based on the ILEC's total element long-run incremental costs ("TELRIC").

Under Section 252(d) of the 1996 Act, State commissions are to determine just and reasonable rates for interconnection of facilities and equipment for purposes of Subsection (c)(2) of Section 251, and just and reasonable rates for network elements for purposes of Subsection (c)(3); as well as the wholesale rates for telecommunications services available on a resale basis.

On January 30, 1998, after a lengthy arbitration proceeding, the Commission issued an Opinion and Order (Decision No. 60635) which established just and reasonable wholesale

rates to be charged by Qwest to its competitors for interconnection and unbundled network elements, as well as resale discounts. Decision No. 60635, as well as several of the Commission's original arbitration decisions, were appealed to the Federal District Court for the District of Arizona. In U S West v. Jennings, 46 F.Supp.2d 1004 (D. Ariz. 1999), the Court upheld certain of the Commission's determinations and remanded others back to the Commission for further consideration.

Docket No. T-00000A-00-0194 was opened in 2000 to address issues arising as a result of the Arizona District Court's decision and several FCC decisions. Phase I of this proceeding was conducted on an expedited basis in order to comply with the FCC's geographical deaveraging requirements set forth in 47 C.F.R. Section 51.507(f). On July 25, 2000, the Commission issued an Opinion and Order in this case ("Phase I Order" or "Decision No. 62753") adopting interim geographically deaveraged UNE rates.

Phase II of this proceeding was designed to address issues raised by subsequent FCC orders and judicial decisions and to establish permanent geographically deaveraged rates. On December 14, 2000, a Procedural Order was issued which stated that Qwest's existing UNE rates would also be reviewed in Phase II.

The Phase II hearing commenced on July 16, 2001, and concluded on July 31, 2001. Initial post-hearing briefs were filed on August 31, 2001. Reply briefs were submitted on September 21, 2001.

On November 8, 2001, a Recommended Opinion and Order was issued. Various parties filed exceptions to the Recommended Opinion and Order, including Qwest. On March 8, 2002, a Supplement to the Recommended Opinion and Order was issued, and exceptions to the Supplement were filed by various parties, including Qwest. On April 11, 2002, the

Commission conducted an Open Meeting to deliberate on the Recommended Order. A second Open Meeting was held on this matter on May 30, 2002. On June 12, 2002, the Commission adopted Decision No. 64922.

Q. Please discuss the relevant events that led to the Commission's issuance of the OSC.

A. Qwest filed a Notice of Compliance with Decision No. 64922 on June 26, 2002, which contained the price list agreed to by the parties. Qwest filed an Application for Rehearing on July 2, 2002. Qwest filed its revised Exhibit A to its Statement of Generally Available Terms and Conditions on August 30, 2002.

Qwest appealed Decision No. 64922 to the Arizona District Court on August 21, 2002. Qwest's appeal is still pending with the District Court. Qwest did not seek a stay of the effectiveness of Decision No. 64922 with either the Commission or the District Court.

Ordering Paragraph 5 of Decision No. 64922 provided that the rates and charges approved in the Order were effective immediately, or in other words, on June 12, 2002.

On October 7, 2002 the Commission Staff became aware that Qwest had not yet implemented the rates approved in Decision No. 64922 when AT&T filed with the Commission a letter to Qwest inquiring why it was still being charged the old wholesale rates that had been superseded by Decision No. 64922.

On October 16, 2002, Qwest responded that the implementation of Arizona wholesale rates was being dealt with as quickly and efficiently as possible and that based on current implementation schedules, the Arizona ordered rates would be completed sometime in mid-December, 2002. Qwest also stated that because of multiple orders from multiple states' dockets, Qwest may not always be able to begin implementation immediately after

a particular order is issued because it may be required to deal with other orders with earlier effective dates. It stated that it had numerous cost dockets and voluntary rate reductions associated with 271 filings in various states, all of which are also being implemented in 2002.

On October 23, 2002, Staff sent Qwest a set of data requests (Staff's twenty-second set of data requests in Docket No. T-00000A-00-0194) relating to its noncompliance with Decision No. 64922. On October 25, 2002, Qwest submitted its responses to Staff's data requests.

Qwest stated in its data responses that its overall implementation time for wholesale rate changes is approximately 60 business days, or approximately 3 months. Qwest separately indicated to Staff that its overall average time to implement wholesale rate changes is 93 business days, or approximately 4 ½ months. Yet, Qwest also stated in response to Staff data requests that it would be unable to implement the Arizona wholesale rates approved in Decision No. 64922 until mid-December, 2002, approximately 6 months, or 135 business days, after the effective date of the Commission's Order.

Qwest's data responses also indicated that its wholesale rate systems and processes are manual in part, and as a result, cumbersome and much different than the processes that Qwest utilizes to implement its retail rate changes.

Qwest's Attachment B submitted in response to Staff Data Request 22-292(a) indicates that Qwest also appears to have prioritized its implementation of wholesale rate changes according to whether or not Qwest had a 271 application pending at the federal level for the particular state in question, and not according to the approval date of the rates by the various State commissions in its 14-state region. This, combined with the other factors

discussed above, resulted in a significant delay in the implementation of Arizona's new wholesale rates, without Commission knowledge or approval.

As a result of the above described events Staff filed a request for an Order to Show Cause on November 26, 2002. On December 12, 2002 the Commission issued the OSC in Decision No. 65450.

Q. Please discuss each of the counts contained in the OSC.

A. Count I deals with Qwest's failure to implement the wholesale rate changes as ordered in Decision No. 64922 within a reasonable period of time. In relation to this count Qwest was ordered to appear and show cause (1) why its failure to implement the rates required by Decision No. 64922 within a reasonable period of time is not unreasonable, (2) why its implementation of rates in other states with pending 271 applications at the FCC ahead of Arizona is not unreasonable, and (3) why its failure to notify the Commission of the delay and seek relief from the Order is not unreasonable.

Count II deals with Qwest's failure to notify the Commission of the rate implementation delay and failure to obtain Commission approval of the delay in implementation. In relation to Count II Qwest was ordered to show cause (1) why it should not be held in contempt of a Commission Order and assessed fines for failure to implement the rates approved in Decision No. 64922 within a reasonable amount of time, (2) why it should not be held in contempt of a Commission Order and assessed fines for deliberately delaying implementation of the wholesale rate changes in Arizona until it had implemented the wholesale rate changes in at least 9 other states in which it had 271 applications pending at the FCC, and (3) why it should not be held in contempt of the Commission for attempting

to discourage parties from notifying the Commission of its failure to comply with Decision No. 64922.

Count III alleges that Qwest's wholesale rate change system is unreasonably slow and inefficient when compared to its retail rate change process. In relation to Count III Qwest was ordered to show cause why it should not be required to implement billing systems and process changes that will enable wholesale rate changes to be implemented within 30 days.

II. COUNT I: FAILURE TO IMPLEMENT THE WHOLESALE RATE CHANGES ORDERED IN DECISION NO. 64922 WITHIN A REASONABLE PERIOD OF TIME.

Q. How long did it take Qwest to implement the rate changes ordered in Decision No. 64922?

A. Decision No. 64922 was released on June 12, 2002. The fifth ordering paragraph of that decision provides that "...the rates and charges approved herein shall be effective immediately." The final phase of Qwest's rate implementation process associated with Decision No. 64922 concluded on December 15, 2002.[1] Rates for the various affected CLECs were implemented on the next billing cycle. CLEC billing cycles are not uniform so CLECs began receiving bills with the new rates at various points in time after December 15, 2002. Thus, it took Qwest in excess of six months to implement the rate changes ordered in Decision No. 64922.

[1] Qwest response to Staff data request STF 24-001a.

Q. Does Staff believe that six months is a reasonable period of time to implement the wholesale rate changes ordered in Decision No. 64922?

A. No. Staff believes that six months is clearly an excessive and unreasonable amount of time for the implementation of the wholesale rates ordered by Decision No. 64922. Qwest stated that sixty business days are normally scheduled to implement cost docket rates.[2] This translates into eighty-four days or three months. Thus, the rates associated with Decision No. 64922 took twice the normal amount of time for Qwest to implement. Additionally, Staff understands that RBOCs other than Qwest usually implement wholesale rates in much shorter periods of time than six months. In its May 16, 2002 cost docket order the California PUC ordered Pacific Bell to complete the necessary billing program changes within 60 days of the order. In its January 28, 2002 order the New York Commission required Verizon to have its rates in effect within thirty days of the order. The rate changes necessitated by these orders were similar in scope to those required by Decision No. 64922 in Arizona.[3]

Q. In its response to Staff data request STF 22-288 Qwest stated that sixty business days are normally scheduled to implement cost docket rates. Is that statement consistent with Qwest's responses to other Staff data requests?

A. No. Qwest's response to STF 24-001 indicates that it normally takes much longer than sixty business days to implement wholesale cost docket rates. Qwest's response to STF

[2] Qwest response to Staff data request STF 22-288

[3] See California PUC Decision 02-05-042 issued May 16, 2002 and New York PUC Decision in Case No. 98-C-1357 issued on January 28, 2002

24-001 provided the start dates and end dates for eight of the most recent major cost docket implementations undertaken by Qwest which are summarized Table 1:

Table 1

State	Start Date	End Date	Total Days	Business Days
Arizona	6/27/2002	12/15/2002	171	122
Colorado	4/18/2002	10/4/2002	169	122
Iowa	3/25/2002	8/23/2002	151	110
Montana	10/12/2001	3/28/2002	167	120
Nebraska	4/24/2002	8/2/2002	100	73
Utah	7/12/2002	11/1/2002	112	81
Washington	10/11/2001	5/17/2002	218	157
Wyoming	7/31/2002	2/7/2003	191	138

Thus, on average it took Qwest 160 days (five months) or 115 business days to implement these eight recent cost dockets. Given these averages it is unclear where the sixty day standard comes from.

Note that the order approving the Arizona rates was entered into on 6/12/02 and Qwest's response to STF 24-001 indicates that Qwest did not begin the implementation process until 6/27/02. Thus, Qwest waited fifteen days after the order was issued before even starting the implementation process. The total time from the effective date of Decision No. 64922 to implementation was 186 days.

Q. Given that the six months it took Qwest to implement the rates approved in Decision No. 64922 is not much more than the five month average, why does Staff believe that six months is an unreasonable period of time?

A. Staff believes that the five month average indicates that Qwest's wholesale rate change system as a whole is unreasonably slow and inefficient. This point will be expanded on in

the discussion of Count III below. Additionally, Qwest failed to notify the Commission or the CLECs of the delay in the implementation of the wholesale rates and as will be discussed below certain voluntary wholesale rate reductions were implemented in much shorter periods of time.

Q. Please discuss Staff's contention that wholesale rate reductions for states that had pending 271 applications with the FCC were implemented more quickly than those in Arizona.

A. On September 30, 2002 Qwest filed an application with the FCC for section 271 approval for nine states: Colorado, Idaho, Indiana, Montana, Nebraska, North Dakota, Utah, Washington, and Wyoming. Each of these states also had wholesale rate proceedings around the time of Arizona's. Table 2 summarizes the effective dates and the implementation dates for these wholesale rate changes:[4]

Table 2[5]

State	Effective Date	Implementation Date	Total Days	Business Days
Colorado	6/12/2002	9/19/2002	99	72
Colorado	8/15/2002	9/13/2002	29	22
Idaho	6/7/2002	9/19/2002	104	75
Indiana	6/5/2002	8/16/2002	72	53
Indiana	6/5/2002	9/19/2002	106	77
Montana	7/10/2002	10/7/2002	89	64
Montana	10/8/2002	10/7/2002	0	0
Nebraska	6/7/2002	9/13/2002	98	71
Nebraska	6/7/2002	8/2/2002	56	41
North Dakota	6/7/2002	9/19/2002	104	75
Utah	7/10/2002	10/7/2002	89	64

[4] Qwest response to Staff data request STF 22-292(a)

[5] Some states have duplicate entries because the wholesale rate changes were not all filed or approved at the same time.

Washington	7/10/2002	8/12/2002	33	24
Wyoming	7/10/2002	8/19/2002	40	29

The average time from effective date to implementation date was 70 days (or 51 business days.) This is a full 62% faster than the 186 days that were taken for the Arizona cost docket. Additionally, for six of these cost dockets the effective date of the new rates was after June 12, 2002, the effective date of Decision No. 64922.

It is important to note that none of the personnel involved in implementing wholesale rate changes are assigned to a particular state.[6] Thus Qwest management would have to provide ongoing guidance to the wholesale rate implementation teams on which states were a priority. Therefore, Staff can only conclude that any decision to implement one state's rates ahead of others would have had to come from Qwest's management. Implementing the wholesale rates for states that had pending 271 applications ahead of the Arizona rates would have been the result of a conscious decision on the part of Qwest management.

Q. Has Qwest provided any justification for the speedier treatment the nine states with pending 271 applications received relative to Arizona?

A. Qwest has stated that "only certain limited voluntary rate reductions were implemented prior to the implementation of the Arizona wholesale rates."[7] Although never stated explicitly, this implies that all of the cases referred to in Table 2 above were limited and

[6] Qwest response to Staff data requests STF 24-011, 24-012, and 24-013.

[7] Qwest response to Staff data requests STF 22-295

voluntary. Qwest also contends that the number of rates needing to be modified in these cases was substantially smaller than in the Arizona cost docket.[8] Additionally, Qwest contends that the rates in these cases were benchmark rates and thus the rate changes necessary were less complex than required in the Arizona cost docket.[9]

Q. Does Staff believe that Qwest's failure to notify and seek relief from the Commission of the delay in implementing Decision No. 62944 was reasonable?

A. No. In its "Answer to Commission's Complaint and Order to Show Cause" docketed on December 23, 2002 ("Answer"), Qwest admits that its failure to notify the Commission was inappropriate. In the Answer Qwest states that, "Qwest acknowledges that its communications with regard to the implementation process and related timelines for the wholesale rate changes ordered by the Commission in Decision No. 64922 ... have been wholly inadequate. To properly fulfill its obligations to both its customers and this Commission, Qwest should have proactively set forth its timeline for implementation of the Commissions order..." Staff agrees with this position from Qwest's Answer.

Q. Is Staff proposing fines or penalties in relation to Count I?

A. Yes, In Staff's subsequent analysis, the issues raised in Counts I and II appear to substantially overlap. Therefore, Staff's penalty recommendations regarding Count II include Staff's concerns with Count I. The fines and penalties Staff is recommending will all be discussed as they relate to Count II below.

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[8] Qwest response to Staff data requests STF 22-295.

[9] Qwest response to Staff data requests STF 24-009.

III. COUNT II: FAILURE TO NOTIFY THE COMMISSION OF RATE IMPLEMENTATION DELAY AND TO OBTAIN COMMISSION APPROVAL OF THE DELAY IN IMPLEMENTATION

Q. Does Staff believe that Qwest should be held in contempt of the Commission and assessed fines for its failure to implement the rates approved in Decision No. 64922 within a reasonable amount of time?

A. Staff believes that the six months it took for Qwest to implement Decision No. 64922 was an unreasonably long time period. Additionally, Staff believes that Qwest should have notified the Commission and the CLECs as to its implementation schedule. Decision No. 64922 contains an explicit statement that "the rates and charges approved herein shall become effective immediately." Decision No. 64922 contains no references to a time frame for implementation of the requirements of the order. Thus, it is Staff's opinion that Decision No. 64922 required Qwest to implement the rates approved by it immediately. If immediate implementation was practically impossible Qwest should have sought relief from the Commission. Qwest instead chose to do nothing and allowed the Commission to assume that its order was being implemented. As discussed above, Qwest has acknowledged that their failure to notify the Commission was inappropriate. Staff believes that Qwest's failure to implement the rates approved in Decision No. 64922 within a reasonable amount of time does constitute contempt of a Commission order and fines should be assessed.

Q. What is the fine that Staff is recommending in relation to the unreasonably long period of time Qwest took to implement Decision No. 64922?

A. Staff believes that under A.R.S. 40-424 the Commission can impose fines up to $5,000 per day for each day that Qwest was in contempt of a Commission order. Staff believes that Qwest was in contempt of the Commission's order for a total of 126 days. This figure is the time between August 11, 2002 and December 15, 2002 (the date the rates were implemented). August 11, 2002 was chosen as the start date because it is sixty days after June 12, 2002 (the effective date of Decision No. 64922.) Qwest has indicated that sixty days are normally scheduled to implement cost docket decisions. Staff believes that sixty days was a reasonable period of time to allow for implementation of cost docket rates. Thus, Staff does not believe that Qwest should be held in contempt for the sixty day time period immediately following June 12, 2002.

Staff believes that Qwest's failure to implement Decision No. 64922 and failure to notify the Commission regarding their implementation schedule resulted in Qwest being in contempt of the Commission's order for a total of 126 days. Therefore a maximum fine of $630,000 ($5,000 X 126 days) could be assessed. However, Staff recommends a lower penalty amount of $750 per day be assessed for a fine of $94,500.

The level of fines being recommended by Staff includes consideration of, and is mitigated by, Qwest's efforts to retroactively remedy this situation thru credits and interest as applicable.

Q. Does Staff believe that Qwest should be held in contempt of the Commission and assessed fines for deliberately delaying implementation of the wholesale rate changes approved in Decision No. 64922 until it had implemented the wholesale rate changes in other states for which Qwest had a 271 application pending at the FCC?

A. As discussed above, rate changes for the nine states listed in Table 2 that had a pending 271 application with the FCC were implemented much faster than the Arizona rates. While these rate changes may have been much simpler than those contained in Decision No. 64922, Staff believes that resources that could have been devoted to the Arizona implementation process were diverted to the implementation of rates for those nine states. Given that Qwest had a pending 271 application for these states; it would have had the incentive to get them done quickly. Qwest would not have wanted rate issues to crop up and mar their pending 271 application. Staff believes that in spite of the Commission's order to implement the Arizona rates immediately, Qwest diverted resources to the implementation of rates for the nine states listed in Table 2. Staff does believe that this constitutes contempt of the Commission and that Qwest should be fined.

Q. What is the fine that Staff is recommending in relation to Qwest's decision to implement certain wholesale rate changes in other states ahead of Arizona?

A. Staff believes a fine in addition to the one discussed above is warranted given Qwest's apparent intentional decision to implement certain state cost dockets ahead of Arizona. Staff Believes that Qwest's decision to delay the implementation of Decision No. 64922 until wholesale rate changes in other states were completed resulted in Qwest being in contempt of the Commission's order for a total of 126 days. Therefore, a maximum fine

of $630,000 ($5,000 X 126 days) could be assessed. However, Staff recommends a lower penalty amount of $750 per day be assessed for a fine of $94,500.

Q. Please summarize Staff's recommendations regarding monetary penalties.

A. Staff is recommending a fine of $750 per day for Qwest's failure to implement Decision No. 64922 in a reasonable period of time. Staff is recommending an additional fine of $750 per day for Qwest's decision to implement certain other states rates ahead of Arizona even though the Arizona decision preceded many of the decisions in those other states. The total fine Staff is recommending is $1500 per day. The number of days for which Qwest should be held in contempt is 126, the difference between December 15, 2002 (the date Decision No. 64922 was implemented) and August 11, 2002 (the date on which Staff believes Qwest could have reasonably been expected to have the rates implemented.) The total fine Staff is recommending is $189,000 ($1500 X 126.)

The level of fine being recommended by Staff includes consideration of, and is mitigated by, Qwest's efforts to retroactively remedy this situation thru credits and interest as applicable.

Q. Why is Staff recommending a fine less than the maximum allowable?

A. There are several mitigating factors which compelled Staff not to recommend the maximum allowable penalties. First, Qwest has committed to credit back to the CLECs any amounts paid over the rates authorized by Decision No. 64922 with interest. Qwest will extend this credit back to June 12, 2002. Thus, the CLECs affected by Qwest's behavior will be made whole. Second, Qwest has acknowledged that its failure to notify

the Commission of the delay in implementing Decision No. 64922 was inappropriate. Third, in their Answer Qwest indicated that they are re-examining their rate implementation process with the intent of making improvements (this will be discussed further in the discussion of Count III below.) Finally, only one CLEC (AT&T) has come forward regarding this issue. In light of these factors Staff believes that while Qwest was in contempt of Decision No. 64922 for a period of 126 days, a fine less than the maximum allowable is appropriate.

Q. Does Staff believe that Qwest should be held in contempt of the Commission for attempting to discourage parties from notifying the Commission of its failure to comply with Decision No. 64922?

A. On October 8, 2002 Staff received a copy of the letter from Mr. Richard Wolters, attorney for AT&T, to Timothy Berg, attorney for Qwest, concerning the implementation of Decision No. 64922. That letter indicated that AT&T was still being charged and was still paying the rates superceded by Decision No. 64922 in spite of the fact that Decision No. 64922 was to become effective immediately. Mr. Berg sent a responsive letter to Mr. Wolters, and copied Staff, on October 16, 2002. The responsive letter indicated that the rates ordered in Decision No. 64922 would be implemented in mid-December 2002 based on Qwest's "current implementation schedules." The responsive letter also indicated that AT&T, and all other CLEC customers, would be credited for the billing differences between rates charged from the effective date through the implementation date. The responsive letter also stated that: "It has come to my attention that AT&T has already

approached the Arizona Corporation Commission regarding implementation of these rates prior to receiving a response from Qwest ... billing disputes and rate implementation matters are subject to the escalation procedures contained in the interconnection agreement between Qwest and AT&T, and normally are addressed, at least initially, through that process. *See e.g.*, Qwest/AT&T Interconnection Agreement, Sections 26-27. I do not believe enforcement or other Commission proceedings are warranted since AT&T will be fully refunded for all amounts paid over the Commission ordered rates ..."

Although Staff is very concerned with the language quoted above, taken as a stand alone item Staff is unable to clearly and conclusively ascertain whether the statements quoted above were intended to deter AT&T (or any other carrier) from bringing their issues forward to the Commission. The responsive letter states that Commission *proceedings* are not necessary and that there are dispute resolution mechanisms contained in the AT&T/Qwest interconnection agreement. The responsive letter does not state that AT&T is precluded from informing the Commission about the issue. Staff has reviewed sections 26 and 27 of the AT&T/Qwest interconnection agreement; those sections place no limits on AT&T's ability to inform the Commission about disputes.

In light of Staff's inability to clearly and conclusively ascertain whether Qwest's behavior with respect to AT&T (or other CLECs) constitutes contempt of the Commission or Commission orders. Staff is not making any recommendations regarding fines or penalties in relation to this point.

IV. COUNT III: QWEST'S WHOLESALE RATE CHANGE SYSTEM IS UNREASONABLY SLOW AND INEFFICIENT WHEN COMPARED TO ITS RETAIL RATE CHANGE PROCESS

Q. What is the principal difference between Qwest's retail and wholesale rate change process?

A. Retail rate changes are not implemented on a customer by customer basis. When a retail rate is changed various system tables/databases need to be updated. However, each system table/database only needs to be updated once per rate changed, they do not have to be updated on a customer by customer basis. On the wholesale side, Qwest's system is such that rates need to be implemented on a customer by customer basis. Thus, each system table/database needs to be updated for each rate changed *and for each CLEC*. The wholesale system tables/databases do not contain generic rates that apply to all CLECs; rather, each CLEC's rates are represented separately in the system tables/databases.[10] This results in a significant difference between the work effort and time required to implement wholesale and retail rates. Retail rates can normally be implemented in 30 days but, as was discussed above, wholesale rate implementation can take much longer.

Q. Has Qwest acknowledged that its current wholesale rate implementation process is inadequate?

A. Staff believes that Qwest has acknowledged that their current wholesale rate implementation process is inadequate. In its Answer, Qwest stated that it "...has already begun a full re-examination of its rate implementation processes and procedures with the

[10] Qwest response to Staff data requests STF 24-007.

goal to ensure the parity of Qwest's practices with those of other major incumbent local exchange providers."

Q. What does Staff recommend regarding Count III?

A. Staff recommends that Qwest be ordered to implement billing and systems process changes that will allow it to implement wholesale rates within 30 days. Staff further recommends that Qwest be ordered to implement those billing and process changes within four months of a Decision in this docket. Staff further recommends that upon completion of the aforementioned billing and process changes Qwest should be required to employ an independent auditor of the Commission's (or Commission Staff's) choosing. The auditor will be charged with evaluating the effectiveness of billing and process changes implemented by Qwest. Staff believes that these recommendations will ensure that the situation regarding Decision No. 64922 will not reoccur.

Q. Dose Staff recommend any specific billing or process changes?

A. No. Staff does not believe it would be appropriate to recommend specific billing or process changes. The company should be held to the 30 standard but how it chooses to meet that standard should be left to the company.

Q. Does this conclude your testimony?

A. Yes, it does.

A

State Docket #	Type of Case	Benchmark filing	Benchmark Approval	Rate Effective Date	Billing Systems Imple.	True-up Complete	Comments
NE C-2516/PI-49, C-2666, C-2750	271 ROC 1	05/24/02	06/05/02	06/07/02	08/02/02	09/03/02	Order issued approving the filing
ND PU-314-97-193 & PU-314-00-282	271 ROC 1	05/30/02	06/05/02	06/07/02	09/19/02	09/30/02	Order issued approving the filing
NE C-2516/PI-49, C-2666, C-2750	271 ROC 1A	06/05/02	06/05/02	06/07/02	09/19/02	09/30/02	Order issued approving the filing
IA TF-02-202	271 ROC 1	05/16/02	06/07/02	06/05/02	08/16/02	09/16/02	Order issued approving the filing
ID USW-T-00-3	271 ROC 1	05/24/02	06/10/02	06/07/02	09/19/02	09/16/02	Order issued approving the filing
CO 02M-260T	271 ROC 1	06/12/02	06/13/02	06/12/02	09/19/02	09/30/02	Order issued approving the rates
WA UT-003022 & UT-003040	271 ROC 2	06/11/02 07/02/02	07/01/02	07/10/02	08/12/02	10/08/02	Order issued approving the filing
UT 00-049-08	271 ROC 2	07/02/02	07/08/02	07/10/02	10/07/02	10/18/02	Order issued approving the filing
-TA-00-599	271 ROC 2	07/01/02	07/09/02	07/10/02	08/19/02	10/08/02	Record No. 5924 approving the filing
MT D2000.6.80	271 ROC 2	07/03/02	07/09/02	07/10/02	10/07/02	10/18/02	* approved in Work Session, no paper order issued
CO 02M-260T	271 ROC 1A	08/02/02	08/14/02	08/15/02	09/13/02	09/30/02	Orally approved in weekly meeting
WY 70000-TA-00-599	271 ROC 2A	08/29/02	09/27/02	07/10/02			Approved in Record No. 7771
ID USW-T-00-3	271 ROC 1A	08/05/02	10/04/02	06/07/02	09/19/02	09/30/02	*No order was issued, by operation of law, became effective.
IA TF-02-202	271 ROC 1A	08/05/02	10/04/02	06/05/02	09/19/02	09/30/02	*No order was issued, by operation of law, became effective.
ND PU-314-97-193 & PU-314-00-282	271 ROC 1A	08/05/02	08/16/02	06/07/02	09/19/02	09/30/02	Approved in the Commission's 8/16/02 meeting, no order to be issued.
MT D2000.6.80	271 ROC 2A	08/30/02	10/11/02	10/08/02	10/07/02	10/18/02	Order No. 6425a
NM 3269 & 3537	271 ROC 3	08/30/02	10/29/02	10/29/02			*No order was issued, by operation of law, became effective.
-08	271 ROC 2A	08/05/02	10/29/02	06/07/02			*No order was issued, by operation of law, became effective.

Docket #	Type of Case	Benchmark filing	Benchmark Approval	Rate Effective Date	Billing Systems Imple.	True-up Complete	Comments
NE C-2516/PI-49, C-2666, C-2750	271 ROC 1A	08/05/02	10/04/02	06/07/02	09/13/02	09/30/02	Order confirming it went into effect
WA UT-003022 & UT-003040	271 ROC 2A	09/25/02					Waiting for WUTC ruling

B

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Arizona
T-00000A-00-0194 and T-01051B-02-0871
STF 24-001

INTERVENOR: Arizona Corporation Commission Staff

REQUEST NO: 001

This question refers to Qwest's response to STF 22-288 issued under Docket No. T-00000A-00-0194. In that response Qwest identified three phases of the cost docket implementation process: the Initiation Phase, the Contract Implementation Phase, and the IT Rate Implementation Phase.

a. Please provide the dates each of these phases began and ended for the Arizona cost docket implementation process associated with Decision No. 64922.

b. Please provide the dates each of these phases began and ended for all other cost docket implementation processes initiated for all Qwest stateover the past two years.

RESPONSE:

a. Initiation Phase: 6/27/02 - 11/08/02
Contract Implementation Phase: 11/11/02 - 11/22/02
I.T. Rate Implementation Phase: 11/25/02 - 12/15/02

b. WASHINGTON DOCKET #UT 003013
Initiation Phase: 10/11/01 - 2/28/02
Contract Implementation Phase: 3/4/02 - 3/25/02
I.T. Rate Implementation Phase: 3/26/02 - 5/17/02

MONTANA DOCKET #965-331T
Initiation Phase: 10/12/01 - 12/30/01
Contract Implementation Phase: 1/2/02 - 2/18/02
I.T. Rate Implementation Phase: 2/21/02 - 3/28/02

IOWA DOCKET #RPU 01-06
Initiation Phase: 3/25/02 - 6/14/02
Contract Implementation Phase: 6/17/02 - 7/05/02
I.T. Rate Implementation Phase: 7/08/02 - 8/23/02

NEBRASKA DOCKET #2516
Initiation Phase: 4/24/02 - 6/28/02
Contract Implementation Phase: 7/01/02 - 7/12/02
I.T. Rate Implementation Phase: 7/15/02 - 8/02/02

COLORADO DOCKET #99A-577T
Initiation Phase: 4/18/02 - 8/02/02
Contract Implementation Phase: 8/05/02 - 9/13/02
I.T. Rate Implementation Phase: 9/16/02 - 10/04/02

UTAH COLLOCATION #01-049-106
Initiation Phase: 4/05/02 - 7/12/02
Contract Implementation Phase: 7/15/02 - 11/08/02*
I.T. Rate Implementation Phase: 11/11/02 - 12/06/02

UTAH UNE DOCKET #01-049-105
Initiation Phase: 7/12/02 - 9/23/02
Contract Implementation Phase: 9/27/02 - 11/1/02*

I.T. Rate Implementation Phase: 11/04/02 - 11/15/02

WYOMING DOCKET #70000-TA-01-700
Initiation Phase: 7/31/02 - 12/20/02
Contract Implementation Phase: 12/23/02 - 1/24/03
I.T. Rate Implementation Phase: 1/27/03 - 2/7/03

ARIZONA DOCKET PHASE IIA
Initiation Phase: 12/16/02 - 1/29/03
Contract Implementation Phase: 1/30/03 - 2/7/03
I.T. Rate Implementation Phase: 2/10/03 - 2/14/03

* DOCKET #01-049-106 and DOCKET #01-049-105 were consolidated for implementation purposes.

Respondent:

C

Arizona
Docket No. T-00000A-00-0194
STF 22-288

INTERVENOR: Arizona Corporation Commission Staff

REQUEST NO: 288

Please describe in detail all steps necessary on Qwest's part to implement new wholesale rates in Arizona.

RESPONSE:

Implementation of a cost docket is an extremely complex undertaking. Qwest's cost docket implementation process consists of three (3) primary phases: the Initiation Phase, the Contract Implementation Phase, and the I.T. Rate Implementation Phase. Once these Phases are completed there is an additional work effort required to determine what, if any, true-up is required pursuant the Commission's Decision or language in CLEC contracts.

The Initiation Phase occurs once the decision of the Commission in the cost docket becomes final. This Phase involves at least 13 individuals representing each of the business entities within Qwest that are charged with implementing the Commission's decision. The entities include representatives from Wholesale Product Management, Business Development and Contract Development & Services. During this Phase, the Commission's order is evaluated and analyzed to determine the scope of work necessary to implement each of the rates. Issues raised by the Decision are assigned for resolution within the appropriate business units, legal interpretation is provided and operational impacts are also addressed in this Phase. The rates are then mapped into existing CLEC contracts and the new rate information is sent on to the departments charged with posting the new rate information on internal websites, determining the application of the rates to each CLEC and preparing the necessary documentation to incorporate the new rates into the various billing systems. Twenty-five business days are normally scheduled for the work required in this Phase. However, that time period may vary depending on the size and scope of the docket to be implemented, the number of CLEC contracts to which the rates need to be applied, and the workload from implementation activities associated with cost dockets from other jurisdictions.

The Contract Implementation Phase involves over 23 individuals - again representing the business units responsible for the tasks necessary to complete this Phase including the Cost Docket Coordinator, the Contract Implementation Team for IABS, the Contract Implementation Team for CRIS, representatives from CPMC (collocation), Product Process representatives and the Program Management Organization. Activities include preparing the documents necessary to build new rate tables, performing quality and accuracy checks of the rate information, data entry associated with inputting the rates into the system, CLEC notification of updated rate sheets associated with their contract, creating documentation necessary for any new rate elements or structure changes, and determining cost of and establishing priority for the systems modifications. Twenty business days are normally scheduled for the work required in this Phase. Again, that time period may vary depending on the size and scope of the docket to be implemented, the number of CLEC contracts to which the rates need to be applied, and the workload from implementation activities associated with cost dockets from

other jurisdictions.

The I.T. Rate Implementation Phase involves at least 13 individuals representing the various billing systems (CRIS, IABS, LEXCIS). These individuals receive all of the documentation from work done in previous phases and are responsible for updating the system tables, making system modifications where necessary to accommodate the rate changes and completing the tasks necessary to have the new rates reflected on the CLEC bills. This Phase is normally scheduled for completion within 15 business days, with variance possible due to complexity or workload demands.

This wholesale rate implementation process is followed in all fourteen Qwest service states.

Respondent: Timothy Dowd

D

COM/LYN/TJL/epg*

Mailed 5/22/2002

Decision 02-05-042 May 16, 2002

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Joint Application of AT&T Communications of California, Inc. (U 5002 C) and WorldCom, Inc. for the Commission to Reexamine the Recurring Costs and Prices of Unbundled Switching in Its First Annual Review of Unbundled Network Element Costs Pursuant to Ordering Paragraph 11 of D.99-11-050.	Application 01-02-024 (Filed February 21, 2001)
Application of AT&T Communications of California, Inc. (U 5002 C) and WorldCom, Inc. for the Commission to Reexamine the Recurring Costs and Prices of Unbundled Loops in Its First Annual Review of Unbundled Network Element Costs Pursuant to Ordering Paragraph 11 of D.99-11-050.	Application 01-02-035 (Filed February 28, 2001)
Application of The Telephone Connection Local Services, LLC (U 5522 C) for the Commission to Reexamine the Recurring Costs and Prices of the DS-3 Entrance Facility Without Equipment in Its First Annual Review of Unbundled Network Element Costs Pursuant to Ordering Paragraph 11 of D.99-11-050.	Application 01-02-034 (Filed February 28, 2001)

INTERIM OPINION ESTABLISHING INTERIM RATES FOR PACIFIC BELL TELEPHONE COMPANY'S UNBUNDLED LOOP AND UNBUNDLED SWITCHING NETWORK ELEMENTS

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I. Summary

This proceeding, known as the "UNE Reexamination," was initiated following formal requests by carriers interconnected with Pacific Bell Telephone Company (Pacific) for the Commission to reexamine certain prices that Pacific Bell charges competitors who purchase "unbundled network elements" (UNEs). Through purchase of these UNEs, competitors are able to use portions of Pacific's network. By this decision, we grant in part a motion for interim relief filed by AT&T Communications of California, Inc. (AT&T) and WorldCom, Inc. (WorldCom) (hereinafter referred to as "Joint Applicants") and we set interim rates for two UNEs, namely unbundled loops and unbundled local and tandem switching. We find that interim rates are necessary due to delays in this proceeding caused by inadequacies in Pacific's cost study filing and the need to examine competing cost models.

For unbundled loops, we adopt an interim discount of 15.1% from Pacific's current loop price for the basic (2-wire) loop, which results in an interim loop rate of $9.93.[1] We apply this discount to the deaveraged loop rates adopted in Decision (D.) 02-02-047. Joint Applicants had requested a 36% reduction, based on a trend analysis of 1994 and 2000 loop cost data using the HAI Model version 5.2a (HAI model or HAI). After considering comments on this approach, we have made adjustments to the HAI model. Specifically, we altered Joint Applicants' line counts to reflect physical facilities rather than "voice grade equivalents." Also, we removed the effects of the investment/expense factor

[1] *See* Appendix A for a complete list of the adopted interim rates.

approach from the HAI trend analysis by holding expenses per loop constant. The analysis leading to the discount noted above is contained in Appendix B.

For unbundled switching, we adopt the recommendation of Joint Applicants that we impose an interim rate based on a proposal by SBC-Ameritech for switching rates in Illinois. As a result, we apply a 69% discount to current local switching rates and a 79% reduction to current tandem switching rates. The adopted rates are set forth in Appendix A.

This proceeding will remain open to set final UNE rates for unbundled loops and unbundled switching. The interim rates adopted in this order are subject to adjustment, either up or down, from the effective date of this order until final rates are adopted.

Through this interim order, we also dismiss Application 01-02-034, filed by The Telephone Connection Local Services LLC, which requested review of Pacific's costs for the DS-3 entrance facility without equipment.

II. Background

A. Applications for Annual UNE Reexamination

In Decision (D.) 99-11-050, in the Commission's Rulemaking and Investigation to Govern Open Access to Bottleneck Services and Establish a Framework for Network Architecture Development of Dominant Carrier Networks (Rulemaking (R.) 93-04-003/Investigation (I.) 93-04-002, hereinafter "OANAD proceeding"), the Commission set prices for UNEs offered by Pacific. In this 1999 order, the Commission recognized that the Total Element Long Run Incremental (TELRIC) costs adopted by the Commission in 1998 (D.98-02-106) and used to set prices in D.99-11-050 were "based largely on data that has not

been updated since 1994," and "there is evidence that some of these costs may be changing rapidly."[2]

Accordingly, the Commission established a process in D.99-11-050 that invited carriers with interconnection agreements with Pacific to annually nominate up to two UNEs for consideration of their costs by the Commission. The decision required that a party nominating a UNE for review must include a summary of evidence demonstrating a cost change of at least 20% (up or down) from the costs approved in D.98-02-106 for the UNE to be eligible for nomination.

In February 2001,[3] the Commission received four separate requests to nominate UNEs for cost re-examination. The four requests and the UNEs for which cost review was initially sought were as follows:

- A.01-02-024, filed jointly by AT&T and WorldCom, requesting that the Commission re-examine the recurring costs and prices of unbundled local and tandem switching.
- A.01-02-034, filed by The Telephone Connection Local Services, LLC, (Telephone Connection) requesting that the Commission re-examine the recurring costs and prices of the DS-3 entrance facility without equipment.
- A.01-02-035, filed by Joint Applicants, requesting that the Commission re-examine the costs and prices of unbundled loops.
- A motion filed by Pacific in the above-captioned OANAD proceeding requesting that the Commission defer any re-examination of the costs and prices of UNEs until the United States Supreme Court has

[2] D.99-11-050, *mimeo.*, p. 168.

[3] All dates are 2001 unless otherwise noted.

> completed its consideration of the challenge to the Eighth Circuit's order on the FCC's TELRIC cost standards.[4] In the alternative, Pacific recommends that if its motion to defer is denied, the Commission should re-examine the cost of the Expanded Interconnection Service Cross Connect (EISCC).

On March 28, the assigned Administrative Law Judge (ALJ) issued a ruling consolidating these applications with the OANAD proceeding for the limited purpose of taking comment on Pacific's motion to defer and on which, if any, UNEs should be re-examined pursuant to D.99-11-050.[5]

B. The Scoping Memo for the 2001 UNE Reexamination

On June 14, the Assigned Commissioner and ALJ issued a joint ruling (hereinafter, "Scoping Memo") denying Pacific's motion to defer the UNE Reexamination proceeding. The Scoping Memo agreed with the Joint Applicants and other parties that the Commission retained the independent state authority to review UNE costs and prices and disagreed with Pacific's assertion that, given the case pending at the Supreme Court, the Commission could no longer rely on TELRIC. Specifically, the Scoping Memo found that the stay of the Eighth Circuit's order had the effect of maintaining the status quo, which means that the FCC's TELRIC rules remain in effect. Further, the Scoping Memo stated that the Commission should move forward with its review of selected UNEs

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[4] *Iowa Utilities Bd. v. F.C.C.*, 219 F.3d 744 (8th Cir. July 18, 2000), *cert. granted, AT&T Corp. v. Iowa Utilities Bd.*, 121 S.Ct. 878, 69 U.S.L.W. 3283 (U.S. Jan. 22, 2001) (No. 00-590).

[5] Comments were filed on April 20 by Joint Applicants, the California Association of Competitive Telecommunications Companies (CALTEL), Communications Workers of America District 9 (CWA), Office of Ratepayer Advocates (ORA), Pacific, The Utility Reform Network (TURN), Telephone Connection, and Z-Tel Communications, Inc. (Z-Tel).

rather than await the outcome of federal litigation so that competitors would not have to pay prices for another year based on costs adopted in 1998.

The Scoping Memo stated that the summary of evidence presented by Joint Applicants led to a reasonable presumption that costs may have declined for unbundled switching and unbundled loops. Therefore, the Assigned Commissioner and ALJ found sufficient justification to accept the nominations of these two UNEs for review and initiate the UNE Reexamination proceeding.[6] The Scoping Memo set a schedule for Pacific to file switching and loop cost studies on August 15 and stated that, in the interests of moving quickly on the cost re-examination, competing cost models filed by other parties would not be allowed.

C. The Issue of Competing Models

At a prehearing conference (PHC) on July 9, Joint Applicants urged that the Commission allow them to file a competing cost model. In a July 11 ruling, the Assigned Commissioner and ALJ reiterated that it was appropriate to limit the scope of the proceeding to review of Pacific's model as long as it met three criteria. Specifically, the July 11 ruling required that Pacific's cost models and cost studies must allow parties to:

- Reasonably understand how costs are derived for unbundled loops and switching,
- Generally replicate Pacific's calculations; and
- Propose changes in inputs and assumptions in order to modify the costs produced by these models.

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[6] The Scoping Memo went on to deny Telephone Connections' nomination of the DS-3 entrance facility without equipment and Pacific's nomination of the EISCC. These denials are affirmed by today's order.

The July 11 ruling discussed the importance of Pacific's model replicating prior OANAD results and left open the question of whether to allow the introduction of competing cost models if Pacific's filing failed to satisfy the criteria. In addition, the ruling required Pacific to provide Joint Applicants and any other requesting party with an advance electronic copy of the cost model or studies that Pacific would use as the starting point for its August 15th cost filing. Pacific provided this advance "starting point" to the parties on July 26.

The ALJ held a technical workshop on August 9 to have Pacific explain its "starting point" model and how it met the three criteria set forth in the July 11 ruling, and to allow staff and other parties to ask questions about the model. Following the workshop, comments were filed by Joint Applicants, TURN, and ORA and reply comments were filed by Pacific. In general, the comments criticized Pacific's "starting point" as not meeting the three criteria cost model because it was not an actual cost model, but merely a set of adjustments to the outputs of the models used to develops costs and prices in prior OANAD decisions.[7] Joint Applicants and other parties stated that several of the prior models are no longer available and it is not possible to re-run them with new inputs.

[7] The prior OANAD decisions referred to are D.98-02-106 and D.99-11-050 in Rulemaking (R.) 93-04-003/Investigation (I.) 93-04-002.

In its reply, Pacific did not dispute that its filing involves adjustments to the outputs of the prior OANAD model and that it is not possible to provide the previously adopted model with new inputs. Nevertheless, Pacific defended its "starting point" and updated loop and switching cost studies filed August 15 as meeting the three criteria from the July 11 ruling. Pacific maintains that its starting point "maps back to the OANAD results" and that it provided source references that tie back to the data originally filed in OANAD. (Pacific's Workshop Comments, 8/23/01, p. 3.) Pacific contends that its filings allow parties to understand how costs in the update were derived from OANAD adopted outputs and to replicate Pacific's updated numbers. Pacific also maintains that parties can vary assumptions by "trac[ing] back through the OANAD data to reflect a change in cost." (*Id.*, p. 9.)[8]

D. Motion for Interim Relief

On August 20, Joint Applicants filed a Motion for Interim Relief, asking the Assigned Commissioner and ALJ to order Pacific to offer UNE prices for unbundled switching and unbundled loops at interim rates as set forth in the motion. Specifically, Joint Applicants propose an interim reduction of 36% in Pacific's UNE loop rates based, in part, on estimates of Pacific's forward-looking costs using the HAI model. For unbundled switching UNE rates, Joint Applicants proposed that Pacific set rates equivalent to either of two rate proposals made by Pacific's affiliate, SBC-Ameritech, in Illinois. If adopted, the Illinois switching rates would amount to essentially a 70% reduction from

[8] On September 28, Pacific filed a revised "linked version" of its cost filing that links various cells on its spreadsheets so that changes in one cell's value are reflected in all linked cells.

current local switching rates. Joint Applicants again support this request using the HAI model as well as the FCC's Synthesis Model.

Joint Applicants justify the need for an immediate rate reduction by citing delays caused by alleged inadequacies in Pacific's starting point and August 15 cost filing and the need for the Commission to consider competing cost studies. Joint Applicants claim Pacific is charging inflated UNE prices that cause irreparable harm to competitive carriers. Finally, Joint Applicants ask that the interim rates be subject to "true-down" [9] as a sanction against Pacific for alleged misleading statements regarding its cost studies and delays in the proceeding.

Responses to the motion for interim relief were filed by Pacific, ORA, TURN, and Tri-M Communications (Tri-M). Pacific opposes the motion stating that 1) Joint Applicants have not justified the need for interim relief because they have not shown a need for emergency action by the Commission; 2) any grant of interim relief without a hearing or adequate opportunity to develop the required evidence would violate Pacific's due process rights; 3) the Commission cannot rely on the HAI Model for interim rates because it allegedly violates the Telecommunications Act requirement that UNE prices be based on cost; and 4) the proposal for a "true-down" violates state and federal law. The other parties all filed comments in support of the motion, and Joint Applicants filed a reply to Pacific Bell's response.

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[9] Essentially, a "true-down" means that if final rates are lower than interim rates, Pacific Bell should provide refunds to those who purchase unbundled loops or switching UNEs, but if rates are ultimately higher than any interim rate, buyers of these UNEs would not owe any additional payment.

On September 13, the ALJ held a prehearing conference regarding the motion for interim relief.

On September 28, the Assigned Commissioner and ALJ issued a joint ruling stating a desire to consider interim relief, but requiring additional filings from parties on the exact amount and the nature of the interim relief proposals. The September 28 ruling stated that interim relief appeared justified because Pacific's August 15 cost filing did not meet the three criteria established in the July 11 ruling.

III. Interim Rates are Warranted

This decision affirms the Assigned Commissioner's and ALJ's September 28 joint ruling regarding the need for interim relief. We affirm the ruling's conclusion that the Commission has the authority to set interim rates and has done so on numerous occasions. Despite Pacific's argument to the contrary, interim rates need not be premised on an "emergency" alone, but can be adopted for other reasons, including procedural delays. The California Supreme Court addressed precisely this issue in *TURN v. CPUC* (44 Cal. 3d 870, 878 (1988)). In the underlying decision, the Commission granted an interim rate increase while expressly declining to make any finding that the "the interim rate increase was required by a financial emergency, or that the reasonableness of the pertinent costs was undisputed." (*Id.* at 875.) The Commission's decision was upheld by the Supreme Court, which found that the overriding circumstance was the prospect of many months and years of hearings and deliberations before a final rate could be determined. (*Id.* at 879.)[10] The court affirmed that the Commission

[10] See also *Re Southern California Edison Company* (28 CPUC 2d 203, 212 (1988) D.88-05-074), which held that "the existence of a financial emergency is no longer a

Footnote continued on next page

could set interim rates as long as the rate is subject to refund and sufficient justification for the interim relief has been presented. (*Id.* at 880.)[11]

Our action today to set an interim rate for the loop and switching UNEs is not precluded by D.99-11-050. In that 1999 order, we stated that the rates adopted therein would remain in effect until changed by an order in the annual UNE reexamination. The 1999 order does not limit our ability to consider and establish interim UNE rates in this UNE Reexamination proceeding.

Interim rates are necessary due to delays in this proceeding caused by the need to examine competing cost models. The Assigned Commissioner and ALJ initially limited the scope of this proceeding to an examination of Pacific's updated cost studies. Despite repeated requests from Joint Applicants to allow them to submit their own cost studies, the Assigned Commissioner and ALJ rejected the notion of competing cost studies unless Pacific's filing failed to meet three criteria. Following an August 9 workshop to understand Pacific's "starting point" for its upcoming cost filings, Joint Applicants and other parties alleged that Pacific was not actually filing updated versions of the earlier cost models. These parties claimed that Pacific was merely filing adjustments to the outputs of the models used to set costs and prices in the prior OANAD proceeding. (*See*

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standard which must be met in granting interim relief." The order also notes that full consideration of the issues in the case has delayed the case and is another factor in granting interim relief. (*Id.* at 212.)

[11] The adoption of interim rates is not limited to energy matters. (*See* 80 CPUC 462, 465 (1976) D.86352, wherein the Commission approved "interim provisional rates" at the request of Pacific for its "Dimension PBX" service as a result of delays in the proceeding to establish permanent prices for the service.)

Joint Applicants Workshop Comments, 8/14/01; TURN Workshop Comments, 8/14/01.)

After review of these claims of insufficiencies in Pacific's filing, the ALJ and Assigned Commissioner determined that Pacific's filing did not meet the three criteria they had set forth. We agree that Pacific's "starting point" filed on July 26 and its updated cost studies filed on August 15 do not meet the criteria set forth in the July 11 ruling. Specifically, Pacific uses endpoints from OANAD and adjusts them rather than actually providing the former model with new inputs. Pacific's subsequent filing of a "linked version" does not correct this problem because it still does not provide the original model on which the calculations are based.

Pacific's filing fails the first and second criteria set forth in this proceeding because parties and staff cannot understand and replicate the calculations and the inputs of the prior OANAD models without the ability to run these models. Pacific itself is not replicating its prior OANAD models since it is not performing new runs of the SCIS model for switching investment, the Cost Proxy Model for loop investment, or other mainframe models used to calculate expenses and support investments. In other words, Pacific did not input changes to the prior OANAD model. Instead, as the Joint Applicants and other parties claimed, Pacific merely calculated the effect of estimated changes by adjusting the outputs of the prior OANAD model. While Pacific's "linked version" allows parties to trace through Pacific's calculations, it is not a model that constructs a forward-looking network. Finally, Pacific's filing fails the third criteria because parties cannot input their own numbers to Pacific's models and re-run them. Thus, it is impossible for parties to modify assumptions from the prior OANAD models.

Without the ability to modify assumptions and re-run the models, it is unclear how the evidence and assumptions that formed the basis for Joint Applicant's initial showing to open this proceeding can actually be tested, modified, and examined.

In their September 28 ruling, Commissioner Wood and ALJ Duda stated:

> We are concerned that if we were to proceed only with the filing presented by Pacific, any resulting UNE prices might not be cost-based as required by Section 252 of the Telecommunications Act of 1996. We will have less confidence in the results of our efforts without the ability to run an actual model and test inputs and assumptions. It is not clear if Pacific can amend its filing to overcome the problems identified. Because Pacific's filing does not currently meet our criteria, we are faced with the option of allowing Joint Applicants and other parties to file competing cost models.
>
> ...
>
> Because of the substantial delay in the case that would be caused by either allowing Pacific to amend its filing or by considering competing filings, we are persuaded to grant some form of interim relief. (9/28 Ruling, p. 5.)

The September 28 ruling noted that Joint Applicants had provided an adequate initial showing in their initial April 20 filing in this case to support a reasonable presumption that costs for unbundled loops and unbundled switching had declined from previously adopted costs. Yet, Pacific's August 15 cost update filing does not allow the Commission staff, the Joint Applicants, or other parties to test this initial showing. For example, Joint Applicants provide

ARMIS[12] data indicating that Pacific's switch investments have declined 40% on a per minute of use basis from 1994 to 1999 due to increases in minutes of use and insignificant increases in switching investments. (Pitts Declaration for Joint Applicants, 2/21/01, para. 12.) Further, they provide data indicating that the price for adding "growth lines" has declined significantly since 1996. (*Id.*, para. 13.) Joint Applicants also indicate that based on service volume and cost data that Pacific reported to the FCC, Pacific's switching-related expenses and support investments have declined 23% (on an expense per line basis) and 32% (on an expense per minute basis) since 1994. (Murray Declaration for Joint Applicants, 2/20/01, para. 8-10.)

Regarding costs for unbundled loops, Joint Applicants assert lower capital costs due to Pacific's "Project Pronto," a large-scale upgrade of its fiber and digital loop carrier (DLC) facilities. (Murray/Donovan Declaration for Joint Applicants, 2/28/01, para. 24.) They also assert economies of density from a 48.5% increase in total access lines from 1994 to 1999. (*Id.*, para. 18.) Joint Applicants' figures for access line growth are based on ARMIS data that Pacific reports to the FCC. In addition, Joint Applicants claim that certain DLC equipment costs have dropped to as low as 25% of the initial price. (*Id.*, para. 30.) Pacific has not disputed a decline in DLC equipment costs,[13] and it does not dispute the ARMIS data cited by Joint Applicants on volume and line growth.

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[12] ARMIS (Automated Reporting Management Information System) is a data collection and information system maintained by the FCC. It contains data that incumbent local exchange carriers such as Pacific provide to the FCC pursuant to FCC reporting requirements.

[13] Regarding DLC equipment, "Pacific Bell does not dispute that DLC equipment prices have fallen in recent years." (Pacific Loop Comments, 10/19/01, p. 7.)

Furthermore, Pacific admits that it benefits from SBC-wide purchasing of switches and can obtain switches in California for a lower price than in Illinois.[14] Joint Applicants point out that SBC has proposed UNE rates for switching in Illinois that are drastically lower than the current switching rates in California.

Considering that many of Joint Applicants' assertions begin with Pacific's publicly reported data, it is reasonably plausible that at least some of these factors will lead to decreases in UNE rates for loops and switching. Nevertheless, Pacific's filings have left the Commission and parties without the ability to test or examine the effect of these documented and undisputed changes involving line growth, corporate mergers, switching investments and DLC technology. Pacific generally states that many of the cost declines shown in the public data from 1994 to 1999 were actually considered and included in the forward-looking models that developed the costs the Commission adopted in 1998. Unfortunately, the Commission has no way to verify this claim without the ability to replicate the costs adopted in 1998 using a model provided by Pacific.

Essentially, Pacific has presented us with a "black box" that does not allow us to test the summary of evidence that initially persuaded the Commission to open the case. The Commission must either trust Pacific's "black box" without further scrutiny, or delay the case while the Commission investigates other models or a revised model from Pacific. Neither of these options is acceptable.

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[14] Regarding switching costs, "Pacific Bell today still enjoys the benefits of volume purchases" under a "new SBC-wide agreement." (Kamstra Declaration for Pacific, 4/20/01, para. 6.) Pacific admits that it can obtain switches for use in California at prices equal to, or more favorable than, the prices at which it can buy switches for Illinois. (*See* Joint Applicants' Switching Reply Comments, 11/9/01, p. 8, citing a Pacific Bell discovery response.)

This case was initiated based on a summary of evidence of cost declines. Delays in this case could lead to prolonging current rates at non-cost-based levels. Under Section 252 of the Telecommunications Act of 1996, this Commission is required to set UNE rates based on cost. (47 U.S.C. § 252 (d)(1).) We cannot in good conscience succumb to the delays caused by the inadequacies of Pacific's filing in the face of this preliminary evidence that costs have declined.

Our decision to set interim rates is in part supported by a recent order of the D.C. Circuit *in Sprint Communications Company v. FCC.*[15] In the *Sprint* decision, the D.C. Circuit was asked to review the FCC's decision to grant in-region long distance authority to SBC for Kansas and Oklahoma. Appellants asked the D.C. Circuit to overturn the FCC's findings that UNE rates for Kansas were cost-based, claiming that the FCC could not properly find the rates in these states TELRIC compliant because "they are the product of a crude 'settlement' method, trimmed by an arbitrary 25% 'haircut.' " (*Id.*, at *22.) In its decision on the appeal, the court declined to overturn the FCC's finding that Kansas UNE rates were cost-based and specifically noted that it could not find fault with the FCC "for approving the Kansas Commission's compromise resolution of an issue that the parties' behavior had left a muddle." (*Id.*, at *25.) The court also discusses the difficulty in pinpointing TELRIC rates with exactitude and cites to a prior case where it stated:

> This argument, however, assumes that ratemaking is an exact science and that there is only one level at which a

[15] *Sprint Communications Company v. F.C.C.*, 2001 U.S. App. LEXIS 27292, (D.C. Circ. December 28, 2001) (No. 01-1076). On January 7, 2002, Joint Applicants and Pacific jointly requested the Commission take notice of this D.C. Circuit decision. We herein grant that request.

> wholesale rate can be said to be just and reasonable.... However, there is no single cost-recovery rate, but a [wide] zone of reasonableness.... (*Id.*, at *12-13, citing *Conway*, 426 U.S. at 278.)

The reasoning of the D.C. Circuit case supports our interim resolution of this proceeding which the deficient cost filing of Pacific has, in some ways, "left a muddle" for the Commission to unravel. Furthermore, given the acknowledgement by the D.C. Circuit's order that TELRIC ratemaking is not an exact science and involves a "zone of reasonableness," we find support in the order for this Commission's discretion to adopt interim UNE rates.

By setting interim UNE rates for unbundled loops and switching, the Commission is not violating Pacific's due process rights. Pacific was given ample opportunity to comment on the proposed interim rates through an additional round of comments that were solicited by the Assigned Commissioner and ALJ. The rates will be subject to adjustment once final rates are determined, either up for down. Thus, Pacific is not harmed by the interim rate levels.

In summary, we find that that interim relief is warranted based on the substantial delays looming in this case caused by the inadequacies of Pacific's cost filing. Interim relief is also warranted based on the summary of evidence initially provided by Joint Applicants indicating a reasonable presumption of cost declines for unbundled loops and unbundled switching.[16]

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[16] On October 9, Pacific filed an Appeal to the Full Commission of the September 28 ruling. We decline to entertain this interlocutory appeal and it is herein denied. On October 19, Pacific filed a motion to vacate the September 28 ruling on the grounds that a pending motion in R.93-04-003/I.93-04-002/R.95-04-043/I.95-04-044 ("Section 271 Proceeding") involving a proposed discount to unbundled switching prices moots the need for interim relief. The motion in the Section 271 proceeding proposes an approximately 40-44% discount to UNE switching rates, depending on usage

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Before we turn to the substance of the relief requested, we must address Pacific's criticisms of the HAI model that underlies the interim relief request. Joint Applicants' proposed interim relief is primarily based on analysis and documentation involving the HAI model and the FCC's Synthesis model. We recognize that the FCC and other states have criticized aspects of prior versions of the HAI model, particularly HAI's assumption of uniform customer dispersion. (Tardiff Declaration for Pacific, 9/4/01, p. 3.) Pacific also criticizes the total investment and expense levels produced by HAI as too low when compared with actual figures. (*Id.*, p. 2.) In addition, Pacific claims that HAI does not meet the three criteria for cost models and studies set forth in this proceeding.

Joint Applicants defend HAI, stating that the current version 5.2a is improved over all earlier ones. For example, Joint Applicants maintain that HAI's use of geocoded customer location data addresses the customer dispersion problem and is mirrored by other models currently in use, including the FCC's Synthesis Model. (Klick Testimony for Joint Applicants, 8/20/01, p. 21.) Joint Applicants also contend that they are not basing the requested interim relief on the absolute output of HAI, but on a trend analysis of its outputs from 1994 to 2000. Joint Applicants reason that any systematic bias in HAI's calculation of the absolute level of investments and expenses does not impact the discounts determined through the trend analysis. (Bryant Declaration for Joint Applicants, 9/7/01, p. 2.)

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assumptions, on the condition that the Commission approves Pacific's Section 271 application. We will deny Pacific's motion to vacate the September 28 ruling because

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We agree with Joint Applicants that because HAI is used for a trend analysis in loop costs over the 1994 to 2000 time period, any criticism of its actual outputs are of lesser significance. While it is true that this Commission and the FCC have rejected prior versions of HAI, and the HAI model has its recognized shortcomings, it is the only actual "model" that has been filed thus far in the record of this proceeding to update UNE prices for loops. We disagree with Pacific's claims that HAI does not meet the criteria for cost models and studies. HAI meets two of our three criteria because we have been able to understand how HAI derived its results for unbundled loops and we have changed numerous model inputs and assumptions to produce our own results. While HAI does not exactly replicate the costs adopted in prior OANAD decisions, we find this is not necessary for purposes of a trend analysis because we are not using the absolute outputs of HAI to set rates. In addition, HAI does allow staff to replicate Joint Applicant's model runs.

Therefore, we will use the trend analysis based on the HAI model to set interim prices for loops, even if the model has elements that we disagree with, rather than relying on Pacific's cost filing, because we cannot adequately test and model all inputs with Pacific's filing. In other words, we will base the interim relief on the analysis presented using the HAI Model, but this does not prejudge the methodology or cost model we will use to set UNE rates in a later phase of this proceeding. We are not endorsing use of the HAI or the Synthesis models to set final updated UNE rates for unbundled loops or unbundled switching.

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we are not persuaded to amend the schedule of the UNE Reexamination based on a conditional proposal that is currently pending in another docket.

IV. Pacific Should be Sanctioned for Failure to Comply with the ALJ's Discovery Rulings

During the course of this proceeding, Joint Applicants submitted a data request to Pacific requesting models, spreadsheets and other documentation supporting various UNE costs that were either proposed to or adopted by regulators in Illinois and Michigan for SBC-affiliated companies, namely SBC-Ameritech. On August 13, the assigned ALJ and the Law and Motion ALJ conducted a hearing to consider these requests and overruled Pacific's objections to production of this material on the grounds that the material was relevant to the proceeding. Pacific moved for reconsideration of this ruling, based on the claim that out-of-state cost data is not relevant to the issues in this proceeding. On October 3, the assigned ALJ denied this motion on the grounds that the material was relevant because it involved information and cost methodologies currently advocated in other states by Pacific's parent, SBC, and because Pacific has admitted it purchases major network components through SBC from common vendors and under SBC-wide purchasing arrangements.[17]

On October 12, Pacific filed an interlocutory appeal requesting that the Commission overturn the earlier ALJs' ruling and stay the ruling pending decision on the appeal. In its appeal, Pacific argues that the requested material does not belong to Pacific, was developed by Ameritech prior to Ameritech's merger with SBC, and is held by SBC-Ameritech. Essentially, Pacific asserts it does not have "control" over these SBC-Ameritech documents and thus does not have to produce them. Pacific does not appeal the relevancy of this material.

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[17] *See* Declaration of Mark Kamstra for Pacific, 4/20/01, para. 6, filed as an attachment to "Response of Pacific to ALJ's Ruling Consolidating Dockets for Limited Purpose and Setting Comment Schedule, and Response to Joint Applicants' Emergency Motion."

Pacific did not produce any of the requested documents that it was ordered to produce pursuant to the August 13 and October 3 ALJ rulings and there has been no stay of the earlier ruling ordering Pacific to produce the documents.[18]

On February 21, 2002, the Assigned Commissioner issued a ruling imposing sanctions on Pacific for failure to comply with the ALJs' earlier discovery rulings. Specifically, the Assigned Commissioner ruled that the SBC-Ameritech cost information that Pacific refused to produce would be deemed to support the adoption of interim rates for unbundled loops and unbundled switching that are lower than current rates. The Assigned Commissioner also ordered Pacific to produce the disputed material within 10 days from the date of the ruling, or risk further sanctions, including monetary penalties, in subsequent orders in this proceeding.[19]

By this order, we affirm both the ALJ rulings requiring Pacific to produce out-of-state cost information and the Assigned Commissioner's ruling imposing an issue sanction against Pacific for its noncompliance with the ALJ rulings. As noted in the Assigned Commissioner's ruling, the Commission has the power to

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[18] In addition, on October 31 Pacific filed a "Motion for Official Notice of a Public Utility Commission of Texas Order," stating that a recent Texas order supports its appeal on this discovery matter. Joint Applicants filed a response in opposition to the motion. On November 20, Pacific filed a motion to strike the response of Joint Applicants to the October 31 motion. Both motions are denied herein as moot because the Commission declines to hear Pacific's interlocutory discovery appeal.

[19] On March 4, 2002, Pacific produced the material in question in compliance with the Assigned Commissioner's Ruling imposing sanctions.

impose discovery sanctions where litigants violate discovery procedures and rulings of the presiding officer.[20]

With regard to Pacific's appeal of the ALJs' rulings, we note that the Commission generally looks with disfavor on interlocutory appeals of ALJ rulings. (45 CPUC 2d 630. *See* also *Pacific Enterprises,* 79 CPUC 2d 343, 421.) Under Commission Rule 65, the Commission may review evidentiary matters under two circumstances, either when considering the matter on its merits or when the presiding officer refers the matter to the Commission. In this case, the presiding officer did not refer the matter. Furthermore, we decline to entertain this interlocutory appeal and request for stay for the reasons stated below.

First, as we stated in *Pacific Enterprises,* the presiding officer must have the authority to rule on discovery motions and impose sanctions for discovery abuse. Without this authority, material evidence would remain undisclosed or unconscionable delay would occur as parties seek relief from the Commission.

Second, even if the Commission chose to entertain Pacific's interlocutory appeal and stay request, it would be denied. The Commission generally refers to California's Code of Civil Procedure (CCP) for guidance with regard to discovery procedures.[21] The CCP and the similarly worded Federal Rules of Civil Procedure require a party to produce documents within its "possession, custody,

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[20] *See* Assigned Commissioner's Ruling Imposing a Sanction Against Pacific for Failure to Comply with Discovery Rulings, 2/21/02, p. 8. *See* also *Pacific Enterprises,* 79 CPUC 2d 343, 421-422 (D.98-03-073), wherein the Commission affirmed the use of evidentiary sanctions against a utility for failure to produce documents.

[21] *See, e.g.,* P.U. Code Section 1794 (the Commission or any party may depose witnesses pursuant to the Code of Civil Procedure and compel the production of documents).

or control."[22] In his February 21, 2002 ruling, the Assigned Commissioner disagreed with Pacific's claim that it does not have custody or control over out-of-state cost information based on a review of the relationship between Pacific, SBC, and SBC-Ameritech. The Assigned Commissioner noted that federal courts have found a subsidiary can have control over its corporate parent's or a fellow subsidiary's documents.[23] Evidence the courts have considered to determine whether such control exists includes the degree of ownership and control the parent exercised over the subsidiary, whether the two entities operated as one, whether an agency relationship existed, and whether there was demonstrated access to documents in the ordinary course of business. Using this analysis, the Assigned Commissioner found that Pacific does have a close relationship with SBC-Ameritech, SBC has exercised control over Pacific, and there is demonstrated access to SBC and SBC-Ameritech documents in the ordinary course of business.[24]

In affirming the ruling of the Assigned Commissioner, we share his concern that Pacific appears to selectively exclude data from SBC-affiliated operations. As the Assigned Commissioner noted, Pacific has already produced documents developed outside of Pacific by other SBC-affiliated entities in the course of this case. Moreover, Pacific has waived any argument that it does not

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[22] C.C.P. section 2031 (a)(1); F.R.C.P. 34(a).

[23] Assigned Commissioner's Ruling, 2/21/02, p. 4-5.

[24] The Assigned Commissioner noted that Pacific's, SBC's, and SBC-Ameritech's operations are closely intertwined given that 1) SBC makes purchasing decisions for both Pacific and SBC-Ameritech, 2) Pacific uses SBC employees for testimony in this proceeding on costing, 3) Pacific has produced other material from SBC during the course of this proceeding, and 4) Pacific has used the same witness used by SBC-Ameritech in Illinois to support its testimony in California. (*Id.*, p. 5-6.)

have access to and/or control of documents of its affiliates and parent company by producing documents and witnesses of SBC and SBC-Ameritech in the course of this proceeding. We will not tolerate Pacific's blatant disregard for the rulings of the presiding officer. Pacific's non-compliance has deprived Joint Applicants of the benefit of reviewing material that was deemed relevant to the proceeding, and has prejudiced Joint Applicants in this proceeding by withholding evidence relevant to the issue of cost modeling and costs throughout the various states in which SBC operates. This material may have a bearing on costs in California. If we permitted Pacific's actions, this would set the dangerous precedent of allowing an entity to hide information from the Commission by developing and maintaining it at one of its sister companies or at its corporate headquarters. We agree wholeheartedly with the Assigned Commissioner that Pacific should not be able to pick and choose which information it will provide to the Commission. Therefore, we will not entertain Pacific's interlocutory appeal and we uphold the sanctions imposed on Pacific by the Assigned Commissioner for Pacific's non-compliance with prior rulings.

V. Interim Rates for Unbundled Loops

A. Joint Applicants Proposal

In their motion for interim relief, Joint Applicants request a statewide average loop rate of $7.51 for the basic (2-wire) loop.[25] This rate represents a 36% discount from the current statewide-average loop rate of $11.70.[26] In support of

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[25] This decision adopts an interim rate for the basic loop only, and does not set interim rates for any other loops, such as the 4-wire, DS-1 or DS-3.

[26] $11.70 is the statewide-average loop price that the Commission adopted in D.99-11-050 based on the costs adopted in D.98-02-106. The Commission recently adopted deaveraged loop rates in D.02-02-047; however, today's order does not address

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this request, Joint Applicants note a decline in forward-looking loop costs since 1994. Specifically, they cite reduced prices for DLC electronics that have dropped roughly 38% between 1994 and 2001. (Joint Applicants' Motion for Interim Relief, 8/20/01, p. 10.) They also report that Pacific's reported total of switched access lines grew from 15 million lines in 1994 to almost 19 million lines in 2000. (*Id.*)

Along with the motion, Joint Applicants provide testimony by witnesses Bryant, Mercer and Klick regarding estimates of Pacific's forward-looking costs for unbundled loops using the most recent versions of the HAI model and the FCC's Synthesis model. Dr. Bryant performed an analysis of the sensitivity of cost results calculated by the HAI model by changing two key input values, the cost of DLC equipment and demand levels. (Bryant Testimony, 8/20/01, p. 5-6.) According to his testimony, Bryant used the HAI model to simulate a 1994 view of forward-looking costs for California as constrained by the key input values that were adopted by the Commission in prior OANAD decisions. He then used this starting point to change DLC equipment and demand levels for 2000 and compared HAI's outputs for 1994 and 2000. Bryant states that the combined effect of these two input changes is a 36% decrease in average loop cost from 1994 to 2000. (*Id.*, p. 6.) Joint Applicants claim that the Synthesis Model confirms this loop cost analysis. Based on this percentage

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interim discounts to deaveraged loop rates because they were not proposed in Joint Applicants' motion for interim relief.

change in the model output after changing only two inputs, Joint Applicants request a 36% reduction from the UNE loop rates adopted in D.99-11-050.[27]

B. Response

On October 19, Pacific filed substantive comments in response to the proposed 36% loop rate reduction. Pacific maintains that the three cost drivers relied on by Joint Applicants -- line growth, DLC electronics costs, and expenses -- do not support a 36% reduction in current UNE loop prices. We will discuss Pacific's criticisms of Joint Applicant's proposal, and responses to Pacific's criticisms, by issue below.[28]

C. Discussion

1. Line Growth

Pacific states that Joint Applicants' line growth assumptions in the HAI model are flawed because they incorrectly treat special access facilities, particularly DS-1 and DS-3 lines, as ordinary copper loops. For example, Joint Applicants have attributed 24 lines to each DS-1 line and 672 lines to each

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[27] Joint Applicants contend that further circumstances most likely lead to an even lower rate, and therefore the 36% reduction that they request is likely conservative. Joint Applicants maintain that existing UNE loop costs are based on assumptions regarding "fill factors" and the amount of structure that is shared (*e.g.* poles, trenches) that the FCC has found to be inappropriate for a forward looking analysis. If fill factors and structure sharing assumptions were increased to levels that the FCC has found to be forward looking, Joint Applicants claim that the discount from current rates would be higher than the proposed 36%. (Joint Applicants' Loop Reply Comments, 10/30/01, p. 21.) "Fill Factor" is a manner of expressing the percentage of Pacific's loop plant capacity that is in use as opposed to spare capacity. If a network has 30% spare capacity, then the network's fill factor is 70%.

[28] Reply comments on interim loop prices were filed by ORA, TURN, Joint Applicants, Mpower Communications Corporation (Mpower). The comments of Mpower were subsequently stricken in a 12/6/01 ALJ ruling.

DS-3 line because these lines carry 24 and 672 "voice grade equivalent" (VGE) channels. In contrast, Pacific notes that a DS-1 line consists of merely two copper loops, while a DS-3 line is provisioned over fiber so it does not involve any copper loops. According to Pacific, the net effect of Joint Applicants' use of VGEs is to overstate the number of loops in Pacific's network by about 10 million. Further, these inflated line assumptions produce illusory "scale economies," such as larger cable sizes and excess structure sharing, which understate Pacific's loop costs. (Pacific Loop Comments, 10/19/01, p. 4.)

Joint Applicants defend their modeling of line growth by claiming that the VGE method is well accepted and conservative. Joint Applicants cite examples of the FCC endorsing the use of line counts based on VGEs in its Synthesis Model, although they note that the FCC ultimately adopted a methodology that develops the network on a physical pair basis and divides the resulting total investment by the number of voice grade equivalents. (Klick Declaration, 10/30/01, p. 5.) Joint Applicants claim that using VGEs to model line growth is actually conservative because treating each channel on a DS-1 or DS-3 line as a copper line adds more cost per line than Pacific would actually incur to provision services using fiber. (Donovan Declaration, 10/30/01, p. 3.) They also note that Pacific has admitted significant volume growth for high capacity services provided over DS-1 and DS-3 facilities. Joint Applicants state that any analysis of line growth must be based on VGEs because DS-1 and DS-3 lines share outside plant structure with basic loop facilities. They allege that if DS-1 and DS-3 growth is not incorporated into the analysis, loop costs for basic unbundled loops will be overstated and this will shift shared costs to basic loops and force basic service to cross-subsidize business service.

In support of Joint Applicants' use of VGEs, ORA notes that Pacific itself measures wire-line growth in terms of VGEs. ORA maintains that line growth should be based on VGEs because it is not appropriate for the Commission to only consider the costs of copper loop plant when that plant is being replaced with less expensive and more cost effective fiber transport and distribution. (ORA Loop Comments, 10/30/01, p. 3.)

TURN contends that Pacific's analysis is contradicted by its own public data. The FCC's ARMIS database indicates that the total number of access lines in 2000 was 29.6 million. Further, TURN claims that all services that share facilities such as cables, conduit, trenches and remote terminal facilities should benefit from the economies of scale that have resulted from Pacific's substantial line growth. According to TURN, the net effect of Pacific's approach of excluding VGEs from any estimate of line growth is to "unreasonably shift costs away from the telecommunications lines utilized by large business customers and onto the loops utilized in the provision of residential and small business basic exchange services." (TURN Loop Comments, 10/30/01, p. 2.) In other words, if line growth is understated, this has the effect of causing higher per line costs for basic exchange loops.

For this interim rate setting exercise, we prefer to adopt a more conservative approach rather than a modeling technique that admittedly overstates the number of copper lines in Pacific's network. Although the FCC used VGEs for its Synthesis Model, parties admit that this model was not developed for UNE cost purposes but for universal service purposes. The goals of a model for UNE costing and universal service are quite different, and the

FCC has suggested that state or company specific values should be used for UNE costing and pricing purposes.[29] As we develop interim estimates of costs for Pacific's loops, we are concerned that overstating the number of copper lines could create assumptions of scale economies in Pacific's network that are not realistic. Although we agree with TURN and ORA that we should not ignore the undisputed growth of special access services, we prefer to account for it on a physical pair basis at this interim phase. We will not adopt a modeling convention that assumes this growth is provisioned entirely over copper when it quite clearly is not. We are troubled by the notion that it is acceptable to overestimate the number of copper lines in the model simply because they are more expensive. Although Joint Applicants, TURN and ORA are concerned that residential users may cross-subsidize business customers, the VGE method would have the opposite effect of allocating the higher costs of a copper-based network to users of fiber-based special access services, potentially violating the TELRIC methodology. We want to avoid creating cross-subsidies in either direction and prefer to take a more careful look at this issue in the next phase of this proceeding.

Joint Applicants acknowledge that the FCC ultimately adopted a methodology that develops the network on a physical pair basis. We are persuaded to adopt that approach for this interim exercise as well rather than inflating copper line counts to reflect special access lines using the VGE method. We will assign the cost of shared facilities such as conduit, poles, and trenches

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[29] *In the Matter of the Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Ninth Report & Order and Eighteenth Order on Reconsideration, released 11/2/99, para. 41 and footnote 125.

commensurate with a service's physical use of that facility. Therefore, we will alter the line counts in the HAI model to reflect physical facilities. In other words, we will account for DS-1 lines as two access lines since they are comprised of two pairs of copper, and we will account for DS-3 lines as one access line since they are provisioned over a single strand of fiber. This results in a line count of 16.3 million in 1994, growing to 20.0 million lines in 2000. When we insert these adjusted line counts into the HAI model and perform a comparison of 1994 and 2000 model runs, the net result is a decrease in the loop discount proposed by Joint Applicants from 36% to 25%, and an increase in the proposed interim loop rate from $7.51 to $8.73. (*See* Appendix B.)

In comments on the draft order, Joint Applicants claim that the draft decision's use of a physical line count methodology is flawed and produces illogical results. They claim that the physical line approach implies that DS-1 loops should be priced at twice the basic loop rate and that DS-3 loops should be priced at the same as the basic loop. They also claim that the methodology ignores the demands that DS-1 and DS-3 loops place on loop electronics. TURN and ORA echo these comments, while Pacific supports the draft decision on this issue as written.

The comments do not persuade us that the physical line count approach is flawed. This approach is used here solely for the purpose of allocating certain shared facility costs between basic loops and DS-1 and DS-3 facilities. We are not using this methodology to develop UNE costs for DS-1 and DS-3 loops so any extrapolation of the results for that purpose, as Joint Applicants, TURN and ORA suggest, is improper. We do not agree that our adopted approach ignores the demands of DS-1 and DS-3 facilities on loop electronics; thus we decline to make any changes to the order in this regard.

2. Infill Growth vs. Plant Extension

Pacific claims that the Joint Applicants' line growth analysis is flawed because it assumes that 100% of growth in Pacific's network since 1994 has been "infill" growth, *i.e.*, growth in already developed areas. Pacific maintains that 70% of the growth in its network over the last several years has been growth to previously unserved areas, or "plant extension" growth, and only 30% has been infill. (Pacific Loop Comments, 10/19/01, p. 5-6.) Pacific alleges that the manner in which HAI models customer growth guarantees lower loop costs because it packs more lines and customer locations into hypothetical local distribution areas, or "clusters." (Tardiff Declaration, 10/19/01, p. 6-7.) Pacific asserts that in reality, plant extension growth tends to be more expensive because it involves the placement of new feeder and distribution facilities and longer cables. Accordingly, Pacific asserts that the costs of plant extension growth more than offset any potential per loop savings from infill growth.

Joint Applicants respond that Pacific's criticisms of the way HAI models growth are not consistent with accepted forward-looking costing principles. According to Joint Applicants, a cost model should not look at the cost of "infill" vs. "plant extension" growth because that approach only looks at the cost to augment existing plant to serve a new increment of demand since the prior OANAD costing exercise. Instead, a proper forward-looking methodology considers the cost to serve total demand in the most efficient manner possible, constrained only by Pacific's current wire center locations. Joint Applicants claim that HAI uses this latter approach and therefore, Pacific's criticisms are meaningless. (Joint Applicants' Loop Reply Comments, 10/30/01, p. 11-12; Murray Declaration, 10/30/01, p. 3-4.)

In addition, Joint Applicants defend the placement of customers under the HAI model by explaining that HAI uses precise geocoded customer location data to place approximately 65% of the customer base. For the approximately 35% of customer locations that are unknown, the model distributes customers uniformly along all roads within the census block. Joint Applicants maintain that this approach conservatively over-disperses customers and potentially increases loop costs by overestimating loop plant. (Joint Applicants' Loop Reply Comments, 10/30/01, p. 18-19; Mercer Declaration, 10/30/01, p. 7-8.) Joint Applicants directly dispute Pacific's assertions that 70% of growth involves costly plant extensions by citing statistics that suggest the majority of growth is infill instead.[30] Joint Applicants also contradict Pacific's assertions that loop costs have increased by providing ARMIS data showing decreases in total loop investment per line from 1994 to 2000. (Joint Applicants' Reply Comments, 10/30/01, p. 23.)

ORA challenges Pacific's contention that plant extensions are more costly by noting that Project Pronto and fiber fed "next generation" DLC technology extend central office functions throughout Pacific's outside plant network without long runs of costly copper.

We have already found that because Pacific has not provided us with a model that we can use to test undisputed line growth, we must use the HAI model for this interim pricing effort. While Pacific alleges certain shortcomings in HAI such as potential problems with how it locates customers,

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[30] Joint Applicants cite statistics that California households and businesses have increased approximately 5% and 6.5% respectively over the 1994-2000 time period,

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this problem is not insurmountable because it pertains only to the one-third of customers that cannot be located using geocoded information. Indeed, HAI places two-thirds of its lines based on actual customer location information. We believe that any customer location problem is somewhat mitigated by our adjustments to HAI to back out the use of VGEs for line counts. When we base line counts on physical facilities rather than VGEs, as discussed above, we reduce the extent to which HAI "crams more customers" into existing areas for the one-third of customer locations that HAI must model without customer location information.

Further, we are not persuaded that potentially costly plant extension growth outweighs other cost reductions. We agree with Joint Applicants that it is improper for a cost model to consider only the cost of infill or plant extension growth. Instead, the cost model should consider the cost to serve total demand as set forth in our adopted Consensus Costing Principles.[31] Even if we were to consider Pacific's approach, Pacific's claims are disputed by Joint Applicants with demographic, line growth, and ARMIS investment data. Given this material that contradicts Pacific's claims regarding growth, it would be improper to accept Pacific's unsupported assertions that the cost of plant extension growth exactly counteracts loop cost reductions. Therefore, we will rely on the HAI model for the interim, irrespective of Pacific's comments in this area. We reiterate that our use of HAI for interim rates in no way prejudges whether to use HAI for setting permanently revised UNE loop rates.

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while Pacific's line counts have increased nearly 66% over the same period. (Klick Declaration, 10/30/01, pp. 12-13.)

[31] D.95-12-016, Appendix C, p. 3.

Pacific comments that the draft decision commits legal and factual error by assuming that all line growth has been in developed areas (*i.e.* "infill growth"). Pacific claims that the record is undisputed that 70% of growth has been higher cost plant extension growth, and that the HAI model used in the draft decision does not allow Pacific to test its assertions regarding line growth. Joint Applicants respond that Pacific is merely rehashing the same arguments rejected by the draft decision and that Pacific's claim of an undisputed record on higher cost plant extension growth is inaccurate.

We agree with Joint Applicants that Pacific is, for the most part, rearguing its earlier positions. We disagree with Pacific's contention that we have ignored undisputed evidence regarding line growth. The record was indeed disputed on whether 70% of growth is plant extension and whether the cost of plant extension counteracts other loop cost reductions. Pacific's assertions that plant extension growth completely offsets other loop cost reductions are not supported by the record. The Commission will resolve this dispute in the final phase of this case rather than delay interim relief.

Furthermore, the draft decision explains that reductions in line counts mitigate the extent to which HAI models infill growth. Thus, we did not ignore Pacific's criticisms in this regard. Pacific's concerns were addressed appropriately, given the fact that the dispute is over only one-third of the lines modeled and the total number of lines was reduced from Joint Applicants' initial model runs.

3. DLC Equipment Costs

Pacific asserts several flaws in Joint Applicants' analysis of DLC equipment cost reductions. Pacific does not dispute that DLC equipment prices have fallen in recent years.[32] Nevertheless, Pacific claims that Joint Applicants incorporated flawed assumptions into their DLC analysis. These assumptions include 1) an analysis that all remote terminals (RTs) are above-ground while ignoring allegedly higher cost underground controlled environmental vaults (CEVs), 2) allocations of DLC site preparation and installation costs that are too low, and 3) unsupported reductions in non-equipment DLC costs. Pacific contends that all of these items overstate the cost savings attributable to falling DLC equipment prices and are not justified.

Joint Applicants respond that they modeled RTs above-ground because that was the assumption Pacific itself used in the adopted OANAD studies. In addition, they claim that CEVs are less costly than RTs on a cost per line basis. (Joint Applicants Loop Reply Comments, 10/30/01, p. 13.) In other words, if HAI had modeled underground CEVs rather than above-ground RTs, the proposed interim prices might be even lower.

Joint Applicants address Pacific's other allegations by stating that site preparation, installation, and non-equipment DLC costs were held constant in the 1994 and 2000 runs of HAI. Therefore, Joint Applicants maintain that

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[32] *See* Pacific Loop Comments, 10/19/01, p. 7. *See* also Attachment B to these comments wherein declarant Pearsons states that "There is little argument that DLC equipment prices have fallen in recent years," as well as his statement that "Pacific has reflected this decrease in its August 15 cost study filing" and that the "plug-in price for POTS like service fell 34%." (Pearsons Declaration, 10/19/01, p. 4.)

those costs play no part in the trend analysis supporting the 36% proposed loop reduction. (*Id.*, p. 13; Donovan Declaration, 10/30/01, p. 8-9.)

We find that Pacific's criticisms of Joint Applicants' assumptions have no merit. First, Pacific does not dispute that RTs were modeled as above ground in OANAD.[33] Indeed, above-ground RTs were the reality in the network at that time. Today, however, comments by both Joint Applicants and Pacific indicate that CEVs are replacing RTs in many locations. Unfortunately, the record is disputed on whether CEVs are more or less expensive than RTs on a per line basis. We find flaws with the analysis offered by both Pacific and Joint Applicants. Both parties appear to mix costs and line capacities from various size CEVs in their calculations and we are not confident in the calculations of either party.[34] The record is incomplete in this area and it is unclear what CEV cost we would use if we wanted to change assumptions used in the prior OANAD decision. We cannot accept Joint Applicants' assertion that CEVs are less costly on a per line basis than RTs. Similarly, we cannot accept Pacific's assertions that CEVs are more costly than RTs. In keeping with our overall desire that interim rates reflect primarily undisputed cost changes, we will not

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[33] Pacific admits in its September 19 testimony that RTs were projected as above ground in the former OANAD studies. (*See* Testimony of Richard Scholl, 9/19/01, p. 29.)

[34] For example, Joint Applicants appear to mix the costs of building a 6 x 16 foot CEV with the number of lines in a much larger 10 x 24 foot CEV. (See Pacific's Comments on the Proposed Interim Opinion, 3/19/02, p. 4-5.) On the other hand, Pacific calculates CEV per line costs based on the above-ground RT size used in OANAD while admitting that "since underground CEVs generally are larger than above-ground cabinets, they have the potential for greater line count capabilities than above-ground cabinets." (McNeill Declaration, 10/19/91, p.3.)

change the original OANAD inputs with regard to RT and CEV costs. This is an area we can explore in setting final rates. For now, we will not change the original OANAD assumptions regarding above-ground RTs. We note that because we make no changes to prior RT assumptions, the loop cost trend analysis using HAI is not impacted in this area.

Second, we find that Joint Applicants only made adjustments for DLC equipment cost reductions and did not vary any other DLC-related costs such as site preparation, installation, and non-equipment costs in their trend analysis using the HAI model. (Donovan Declaration, 10/30/01, pp. 8-9.) Again, we find that because non-equipment DLC costs were held constant, they do not impact the trend analysis. We have no basis on which to increase these costs, as Pacific has suggested. Hence, we will reject Pacific's protests on this issue.

In comments on the draft decision, Joint Applicants contend that the Commission errs in not accepting the evidence they presented allegedly showing that CEVs are less costly on a per line basis than RTs.

In contrast, Pacific claims the draft decision errs in ignoring evidence that roughly half of the RTs in Pacific's network are housed below ground in CEVs. Pacific alleges that it has documented the real costs of CEVs while Joint Applicants' presentation of CEV costs is flawed and should be ignored.

We reiterate that we cannot agree with either side of this dispute without developing further record evidence on this issue. That effort is more appropriate for the next phase of this case. The comments clearly validate the conclusion in the draft decision that the record is disputed on RT and CEV costs. The results of the draft decision are left unchanged on this issue.

4. Loop Expenses

Pacific claims that Joint Applicants have made unsupported reductions in the expenses for maintaining and repairing loops. Pacific asserts that the reason for this decline in expenses is the application of an "investment/expense factor" embedded in the HAI model. Essentially, Pacific claims that for each dollar decrease in capital expenditures in the HAI loop model, HAI automatically decreases loop expenses by a certain amount. Pacific cites language where the Commission stated that this "investment factor approach is inconsistent with TSLRIC Principles No. 4...." (D.95-12-016, *mimeo.*, p. 10) and that simple common sense dictates that even if DLC equipment costs decline, repair expenses are not automatically reduced. Further, Pacific claims that expenses included in current loop costs are not based on 1994 data but on repair expenses that were trended downward for 1996 and 1997 to reflect forward-looking technology.

Joint Applicants defend their expense analysis by stating that Pacific's expenses have fallen considerably on a per loop basis since 1994. (Joint Applicants' Loop Reply Comments, 10/30/01, p. 14, footnote 36.) Joint Applicants' contend that HAI results track with actual trends and are a realistic reflection of forward-looking loop expense reductions (Klick Declaration, 8/20/01, p. 4, 8-11; Murray Declaration, 8/20/01, p. 5, 26-29, 35-37, 40-41.) Joint Applicants claim that Pacific has not addressed this substantial evidence of expense reductions and does not adequately support its claim that expenses have not dropped in the face of the actual reported data.

Joint Applicants defend their use of expense to investment ratios because they replicate forward-looking expense adjustments without requiring a data-intensive review of each expense account. Joint Applicants also note that

the ratios used in HAI are those developed by the FCC for use in its Synthesis Model. Joint Applicants further maintain that Pacific uses this same FCC Synthesis Model to support its proposed switching discount in the Section 271 proceeding.[35]

ORA responds that it is reasonable to assume maintenance expenses have fallen for loops given Pacific's statements that implementation of Project Pronto would pay for itself in maintenance savings. ORA states that the forward-looking trends anticipated in the earlier OANAD calculations likely have not fully captured the expense savings associated with Project Pronto.

We agree with Pacific that the use of investment to expense factors in HAI may not be reasonable. The fact that investments in certain technologies may have decreased in price does not mean that all other expenses, such as maintenance, have also dropped. Nevertheless, we will not go so far as to state that an investment factor approach violates the forward-looking cost principles. Indeed, the same decision cited by Pacific as denying an investment factor approach suggests that "partial use of investment factors may help to reduce the possibility of 'gaming' in the assignment of maintenance expense." (D.95-12-016, *mimeo*, p. 12.) Because we are setting interim rates that will be subject to true-up, we will use a conservative approach and remove the effects of the investment/expense factor approach from the trend analysis to avoid the risk of overstating any loop cost decreases. We think that Pacific has raised valid criticisms of the factor approach so we will not use it to adjust rates for the interim. After we rerun the HAI model keeping expenses constant in the 1994 to

[35] *See* Pacific's "Motion to Notify Parties of Discounted Switching Prices," filed October 12, 2001 in the Section 271 Proceeding.

2000 runs, we see that this removal of the factor approach, coupled with our removal of the VGE line count method, has the effect of reducing the relative change in loops costs from 1994 to 2000 from 36% to 15 %. As a result, the interim loop rate proposed by Joint Applicants increases from $7.51 to $9.93.

Nevertheless, we find that Joint Applicants have provided preliminary evidence of expense cost declines based on actual data that we will need to explore further when we set final rates for loops. Thus, loop expenses will undergo further scrutiny in the next phase of this proceeding.

In comments on the draft decision, Joint Applicants, TURN, and ORA comment that the draft uses an improper methodology to remove the impact of expense-to-investment ratios and this error leads to an incorrect calculation of loop expenses. The draft decision holds expenses per loop at a constant level. At the same time, the analysis assumes an increase in the number of loops served, which causes total loop expenses to increase. Joint Applicants claim that it is undisputed that Pacific's total expenses have decreased, or at least remained flat, from 1994 to 2000. Using this reasoning, Joint Applicants argue that the Commission should hold total expenses constant rather than expenses per loop, which effectively results in a decrease in expenses per loop.

Pacific disputes Joint Applicants' comments on this point and instead argues that loop expenses were calculated correctly in the draft decision. Pacific states that Joint Applicants use flawed logic to suggest that expenses per loop should decline simply because the number of loops served has grown. For illustration, Pacific suggests that if it serves 100 loops at $10 per loop in 1994, the model should assume costs of $10 per loop in 2000 no matter how many loops are served. If the number of loops served has grown, then total loop expenses would also increase although per loop expenses would be held constant at $10.

Pacific claims that the draft decision uses the correct methodology in holding expenses per loop constant. Pacific also contends that ARMIS data cited by Joint Applicants actually shows an increase in total loop expenses.[36]

In the trend analysis in the draft decision, we intended to reverse the effect of the investment-to-expense factors embedded in the HAI model because we did not agree with the assertion that expenses automatically decline when investment levels decline. To remove the investment-to-expense factors, we held expenses per loop at a constant level for the 1994 and 2000 model runs. We are not persuaded to alter this methodology because the record thus far does not convincingly support a lowering of expenses per loop for two reasons. First, Pacific is correct that certain ARMIS data indicates an increase in total loop expenses from 1994 to 2000. Second, the record on expenses per loop is far from clear given disputes over line counts and growth assumptions in the HAI model. Therefore, we find that leaving expenses per loop constant for this interim rate analysis is the proper middle ground. Parties may make their case for a change to expenses per loop in the next phase of this case.

5. Summary of Loop Changes

We have modified Joint Applicants' HAI trend analysis to remove line counts using the VGE methodology and to remove the effects of the investment/expense factors embedded in HAI. These changes are shown in Appendix B and reduce Joint Applicants' requested loop discount from 36% to 15.1%, for an interim unbundled loop rate of $9.93.

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[36] Pacific refers to the Joint Declaration of Murray and Donovan, 2/28/01, p. 21.

VI. Interim Rates for Unbundled Switching

A. Joint Applicants' Proposal

In their motion for interim relief, Joint Applicants request that the Commission adopt an interim UNE switching rate equivalent to one of the two alternative switching rates that SBC has proposed for its Illinois affiliate, SBC-Ameritech. Specifically, Joint Applicants propose that the Commission set interim rates equivalent to either of the options shown below.

Table 1

Joint Applicant's Proposed Switching UNE Prices

Option # 1	
Basic/Centrex Port	$1.94
Local Switching Usage per Minute of Use	$0.001087
ULS-ST Local Switching-ST (w/UNE-P)	$0.001009
ULS-ST SS7 Signaling (w/UNE-P)	$0.001076
ULS-ST Tandem Switching per Minute of Use	$0.000215
Option # 2	
Basic/Centrex Port	$3.16
Local Switching Usage per Minute of Use	$0.000283
ULS-ST Local Switching-ST (w/UNE-P)	$0.000205
ULS-ST SS7 Signaling (w/UNE-P)	$0.000176
ULS-ST Tandem Switching per Minute of Use	$0.000215

Joint Applicants base their request on the contention that current switching prices are based on outdated 1994 to 1996 data. According to Joint Applicants, Pacific's own publicly available data reveals that certain switching costs have decreased significantly since that time.[37] Further, Joint Applicants highlight two of Pacific's admissions to support an interim rate on par with Illinois. First, Pacific admits it buys switches under an SBC-wide switching contract. (Kamstra Declaration, 4/20/01, para. 6.) Second, Pacific has stated that it can obtain switching prices that are as favorable as, or more favorable than those that its affiliates in Illinois and Michigan receive. (Joint Applicants' Reply

[37] Joint Applicants cite Pacific's testimony in the prior OANAD proceeding that the cost of new switches has been declining since 1993 at a rate of 8% per year. (D.99-11-050 at p. 172, fn. 152, as noted in Joint Applicants' Motion for Interim Relief, 8/20/01, p.7.) In addition, Joint Applicants explain that they ran HAI using SBC's publicly reported data for 1994 and 2000 for ARMIS expenses, ARMIS investment, and ARMIS demand data. (Klick Testimony, 8/20/01, p. 9.)

Comments, 9/7/01, p. 5, citing Pacific's response to discovery request No. 118.) Given these statements by Pacific, Joint Applicants claim there is no basis for assuming that Pacific's forward-looking switching costs exceed the costs of SBC-Ameritech for Illinois.

Joint Applicants justify the application of an Illinois rate by comparing the average lines per switch for Pacific with SBC-Ameritech in Illinois. Joint Applicants contend that Illinois is the closest proxy to California for local switching operations in SBC's service territory. Based on 2000 ARMIS data, Pacific has the highest average number of lines per switch, with Illinois as the next highest average. (Murray Declaration, 9/7/01, p. 5.) Joint Applicants also note that Pacific's current switching prices are as much as 252% higher than the prices SBC-Ameritech has proposed for Illinois and 207% higher than the prices the Michigan Public Service Commission recently adopted for SBC's affiliate in that state. (Motion for Interim Relief, 8/20/01, p. 8.) Joint Applicants maintain that this difference in rates is unsupportable given the similarities in switch density of the two states, shown by average lines per switch, and the admissions of SBC-wide purchasing.

To further support their request, Joint Applicants contend that the switching costs calculated by HAI confirm that switching prices should be as low as, or lower than, the proposed Illinois rates. Joint Applicants state that using Pacific's own public information about costs in 2000, HAI produces a total local switching cost per line of $2.82 per month. (Mercer Testimony, 8/20, p. 7; Mercer Declaration, 11/9/01, p. 3, footnote 10.) Based on this output of the HAI model, Joint Applicants maintain that either of the rate options proposed in Illinois would lead to conservative interim switching prices. In addition, the Joint Applicants contend that the FCC's Synthesis Model also produces

forward-looking switching costs that support their interim relief request. (Klick Testimony, 8/20/01, p. 29-30.)

B. Amended Proposal

In the September 28 ruling, the Assigned Commissioner and ALJ stated a concern that the proposed interim rates from Illinois differ dramatically in price structure from Pacific's current rates. The ruling required Joint Applicants to reformulate their request to entail a percentage reduction from current switching rates using the same rate structure as is currently in use for Pacific. In their amended filing, Joint Applicants reformulated the price structure as requested, but continue to recommend that the Commission adopt interim unbundled local switching and tandem rates no higher than SBC-Ameritech's proposed rates for Illinois.

Joint Applicants derived a method to take the results of their switching analysis and convert it Pacific's current rate structure. Their proposal provides Pacific with the same compensation for an average end-user for local switching that SBC would receive for service provided to an average Illinois end-user based on the proposed Illinois prices. This reformulated request entails a 69.4% reduction from current local switching prices and a 79% reduction from current tandem switching rates.[38] Once again, the Joint Applicants rely on the output of

[38] Joint Applicants calculate the 69.4% discount by first determining the total local switching revenue for an average per-line usage level based on the Illinois rate level. The result, $3.54, is then divided by an estimate of average current revenue from UNE local switching prices in California ($11.56). ($3.54/$11.56 = 30.6%, or a 69.4% discount). They perform a similar analysis to determine the tandem switching discount of 79%. (Amended Proposal of Joint Applicants, 10/15/01, p. 3-4.)

the HAI model to support their request for an interim rate equivalent to the rates proposed by SBC-Ameritech in Illinois.

Joint Applicants maintain that this across the board 69.4% reduction for local switching may inadvertently result in a large true-up once final rates are adopted. Joint Applicants ask that the Commission consider minimizing the expected true-up by simplifying the current UNE switching rate structure for interim pricing. Joint Applicants provide two alternatives to the across the board 69.4% discount that they believe will result in a smaller true-up. The first alternative entails simplifying the distinctions between call types. Joint Applicants suggest that the Commission should remove the distinction between call types because Pacific itself has proposed this simplification when it proposed a discount for switching rates in the 271 proceeding. Specifically, Joint Applicants ask that, identical to Pacific's Section 271 proposal, the Commission eliminate the distinction in rates between intraoffice calls and originating interoffice calls.

Joint Applicants' second alternative switching price structure takes this simplification of call types and also removes any separate vertical feature charges. Again, this mimics Pacific's own proposal in the Section 271 proceeding. This would result in a discount of 63.2% for switching, and no charge for features. Joint Applicants contend that this second alternative proposal will likely lead to a smaller true up than the 69.4% across the board discount once final UNE switching rates are adopted.

C. Responses

Pacific responds to this amended proposal by stating that Joint Applicants have not demonstrated that Pacific's switching costs have fallen by anything approximating 69.4% or that the prices SBC-Ameritech has

proposed for Illinois are a reasonable surrogate for Pacific's switching costs. Pacific contends that Joint Applicants have failed to provide factual support for lower switch prices, more efficient switch maintenance practices or any new technology. Further, Pacific contends that Joint Applicants have made no showing that Illinois costs are relevant or determinative of Pacific's costs.

First, Pacific disputes any attempt by Joint Applicants to imply that the proposed price for unbundled switching in Illinois is sufficient to recover all of Pacific's switching costs. Pacific's witness Dr. Palmer explains that SBC-Ameritech disagrees with a number of aspects of the Illinois switching cost study and is appealing it. Further, Pacific contends that Joint Applicants have not established that California and Illinois have any similarity on a number of factors critical to switching prices including fill factors, cost of capital, cost of money, depreciation rates, labor rates, tax rates, and switch types. According to Pacific, the Joint Applicants' proposal to use Illinois prices is based solely on claims regarding switching investment and does not consider other factors that determine the UNE rate for unbundled switching.

Second, Pacific provides a comparison of the relative cost results of the FCC Synthesis Model for California and Illinois and uses this comparison to dispute the Joint Applicants' proposal to use Illinois switching rates.[39] Based on its own run of the FCC's Synthesis Model, Pacific's contends that the Synthesis Model produces significantly higher end office usage and port costs for

[39] According to Pacific, the FCC has never used the USF cost model to determine rates for a particular unbundled network element and the model was not designed to perform such a task. Pacific explains that it makes this comparison only because Joint Applicants and others have suggested using the USF Model. (Pacific Switching Comments, 10/30/01, p. 9, footnote 19.)

California than for Illinois and for other states where the incumbent local carrier has received approval under Section 271 to provide in-region long distance service.

Finally, Pacific notes that while Joint Applicants use a trend analysis using the HAI model to propose an interim loop rate, they do not use this same trend analysis to support an interim switching rate. According to Pacific, Joint Applicants performed the same trend analysis for switching costs and the results of that trend analysis do not justify the deep discount to Illinois rates that the Joint Applicants now propose. (Pacific Switching Comments, 10/30/01, p. 13.) According to Pacific, a trend analysis for switching suggests that local switching costs have fallen only 6% compared to the 69.4% reduction requested by Joint Applicants. (*Id.*)

D. Discussion

We begin by noting that public data shows substantial declines in per line and per minute of use switching costs since we last adopted UNE switching prices in D.99-11-050. Specifically, Joint Applicants analyzed ARMIS data that Pacific reported to the FCC for switch investments in California and found that:

- Pacific's booked switching investments per minutes of use declined 28% from 1994 to 1999. (Pitts Declaration, 2/20/01, p. 6.)
- Pacific's switch expenses per line dropped 23% from 1994 to 1999 and expenses per minute dropped 32% over the same period. (Murray Declaration, 2/20/01, p. 4.)
- Pacific's support investments for unbundled switching, including the cost of computers and related equipment, declined 15% from 1994 to 1999. (*Id.*, p. 7.)

- Pacific's ARMIS data for 2000 shows a continued decline in switch investments and switch expenses per minute of use. Specifically, Pacific reported a 26.5% decline in switching expense and a 51% decline in switching expense per DEM from 1994 to 2000. (Klick Declaration, 11/9/01, para. 18-19.)

We find that this publicly reported data supports the establishment of interim UNE switching rates while the Commission continues its review of updated cost models in this proceeding.

At the heart of the debate over which interim UNE switching rates to adopt is how SBC-Ameritech's proposed switching rates in Illinois compare to California costs. Pacific argues that Joint Applicants have not convincingly shown that critical cost factors that affect the UNE switching rate, such as labor rates and switch types, are the same across the two states. As we discussed in Section IV above, Pacific did not provide the cost material requested by Joint Applicants regarding Illinois. This material might have supported Pacific's claim that costs in the two states are not comparable, but it might also have shown major similarities in costs and cost drivers between the two states. However, Pacific chose not to make this information available to be introduced into the record of the proceeding, notwithstanding ALJ rulings compelling production of the documents.

As already discussed, because of Pacific's noncompliance with the ALJs' discovery rulings, we will deem the missing material to support the Joint Applicants' claim that switching rates in California should be lowered from current levels. For the same reason, we are disinclined to give substantial weight to Pacific's claims that there are significant differences that render the prices SBC-Ameritech proposed in Illinois lower than costs in California. As a result of

Pacific's failure to produce the required information, the record has been deprived of what certainly would have been highly probative evidence of the comparability of switching costs between SBC's operations in Illinois and California. As Joint Applicants point out, Pacific's suggestions about factors that could lead switching costs to be higher in California than in Illinois could have been effectively analyzed had Pacific produced the required discovery. It would set a dangerous precedent to reward a party for its non-compliance with discovery rulings by according substantial weight to assertions that could have been supported by material that the party refused to produce.

Notwithstanding the gap in the record created by Pacific's non-compliance with the ALJs' discovery rulings, we find ample evidence to support Joint Applicants' contention that the SBC-Ameritech proposed switching prices either equal or exceed the appropriate cost-based rates in California.

Joint Applicants have presented public data that convincingly shows a substantial degree of uniformity across geographic regions in switching cost trends. (Klick Declaration, 11/9/01, pgs. 11-13.) Moreover, Pacific does not dispute that it buys switches under an SBC-wide switching contract. And Pacific has acknowledged that SBC is able to buy switches for use in California at prices that are equal to, or more favorable than, the prices at which it can buy switches for use in Illinois.

We also note that, for the two key cost drivers identified by the FCC, Joint Applicants have demonstrated characteristics indicating that switching costs in California are no higher than those in Illinois. With respect to average switch size, ARMIS data shows that Pacific has far more switched lines per switch than Illinois, which has 27 percent fewer lines per switch than California. With respect to the other factor, percentage of host vs. remote switches, the two

states are nearly identical (Joint Applicants' Reply Comments, 11/9/01, p. 23; Klick Declaration, 11/9/01, pp. 15-16.)

Pacific claims that its run of the Synthesis Model does not support a switching rate discount. According to Pacific's analysis, the model indicates that California end office usage and port costs should be 23% and 19% *higher* than Illinois costs, respectively. (Pacific Bell Switching Comments, 10/30/01, p. 10.) Joint Applicants respond that Pacific has miscalculated and misconstrued the Synthesis Model results because Pacific's analysis fails to correct a substantial input error regarding usage volume. (Klick Declaration, 11/9/01, p. 5-6.) Moreover, Joint Applicants claim further flaws in Pacific's analysis from several factors including the fact that it relies on 1998 data rather than updated data for 2000. (*Id.*, p. 7.)

Based on analysis performed by our staff, we agree that Pacific's run of the Synthesis Model is flawed because Pacific did not re-run the model with correct usage volumes.[40] Rather, our staff corroborated the run of the Synthesis Model performed by Joint Applicants and its results do indeed show switching rates for California *lower* than those suggested by Pacific, and in line with the results described by Joint Applicants. (Klick Declaration, 11/9/01, pp. 5-6.)

In summary, the record supports Joint Applicants' position that switching costs in California are likely to be no higher than the rates that SBC itself proposed in Illinois. We will therefore adopt Joint Applicants'

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[40] According to a response to a data request from Commission staff, Pacific corrected the error noted by Joint Applicants and re-ran the Synthesis Model, obtaining similar results to Joint Applicants. (Pacific Bell Response to Data Request, 12/11/01.)

recommendation to apply SBC-Illinois' proposed switching rates as interim rates for California.

As explained above, Joint Applicants have shown that, if the SBC-Ameritech switching rate proposal in Illinois is reformulated based on the current switching rate structure in California, local switching rates would be reduced by 69.4% and tandem switching prices would fall by 79.3%. Rather than make any changes to the existing rate structure in this interim pricing decision, we will simply apply these percentage reductions to the appropriate existing switching rate elements, including the 31 vertical features listed in Appendix A of D.99-11-050. The resulting switching rates that we adopt are set forth in Appendix A.

VII. True Up

Joint Applicants request that any interim rates be subject to "true-down." Essentially, they request that if final rates are lower than interim rates, Pacific should provide refunds to purchasers of these UNEs. However, if rates are ultimately higher than any interim rate, purchasers would not owe any additional payment for the interim period.

In the September 28 ruling, the Assigned Commissioner and ALJ rejected this notion of a "true down." The ruling noted that if the Commission set interim rates that were not adjustable both up and down, and the interim rates were later found to be inaccurate, the Commission might potentially violate Section 252(d) of the Federal Telecommunications Act that requires cost-based rates for UNEs.

We affirm the earlier ruling in this proceeding that the rates adopted in this order should be adjusted, either up or down, once final rates are set. Therefore, we require Pacific to establish a balancing account to track the revenues received from these interim UNE rates for unbundled loops and

unbundled switching. The balancing account should begin tracking revenues on the same date the interim rates become effective, which is the effective date of this order. Further, the balancing account should accrue interest at the three-month commercial paper rate, as is common practice for accounts of this type. When permanent UNE rates are adopted at the conclusion of this UNE reexamination proceeding, we will determine how to adjust loop and switching rates, either up or down, from the date the interim rates became effective through the date of adoption of a final rate.

VIII. Categorization

In Resolution ALJ 176-3059, dated March 15, 2001, the Commission preliminary categorized the consolidated applications in this proceeding as ratesetting. The Scoping Memo issued on June 14 affirmed this categorization and found that hearings might be required. Although no hearings have been held to date, hearings may be required in the next phase of this proceeding when we determine final UNE loop and switching rates.

IX. Comments on Draft Decision

The Commission mailed the draft decision of the ALJ in this matter to the parties in accordance with Section 311(g)(1) and Rule 77.7 of the Rules of Practice and Procedure. Comments were filed by Joint Applicants, Pacific, TURN, ORA, Z-Tel, Tri-M, and Anew Telecommunications Corporation d/b/a "Call America" (Call America).[41] Reply comments were filed by Joint Applicants, Pacific, TURN, ORA and Z-Tel. In this section, we will address comments that pertain to the overall decision. We have already addressed technical comments on specific

[41] Along with its comments, Call America filed a petition to intervene in this case that was subsequently granted.

details of the loop and switching cost analyses throughout the text of the order where appropriate.

A. General Comments of Pacific

Pacific claims that the decision to grant interim relief commits legal error. For the most part, Pacific reargues the same positions it has already taken such as criticism of the HAI model, claims that its own cost filing met the Commission's cost model criteria, and other due process arguments. The decision already addresses these points and dismisses them. We do not agree that our decision to grant interim relief commits legal error. Pacific argues that interim relief is not warranted because we have not shown competitive local exchange carriers (CLCs) cannot compete at current prices. As we have already stated, the fundamental issue in this matter is whether Pacific's current UNE prices are cost-based. The scope of this case does not include a review of the current status of local exchange competition. When we dismissed Pacific's request to defer this UNE Reexamination, we noted the preliminary evidence of cost declines and our obligation under the Act to set cost-based rates. While we are, of course, deeply concerned with the effects of non-cost-based rates on competition, the impetus for our action today to set interim rates is the undisputed evidence presented thus far, which we cannot ignore, that many input costs have decreased.

Pacific argues that the interim rates will harm competition because the interim rates are below cost and will bring inefficient competition to the market. We do not agree with these assertions primarily because we have no evidence that these interim rates are below cost, as Pacific suggests. Given that these interim rates are subject to adjustment at a later date, Pacific will not face financial harm from the interim rates. If anything, the greater risk lies with the

CLCs that must make strategic business decisions based on temporary rates. With this in mind, we will attempt to expedite the next phase of this case to finalize UNE loop and switching rates.

B. Inflation Adjustment

The ALJ's draft decision contained a section describing the conversion of the HAI model results from nominal dollars to real dollars. Specifically, the draft noted that the Joint Applicants had compared the nominal outputs of the 1994 and 2000 model runs to derive a percent change in loop rates over that time frame, but they had provided a switching analysis that compared HAI model runs after adjusting for inflation. The draft decision converted the revised HAI loop results into real dollar terms in order to compare the results in constant dollars and eliminate the influence of inflation over that time period.

Pacific claims that the ALJ's draft decision errs in accounting for inflation by converting the HAI model results from 1994 from nominal into real dollars. Pacific maintains that because UNE prices have been held constant at 1994 levels, it is inappropriate to adjust costs for inflation unless UNE prices are adjusted for inflation as well. According to Pacific, the nature of a forward-looking cost exercise obviates any need to adjust for inflation when adjusting OANAD results and the Commission already made significant downward adjustments to Pacific's forward-looking costs when it adopted costs in 1998 based on data from 1994 to 1997. Joint Applicants respond that a pure time trend analysis should state all dollars in the same "real" base year and that the Commission should not eliminate this inflation adjustment.

Based on the comments, we will no longer convert the 1994 HAI model runs for loops into real dollar terms. The section describing this change has been removed from the decision. Although we have not changed our view that a pure

trend analysis should be done in constant dollars, it appears that UNE cost comparisons are more problematic. First, it is not clear whether all of the 1994 model inputs are in 1994 dollars and the 2000 model inputs are in 2000 dollars. We do not necessarily have a pure starting point from which to adjust. Second, it is unclear whether inflationary adjustments were already incorporated in the prior OANAD proceeding. Third, Pacific is correct that the UNE prices the Commission adopted in 1999 have not been adjusted for inflation since the time they were adopted. Any inflation from 1999 to 2002 has made these prices decline in real terms. When we consider that UNE prices have declined in real terms and the underlying costs we are comparing are not necessarily in purely 1994 or 2000 dollars, we find that including an inflation adjustment may not be reasonable. Therefore, we will remove the inflation adjustment that was included in the draft decision.

Although we agree to remove the inflation adjustment from our trend analysis, we reject Pacific's suggestion that the Commission should annually adjust UNE prices for inflation. Many rates that the Commission sets are not annually adjusted. A decision on whether or not to provide an inflation adjustment is a policy choice that has never before arisen in the context of setting forward-looking costs for UNEs. Because the purpose of this decision is to set interim UNE rates while we press forward with an update of forward-looking costs for unbundled loops and unbundled switching, we will not include an inflation adjustment at this time.

C. Alleged Error Regarding Shared and Common Costs

Pacific maintains that the draft decision errs in applying a discount to UNE loop and switching *prices* rather than applying the discount to underlying *costs*. In the OANAD pricing order (D.99-11-050), the Commission adopted a

19% shared and common cost "mark-up" that was added to TELRIC costs to set UNE prices. Pacific now claims that this 19% mark-up should be removed from the applicable UNE price before any interim discount is taken. In other words, the discount should be applied only to the direct TELRIC cost for the UNE. Once an interim cost is calculated, Pacific suggests that the original amount of the mark-up should be added back, leaving the absolute dollar amount of the shared and common cost unchanged.[42]

Joint Applicants, TURN and ORA respond that the Commission did not set an absolute dollar amount for shared and common costs in D.99-11-050 and that Pacific is wrong to suggest that it do so now. Instead, consistent with D.99-11-050, a UNE's price should be determined by adding 19% to the underlying TELRIC cost. Indeed, Joint Applicants point out that Pacific itself suggested this method when it stated that "whatever the updated cost is found to be in this proceeding (either the interim or permanent phase) must be increased by 19%." (Pacific Loop Comments, 10/19/01, p. 3.) Further, Joint Applicants contend that it makes no difference mathematically whether the percentage reduction is applied before or after the shared and common costs are added to the underlying cost.

Joint Applicants, TURN and ORA are correct that the Commission did not set an absolute value for shared and common costs in D.99-11-050. If we were to adopt Pacific's newest approach, which appears inconsistent with its earlier statements in this case, we would increase the percentage of shared and

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[42] For example, the current 19% mark-up on unbundled loops is $1.87 (19% of $9.83 TELRIC loop cost). Pacific would subtract any interim loop discount from $9.83, and then add back $1.87 to the new interim loop cost).

common costs as a component of the interim UNE rates and violate the edict in D.99-11-050 that the Commission would not consider the 19% mark-up in the annual reexamination proceedings. Therefore, we do not agree with Pacific that the draft contains a technical and legal error in how it computes an interim discount. Rather, Pacific's proposal would amount to legal error by adjusting the 19% mark-up. Furthermore, Joint Applicants are correct that there is no mathematical difference in taking the interim percentage reduction before or after the shared and common cost mark-up.[43] We make no changes to the draft in this area.

D. True-Up Comments

Z-Tel comments that the Commission should consider the interim rates as a ceiling and only allow for adjustments to these interim rates if the final rates are lower. If the final rates are higher, Z-Tel suggests that Pacific should absorb the loss as a sanction for failure to produce a useable model thus far in the proceeding. Z-Tel contends that competitive carriers cannot effectively compete under the risk of a true-up should the Commission set final rates higher than these interim ones. Z-Tel also suggests that CLCs have overpaid for UNE loops and switching for some time. Therefore, Z-Tel requests that the Commission retroactively adopt the interim rates in this order as of July 26, 2001, the date Z-Tel contends Pacific filed its latest loop and switching cost-studies.

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[43] For the current UNE loop rate of $11.70, the underlying cost is $9.83 ($11.70/1.19). As an example, an interim rate of $10.53 results when a discount of 10% is taken from $11.70. Similarly, a 10% discount from the loop cost of $9.83 equals $8.85. If a 19% mark-up for shared and common costs is added to $8.85, this equals the same $10.53 interim rate.

We decline to make any changes based on Z-Tel's comments. This decision already extensively explains why interim relief should be subject to adjustment. In addition, we will not adjust UNE rates as of July 2001 as Z-Tel suggests because this would entail retroactive ratemaking.

E. Use of Synthesis Model

TURN expresses concern that the draft decision may discount the usefulness of the FCC's Synthesis Model in the next phase of this proceeding. TURN points out that all parties to this proceeding have found uses for the Synthesis Model to support their various positions. Thus, TURN suggests that the Synthesis Model can be adjusted to serve UNE costing purposes and the decision should not foreclose this option. Based on TURN's comments, we have clarified the draft on this point because, at this time, we do not intend to limit the modeling choices of parties in the next phase of this case.

F. Sanctions Against Pacific

TURN and ORA comment that the "issue sanction" against Pacific for failure to comply with discovery rulings does not go far enough. TURN and ORA ask that that the Commission apply a harsher sanction and grant Joint Applicants' request for an interim switching rate equal to rates proposed in Illinois. Joint Applicants' comments mirror these remarks and claim that the draft does not punish Pacific adequately. They claim the ALJ's draft ignores evidence they presented that switching costs do not vary from state to state. They urge the Commission to consider SBC's Illinois switching rate proposal as a "judicial admission" that its switching costs in California are no higher than the Illinois rates. At the very least, TURN, ORA and Joint Applicants request that the Illinois switching rates be used as a benchmark to gauge the accuracy of the Commission's own proposed interim switching rates in the ALJ draft decision.

As explained in Section VI, we have revised the draft decision to adopt the Joint Applicants' proposal to base interim rates on the SBC-Ameritech proposal. As we noted, Pacific's failure to comply with the ALJs' discovery orders and to make available probative information about the comparability of costs between SBC states influenced our analysis of the evidence in the record. In particular, where Pacific raised possible reasons why costs might be higher in California than in Illinois, we gave little weight to assertions that could have been supported by information that Pacific refused to make available for the record.

Also on the subject of sanctions, Pacific maintains there was no basis to impose sanctions for noncompliance because Pacific had appealed the rulings. Pacific states that "any prejudice [Joint Applicants] may have experienced was due to the length of time taken to resolve SBC Pacific's appeal." (Pacific's Comments on Draft Decision, 3/19/02, p. 15). We are offended with Pacific's suggestion that the Commission is somehow to blame for the effects of Pacific's noncompliance with two ALJ rulings. The Commission never granted Pacific's request for a stay of the prior rulings. Pacific alone must accept responsibility for its actions in this case and the sanction imposed.

G. Deaveraged Loop Prices

Joint Applicants contend that the draft decision errs in not adopting deaveraged loop prices in accordance with FCC requirements. They request the Commission apply the interim loop discount to the deaveraged prices recently adopted in D.02-02-047. Pacific responds that Joint Applicants' motion for interim relief never made this deaveraging request and it is procedurally improper to raise this request now in comments on the draft order.

Joint Applicant s' motion for interim relief did indeed include a brief, one sentence request that the Commission deaverage any interim loop rate "in the same manner as the pending settlement of the deaveraging proceeding." (Motion for Interim Relief, 87/20/01, p.1.) The settlement was ultimately adopted by the Commission in D.02-02-047, and it explicitly stated that it was intended to last only "until superseded by Commission action in the review proceeding for unbundling issues established in D.99-11-050 of the OANAD proceeding." (D.02-02-047, Appendix A at A-1.) From the very words of the settlement, parties anticipated a change to deaveraged rates in this UNE Reexamination proceeding. We also note that the cost filings accompanying the August 20 motion included a calculation of loop costs by geographic zones. (Mercer Declaration, 8/20/01, p. 7.)

Pacific's failure to comment on the deaveraging request in the motion for interim relief does not mean that we should ignore the request entirely as well as the federal mandate requiring deaveraged rates. (*See* 47 Code of Federal Regulations, Section 51.507(f).) We apply the 15.1% interim loop discount to the deaveraged rates adopted in D.02-02-047. The interim deaveraged loop rates are set forth in Appendix A and supersede the rates adopted in D.02-02-047. These interim rates are subject to adjustment in the same manner as all other rates adopted by this order.

H. ISDN and Centrex Ports

Tri-M and Call America comment that the draft order fails to set an interim reduced rate for Centrex ports. Tri-M and Call America claim that the Commission ignores evidence that Centrex port costs are similar to basic port costs, particularly the fact that the proposed Illinois switching rates make no distinction between basic and Centrex port prices. Joint Applicants echo this

same request that the Commission should adopt interim prices for all port types, including ISDN and Centrex ports.

Pacific responds that it was never put on notice that ISDN port prices were at issue in the interim phase, and that Joint Applicants' amended switching proposal referred only to the basic port price. Pacific contends there is no evidence on the record regarding the current costs of ISDN and Centrex Ports. Therefore, the Commission cannot set interim rates for anything other than the basic port.

It is true that Joint Applicants' motion for interim relief requested one rate for both basic and Centrex ports based on proposed Illinois rates. ISDN ports are not mentioned. Pacific was not given notice that we were considering an *interim* rate for anything other than the basic port, although all ports are subject to reexamination in the final phase. Therefore, we cannot adopt a different outcome without adequate notice and an opportunity for parties to comment on application of the port discount adopted in this order to other port types. We will direct the ALJ to solicit comments on this issue by further ruling.

X. Comments on Alternate Draft Decision

In accordance with Public Utilities Code Section 311(e) and Rule 77.6 of the Rules of Practice and Procedure, the Commission mailed the alternate draft decision (ADD) of Commissioner Lynch on May 2, 2002. The Commission received opening comments from Pacific; AT&T, WorldCom, ORA, and TURN (a joint filing); Tri-M and Call America (a joint filing); Sage Telecom; and Allegiance Telecom. The Commission received reply comments from Pacific and AT&T, WorldCom, ORA and TURN (a joint filing).

Pacific contends that the ARMIS data cited in four bullets at the beginning of Section VI.D fail to support the adoption of Joint Applicants' proposal to base

switching rates on SBC-Ameritech's proposal in Illinois. (Pacific Comments at 1-8). Pacific misreads the ADD. The ARMIS information that Pacific cites was not used to determine the particular switching rates set forth in the ADD, but rather to support the general proposition that public data shows that a reduction in switching UNE prices of some level is warranted. In this respect, the ADD adopts, nearly verbatim, the analysis in the ALJ's draft decision, and which Pacific did not challenge in its comments on the ALJ's draft decision. The ADD explains the basis for the adopted switching rates in the portion of Section VI.D that follows the statements challenged by Pacific.

In all other respects, the comments and reply comments have been fully considered and changes based on those comments have been made to the decision where appropriate.

Findings of Fact

1. In D.99-11-050, the Commission established a process by which carriers with interconnection agreements with Pacific Bell could annually nominate up to two UNEs for consideration of their costs by the Commission.

2. In February 2001, the Commission received four requests to nominate UNEs for cost re-examination and a motion by Pacific to defer the cost re-examination proceeding.

3. On June 14, the Assigned Commissioner and ALJ issued a joint ruling denying Pacific's motion to defer any cost re-examination and finding sufficient justification to begin a reexamination of the costs of two UNEs, namely unbundled switching and unbundled loops.

4. On July 11, the Assigned Commissioner and ALJ issued a joint ruling identifying three criteria that Pacific's cost model filing must adhere to in order to be used for this cost re-examination proceeding.

5. Pacific's cost filings in this matter do not perform new runs of the SCIS model, the Cost Proxy Model, or other expense and support investment models.

6. Pacific's cost filings involve adjustments to the outputs of the prior OANAD models and it is not possible to provide the previously adopted models with new inputs.

7. On August 20, Joint Applicants filed a motion requesting interim UNE prices for unbundled loops and unbundled switching.

8. On September 28, the Assigned Commissioner and ALJ ruled that Pacific's August 15 cost filing did not meet the criteria set forth in the earlier ruling and that interim relief would be considered.

9. In *Turn v. CPUC*, the California Supreme Court held that the Commission could set interim rates as long as the rate is subject to refund and sufficiently justified.

10. Pacific and Joint Applicants agree that DLC equipment prices have fallen in recent years from the levels used in the prior OANAD cost proceeding.

11. Publicly available ARMIS data indicates declines in switching investment costs, declines in switch expenses, growth in the number of access lines served, and growth in call volume.

12. Pacific purchases switches under an SBC-wide agreement and can obtain switches in California at prices that are as favorable as, or more favorable than the prices it pays for switches in Illinois.

13. Pacific's cost filing does not allow parties or staff to test the effects of switching investment changes, DLC equipment declines, line growth, or call volume changes.

14. Commission staff have been able to understand how the HAI model derived its results for unbundled loops and switching and have modified HAI

model inputs and assumptions to produce varying results. Although the HAI model does not exactly replicate the costs adopted in prior OANAD decisions, staff have been able to replicate Joint Applicants' HAI model runs.

15. Section 252(d) of the Telecommunications Act requires the Commission to set UNE rates based on cost.

16. On January 7, 2002, Joint Applicants and Pacific jointly requested the Commission take notice of a decision by the D.C. Circuit Court in *Sprint Communications Company v. FCC.*

17. On October 9, Pacific filed an Appeal to the Full Commission of the September 28 ruling and on October 19, Pacific filed a motion to vacate the September 28 ruling.

18. On August 13 and again on October 3, the assigned ALJ and the Law and Motion ALJ directed Pacific to produce material relevant to the issues in this proceeding.

19. On October 12, Pacific filed an appeal and stay request regarding the ALJs' discovery rulings, which has not been acted on by the Commission.

20. Pacific did not comply with the August 13 and October 3 ALJ rulings ordering it to produce certain documents until the Assigned Commissioner issued a ruling imposing sanctions on Pacific.

21. Pacific produced documents and witnesses of SBC and SBC-Ameritech in the course of this proceeding.

22. The Commission does not generally entertain interlocutory appeals of ALJ rulings.

23. The Assigned Commissioner issued a ruling on February 21, 2002 imposing sanctions on Pacific for failure to comply with the ALJ's earlier discovery rulings.

24. Joint Applicants request a 36% discount from the current statewide-average loop rate of $11.70 based on a trend analysis of 1994 and 2000 data input into the HAI model.

25. In their trend analysis for loops, Joint Applicants have attributed 24 lines to each DS-1 line and 672 lines to each DS-3 line because these lines, respectively, carry 24 and 672 "voice grade equivalent" channels.

26. A DS-1 line consists of two copper loops and a DS-3 line is provisioned over fiber and does not involve any copper loops.

27. The record of this case is disputed on whether 70% of growth involves plant extensions and whether plant extension costs offset other loop cost reductions because of certain demographic, line growth, and ARMIS investment data.

28. The prior OANAD cost models assumed that all remote terminals (RTs) were above ground.

29. Although Pacific asserts that underground CEVs are replacing RTs in many locations, the record is disputed on whether CEVs are more or less expensive than RTs on a per line basis because both Pacific and Joint Applicants mix costs and line capacities from various size CEVs in their calculations.

30. The current record of this case does not support changing the original OANAD assumptions regarding RTs.

31. The HAI model uses expense to investment ratios to replicate forward-looking expense adjustments.

32. ARMIS data indicates an increase in total loop expenses from 1994 to 2000.

33. Joint Applicants request interim UNE switching rates equivalent to one of two alternative switching rates that SBC-Ameritech has proposed in Illinois.

34. In the September 28 ruling, the Assigned Commissioner and ALJ required Joint Applicants to reformulate their interim switching request to entail a percentage reduction from the current switching rate structure.

35. Public data shows a substantial degree of uniformity across geographic regions in switching cost trends.

36. ARMIS data shows that Pacific has far more switched lines per switch than Illinois.

37. California and Illinois are nearly identical with respect to the percentage of host versus remote switches in each state.

38. The record shows that switching costs in California are likely to be no higher than the rates that SBC-Ameritech proposed in Illinois.

39. If the SBC-Ameritech proposal in Illinois is reformulated based on the current switching rate structure in California, local switching rates would be reduced by 69.4% and tandem switching prices would fall by 79.3%.

40. Joint Applicants requested interim UNE rates subject to "true down," meaning that if final rates are lower than interim rates, Pacific should provide refunds to UNE purchasers, but not vice versa.

41. The Commission adopted deaveraged loop rates in D.02-02-047 until superseded by action for this proceeding.

42. Joint Applicants have presented a summary of evidence indicating a reasonable presumption of cost declines for unbundled loops and unbundled switching based on declining DLC equipment costs, SBC-wide switching purchases, ARMIS data indicating declines in switching investments and expenses, and growth in access lines and call volume.

Conclusions of Law

1. The Commission retains the independent state authority to review UNE costs and prices and should move forward with its review of selected UNEs, namely unbundled loops and unbundled switching, rather than await the outcome of federal litigation.

2. Pacific's August 15 cost filing does not allow parties and Commission staff to (1) reasonably understand how costs are derived, (2) generally replicate Pacific's calculations, and (3) modify assumptions from the prior OANAD models.

3. Without the ability to modify assumptions in Pacific's cost filing, it is not possible for parties and Commission staff to test the effects of declining input costs and volume and line growth.

4. Delays in this case may prolong current rates at non-cost-based levels that are not just and reasonable.

5. The Commission has the authority to set interim rates for UNEs.

6. Interim rates are necessary due to delays in this proceeding caused by the inadequacies of Pacific's cost filing and the need to examine competing cost models.

7. Pacific is not harmed by the interim rate levels if rates are subject to adjustment once final rates are determined.

8. The Commission can rely on the HAI model to set interim rates because the HAI model meets two of the three criteria set forth in this proceeding and because the Commission is not basing interim rates on the actual output of the HAI model but on a trend analysis of the change in loop costs from 1994 to 2000.

9. The Commission may impose discovery sanctions where parties violate discovery procedures and rulings of the presiding officer.

10. The presiding officer must have the authority to rule on discovery motions and impose sanctions for discovery abuse to ensure all material evidence is disclosed without undue delay.

11. Pacific has waived any argument it does not have access to and/or control of documents of its affiliates and parent company by producing documents and witnesses of SBC and SBC-Ameritech in this proceeding.

12. We should deny Pacific's appeal of the September 28 ruling and its October 12 appeal of the ALJs' discovery rulings.

13. We should affirm the ALJ rulings requiring Pacific to produce out of state cost information and the Assigned Commissioner ruling of February 21, 2002 imposing an issue sanction against Pacific for its noncompliance with discovery rulings. The material that Pacific refused to produce should be deemed to support the adoption of interim rates for unbundled loops and unbundled switching that are lower than current rates.

14. We should deny Pacific's motion to vacate the September 28 ruling because we should not amend the schedule of the UNE Reexamination based on a conditional proposal that is currently pending in another docket.

15. We should account for growth in DS-1 and DS-3 lines on a physical pair basis rather than through the use of voice grade equivalents. DS-1 lines should be counted as two access lines and DS-3 lines as one access line for purposes of setting an interim loop rate.

16. Any customer location shortcomings in the HAI model are somewhat mitigated by adjustments to the model to remove voice grade equivalents.

17. We should dismiss Pacific's comments regarding the cost of plant extension growth because a forward-looking cost model should consider the cost to serve total demand, not merely an extension of it.

18. It is not reasonable based on the current record to assume that plant extension growth counteracts loop cost reductions.

19. If assumptions regarding RTs and other DLC non-equipment costs are held constant in the HAI trend analysis, these factors will not impact the results of the trend analysis.

20. It is not reasonable to assume that price decreases for certain loop technologies automatically lead to lower loop expenses.

21. Because the record on expenses per loop is unclear, we should leave expenses per loop constant for the loop cost trend analysis.

22. The investment/expense factors in HAI should be removed for purposes of the Commission's loop trend analysis.

23. Pacific's assertions about factors that could lead switching costs to be higher in California than in Illinois should not be accorded significant weight because Pacific's failure to comply with discovery orders has deprived the record of information that would have allowed Pacific's assertions to be effectively analyzed.

24. It is reasonable to base interim switching rates on the rates that SBC-Ameritech proposed in Illinois.

25. Once final rates are adopted, these Interim rates should be adjusted, either up or down, from the effective date of this order.

26. The interim loop discount of 15.1% should be applied to the deaveraged loop rates adopted in D.02-02-047.

27. We should affirm the Assigned Commissioner and ALJ ruling of June 14, 2001, which (1) denied review of the costs of the DS-3 entrance facility without equipment, (2) denied review of the EISCC, and (3) denied Pacific's motion to defer this proceeding.

ORDER

IT IS ORDERED that:

1. The motion for interim relief, filed on August 20, 2001 by AT&T Communications of California, Inc. and WorldCom, Inc., is granted in part as set forth herein.

2. The monthly recurring prices for loop and switching unbundled network elements (UNEs) offered by Pacific Bell Telephone Company (Pacific) that are set forth in Appendix A to this decision satisfy the requirements of Sections 251(c)(2), 251(c)(3), and 252(d)(1) of the Telecommunications Act of 1996 and are hereby adopted on an interim basis.

3. Pursuant to Commission Resolution ALJ-181 (adopted October 5, 2000), Pacific shall prepare amendments to all interconnection agreements between itself and other carriers. Such amendments shall substitute the interim monthly recurring UNE prices for loops and switching set forth in Appendix A, for the UNE prices set forth in such interconnection agreements. Such amendments shall be filed with the Commission's Telecommunications Division, pursuant to the advice letter process set forth in Rules 6.1 and 6.2 of Resolution ALJ-181, within 30 days after the effective date of this order. Unless protested, such amendments shall become effective 5 days after filing.

4. The interim UNE prices for loops and switching adopted in this order shall be effective on the date this order is effective. Pacific shall make all billing adjustments necessary to ensure that this effective date is accurately reflected in bills applicable to these UNEs.

5. Pacific may have 60 days from the date of this order to complete the billing program changes necessary to reflect in bills the interim monthly recurring prices

for UNEs adopted in this order. Upon completion of said billing program charges, Pacific shall notify the Director of the Telecommunications Division in writing that all of the necessary billing program changes have been completed.

6. Within 10 days of the effective date of this order, Pacific shall file an advice letter to establish a balancing account to track the revenues received from these interim UNE rates, beginning on the same date the interim rates become effective. The balancing account should accrue interest at the three-month commercial paper rate. Unless protested, the advice letter shall become effective 5 days after filing.

7. The assigned Administrative Law Judge shall issue a ruling soliciting further comments on applying the interim port discount to all port types.

8. Application 01-02-034, filed by The Telephone Connection Local Services LLC, is dismissed.

9. The Assigned Commissioner's and Administrative Law Judge's ruling dated June 14, 2001, which denies Pacific's February 28, 2001 Motion to Abey, is affirmed.

10. Pacific's October 9, 2001 appeal of the September 28 ruling is denied.

11. Pacific's October 19, 2001 motion to vacate the September 28 ruling is denied.

12. Pacific's October 12, 2001 appeal of the ALJs' discovery rulings is denied.

13. Pacific's October 31, 2001 Motion for Official Notice and its November 20, 2001 motion to strike the response of Joint Applicants to its October 31 motion are denied as moot.

14. We take official notice of the December 28, 2001 decision by the D.C. Circuit Court in *Sprint Communications Company v. FCC.*

15. The Assigned Commissioner's ruling in this proceeding dated February 21, 2002, which imposes discovery sanctions on Pacific, is affirmed.

16. This proceeding shall remain open so that the Commission can determine final rates for Pacific's unbundled loops and unbundled switching.

This order is effective today.

Dated May 16, 2002, at San Francisco, California.

LORETTA M. LYNCH
President
CARL W. WOOD
GEOFFREY F. BROWN
Commissioners

I dissent.

/s/ MICHAEL R. PEEVEY

I will file a written dissent.

/s/ HENRY M. DUQUE
Commissioner

APPENDIX A

Appendix A

Interim Rates

	Current	Discount %	Adopted Interim
Loop (Basic 2-wire)	$ 11.70	15.1%	$ 9.93
Deaveraged			
Zone 1	$ 9.87	15.1%	$ 8.38
Zone 2	$ 13.28	15.1%	$ 11.27
Zone 3	$ 23.13	15.1%	$ 19.64
Switch			
Port (2-wire)	$ 2.88	69.4%	$ 0.88
Usage			
Interoffice originating			
setup per attempt	$ 0.005940	69.4%	$ 0.001817
holding time per MOU	$ 0.001840	69.4%	$ 0.000563
Interoffice termination			
setup per attempt	$ 0.007000	69.4%	$ 0.002142
holding time per MOU	$ 0.001870	69.4%	$ 0.000572
Intraoffice			
setup per attempt	$ 0.013990	69.4%	$ 0.004280
holding time per MOU	$ 0.003620	69.4%	$ 0.001108
Vertical Features	$ 0.29 to 1.73	69.4%	$ 0.09 to 0.53
Tandem Switching			
setup per attempt	$ 0.000750	79.3%	$ 0.000155
setup per completed msg	$ 0.001130	79.3%	$ 0.000234
holding time per MOU	$ 0.000670	79.3%	$ 0.000139
UNE-Platform			
@ 1400 Local Voice & 300 Toll Minutes	$ 23.18	38.9%	$ 14.16
@ 2000 Local Voice Minutes	$ 22.94	39.1%	$ 13.97

APPENDIX B

Appendix B

Analysis of Interim Unbundled Loop Rates

	Loop 1994	Loop 2000	% decrease	Discount from current	New Price	
Joint Applicants' Analysis of Joint Applicant's Proposal						
DLC Costs			12.0%	$ 1.41	$ 10.29	
VGEs + Expenses			31.4%	$ 3.67	$ 8.03	
Total	$ 12.55	$ 8.06	35.8%	$ 4.19	$ 7.51	
Pacific's analysis of Joint Applicant's Proposal						
DLC Costs			8.3%	$ 0.97	$ 10.73	
VGEs			14.3%	$ 1.67	$ 10.03	
Expenses			15.8%	$ 1.85	$ 9.85	
VGEs + Expenses			30.1%	$ 3.52	$ 8.18	
Total			38.4%	$ 4.49	$ 7.21	
Staff's analysis of Joint Applicant's Proposal						
Removing VGEs	$ 13.44	$ 10.03	25.4%	$ 2.97	$ 8.73	[1]
Removing Expenses	$ 13.44	$ 9.93	26.1%	$ 3.06	$ 8.64	[2]
Removing VGEs + Expenses	$ 13.44	$ 11.41	15.1%	$ 1.77	**$ 9.93**	[3]

[1] Line count reduction factors 1994: 24.2% 2000: 6.84%; Expense and DLC savings kept constant.
[2] Before removing VGEs (VGE and DLC savings kept constant).
[3] After removing VGEs *and* Expenses (DLC savings kept constant).

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STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held in the City of Albany on January 23, 2002

COMMISSIONERS PRESENT:

Maureen O. Helmer, Chairman
Thomas J. Dunleavy
James D. Bennett
Leonard A. Weiss
Neal N. Galvin

CASE 98-C-1357 - Proceeding on Motion of the Commission to Examine New York Telephone Company's Rates for Unbundled Network Elements.

ORDER ON UNBUNDLED NETWORK ELEMENT RATES

(Issued and Effective January 28, 2002)

BY THE COMMISSION:

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INTRODUCTION AND PROCEDURAL HISTORY

In September 1998, we announced our intention to undertake, beginning in January 1999, a comprehensive reexamination of the unbundled network element (UNE) rates of Verizon New York Inc. f/k/a Bell Atlantic-New York,[1] as set in the First Network Elements Proceeding. (That case is referred to as "the First Elements Proceeding" or, simply, "the First Proceeding.")[2] This ensuing case has had a long and complex procedural history, including various interim measures and extensions of deadlines in response to pertinent federal court decisions and a delay of several months in the aftermath of the September 11 attack on New York and of settlement efforts described below. Only the broad outlines of that history will be recounted here.

On the basis of an initial collaborative process facilitated by Department of Public Service Staff, the proceeding was divided into three modules: Directory Database (DDB); Collocation; and Unbundled Network Elements (UNEs) generally.[3] The first two modules culminated in decisions issued

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[1] Cases 95-C-0657 et al., First Network Elements Proceeding, Order Denying Motion to Reopen Phase 1 and Instituting New Proceeding (issued September 30, 1998). Except where clarity otherwise requires, Verizon is referred to as such throughout this order, even in references to matters that predate the name.

[2] The First Elements Proceeding comprised four phases, designated "Resale" and Phases 1, 2, and 3, as follows. Resale: Opinion No. 96-30 (issued November 27, 1996). Phase 1 (network elements generally): Opinion No. 97-2 (issued April 1, 1997); rehearing, Opinion No. 97-14 (issued September 22, 1997). Phase 2 (primarily Operations Support Systems and Nonrecurring Charges): Opinion No. 97-19 (issued December 22, 1997); rehearing, Opinion No. 98-13 (issued June 8, 1998). Phase 3 (various issues, including collocation): Opinion No. 99-4 (issued February 22, 1999); rehearing, Opinion No. 99-9 (issued July 26, 1999). The phases and their opinions are referred to as "Phase 1," "Phase 2 Rehearing Opinion," etc., without further specification.

[3] Case 98-C-1357, Ruling on Scope and Schedule (issued June 10, 1999).

during the first half of last year.[4] During the course of the proceeding, special expedited tracks were established for consideration of certain digital subscriber line (DSL) rates and line sharing rates; those, too, have been concluded.[5] In several instances, issues raised in those earlier modules and tracks gave rise to matters considered further here.

Initial testimony in Module 3 was originally scheduled to be filed in December 1999, with hearings to begin in February 2000. For a variety of reasons, including the broad scope of the proceeding, the need to take account of actions by the FCC and of a federal court decision, and the strike by Verizon employees during August 2000, that schedule was extended on several occasions, and hearings were ultimately held in December 2000. The only one of these factors that warrants specific note here is the decision of the United States Court of Appeals for the Eighth Circuit to vacate 47 C.F.R. §51.505(b)(1), a portion of the FCC's rules central to the requirement that UNEs be costed and priced on the basis of Total Element Long-Run Incremental Cost (TELRIC).[6] (That decision is now stayed pending Supreme Court review; these matters are discussed further in the next section.)

In view of the Eighth Circuit's ruling and the uncertainty it was said to create with regard to the proper costing standard, Verizon urged suspension of the proceeding. All other parties opposed any suspension; they questioned, among

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[4] Module 1 (DDB): Case 98-C-1357, Opinion No. 00-2 (issued February 8, 2000); Order on Petitions for Rehearing (issued June 29, 2000). Module 2 (Collocation): Case 98-C-1357, Opinion No. 00-8 (issued June 1, 2000); Order Denying Petitions for Rehearing of Opinion No. 00-08 (issued January 4, 2001).

[5] DSL: Case 98-C-1357, Opinion No. 99-12 (issued December 17, 1999); Order Denying Petitions for Rehearing (March 17, 2000). Line Sharing: Case 98-C-1357, Opinion No. 00-7 (issued May 26, 2000); Order Denying Petition for Rehearing (issued October 3, 2000).

[6] Iowa Utilities Bd. et al. v. FCC, 219 F.3d 744(8th Cir. 2000).

other things, the import of the court's decision in jurisdictions beyond the Eighth Circuit and argued (contrary to Verizon's view) that Verizon in any event remained bound to TELRIC pricing by conditions imposed by the FCC in approving the merger of its predecessor companies.[7] Administrative Law Judge Joel A. Linsider declined to suspend the proceeding, citing "(1) the time it likely will take for [the] uncertainties to be resolved, (2) the effect of the FCC's merger conditions[8] during that interval, and (3) the Eighth Circuit's sustaining of forward-looking pricing [as a matter of principle, despite its rejection of the specific version of forward-looking pricing embodied in the rule it had vacated]."[9]

Verizon sought reconsideration of that ruling, in part on the grounds that the FCC had recently construed its earlier order approving the NYNEX/Bell Atlantic merger in a manner assertedly suggesting that the Bell Atlantic/GTE Order likewise did not require TELRIC pricing as a merger condition.[10] The Judge declined to reconsider, noting the significant difference in wording between the two merger orders and seeing no need to change his conclusion that "what the [Bell Atlantic/GTE] order means may ultimately be a matter for the FCC and the courts to decide, but for present purposes [it] provides an adequate basis for concluding that Verizon remains obligated, notwithstanding

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7 CC Docket No. 98-184, GTE Corporation and Bell Atlantic Corporation, Memorandum Opinion and Order (rel. June 16, 2000), FCC 00-221 (GTE/BA Order).

8 This referred to conditions imposed by the FCC on the earlier NYNEX/Bell Atlantic merger as well as the Bell Atlantic/GTE merger just noted.

9 Case 98-C-1357, Ruling on Module 3 Schedule (issued August 24, 2000), p. 7.

10 Verizon cited the FCC's dismissal of complaints that Verizon had violated such a commitment made in connection with the NYNEX/Bell Atlantic merger. File No. E-98-05, AT&T Corporation v. Bell Atlantic Corporation, and File No. E-98-12, MCI Telecommunications Corporation et al. v. Bell Atlantic Corporation, Memorandum Opinion and Order (rel. August 18, 2000).

the Eighth Circuit's decision, to continue pricing UNEs on a TELRIC basis and will remain so obligated at least until the Eighth Circuit's decision is sustained or becomes non-appealable."[11] The proceeding went forward on that basis.

Initial testimony was filed (on February 7, 2000 and, with respect to some issues, on February 22, 2000[12]) by Verizon, jointly by AT&T and WorldCom, Inc., jointly by Covad Communications Company and Rhythms Links Inc., and by FairPoint Communications Corp. Responsive testimony, due June 26, 2000, was filed by Verizon, AT&T (alone), WorldCom (alone), AT&T/WorldCom (jointly), Rhythms/Covad (jointly), the CLEC Coalition,[13] the CLEC Alliance,[14] Z-Tel Communications, Inc., Cablevision Lightpath, Inc., the Cable Television and Telecommunications Association of New York, Inc. (CTTANY), and the United States Department of Defense and all Federal Executive Agencies (Federal Agencies). Rebuttal testimony, due October 19, 2000, was filed by Verizon, AT&T/WorldCom, Rhythms/Covad, the CLEC Coalition, FairPoint, and DOD/FEA. In addition to these principal filings, supplemental or supplemental responsive or rebuttal testimony on particular

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[11] Case 98-C-1357, Ruling Denying Request for Reconsideration (issued September 18, 2000), p. 4. The FCC staff has since stated its view that the merger condition has this effect. Letter from Dorothy T. Attwood, Chief, Common Carrier Bureau, to Michael Glover, Verizon Communications, Inc. (September 22, 2000).

[12] Portions of the February 22 testimony were admitted as part of the line sharing track previously referred to.

[13] The CLEC Coalition comprises Allegiance Telecom of New York, Inc.; Intermedia Communications Inc; and XO New York, Inc., f/k/a NEXTLINK New York, Inc. Allegiance did not participate in the Coalition's brief on exceptions, but the brief notes that Allegiance's decision not to participate should not be construed as disagreement with the Coalition's exceptions.

[14] At the time testimony and briefs to the Judge were filed, the CLEC Alliance comprised CoreComm New York, Inc.; CTSI, Inc.; Mpower Communications, Inc.; Network Plus, Inc.; RCN Telecom Services, Inc.; and Vitts Networks, Inc. The Alliance filed no brief on exceptions, but its reply brief on exceptions identifies its members as RCN and Focal Communications, Inc.

issues was submitted by Verizon (May 23, September 11, September 25, November 8, November 22, and December 5), Rhythms/Covad (November 13), and CTTANY (November 29).

An attorneys' prehearing conference was held in New York City on November 30, 2000 for the purpose of introducing pre-filed testimony into the record via affidavit, subject to later cross-examination of witnesses as to whom cross had not been waived. Hearings were held before Judge Linsider in Albany on December 7, 8, 12, 13, 15, 19, and 20, and an on-the-record post-hearing attorneys' teleconference was held on December 21. Following the hearings, Staff of the Department of Public Service posed a series of questions to Verizon and AT&T; their responses have been admitted as exhibits 457 and 458 respectively.

The record comprises 4,954 pages of stenographic transcript (numbered 1,150-6,103) and 159 exhibits (numbered 301-459). The following pages of the transcript have been provisionally designated as proprietary: 1620-1877 (public version at 1362-1617), 2067-2216 (public version at 1917-2065), 3110-3189 (public version at 2832-2911), 3813-3958 (public version at 3666-3811), 3984-4008 (public version at 4009-4032) 4059-4135 (public version at 4137-4204A), 4255-4302 (public version at 4206-4253), 4432-4453 (public version at 4456-4476), 4558-4576 (public version at 4541-4557), 5674-5746 (public version at 5599-5672), 4911, 5453-5456. Provisionally proprietary exhibits are 317P, 320P, 324P, 326P, 328P, 330P, 333P, 339P, 358P, 367P, 370P, 375P, 381P-389P, 392P, 411P, 412P, 414P, 417P, 418P, 448P, 453P, and 455P. Judge Linsider's ruling on the final status of the provisionally protected material is pending.

Initial briefs, due February 16, 2001, were filed by Verizon, AT&T, CTTANY, Lightpath, the CLEC Alliance, the CLEC Coalition, the Federal Agencies, FairPoint, Rhythms/Covad, and Z-Tel. Reply briefs, due March 14, 2001, were filed by those parties except for Z-Tel.

In a recommended decision issued May 16, 2001, Judge Linsider treated all issues in the case other than duct and

conduit rentals; the latter were the subject of a supplemental recommended decision issued June 18, 2001. (The two documents are referred to in this order as the "recommended decision" and the "supplemental recommended decision.")

Briefs on exceptions to the recommended decision have been submitted by Verizon, AT&T, WorldCom, Rhythms/Covad, the CLEC Coalition, FairPoint, Z-Tel, Focal Communications, Inc., Metropolitan Telecommunications (MetTel), Broadview Networks, Inc., and the New York State Attorney General.[15] Reply briefs on exceptions have been submitted by those parties except for Focal, FairPoint, and Broadview, and by the CLEC Alliance.[16] On July 18, 2001, Verizon moved to strike, as improper response, certain portions of the reply briefs on exceptions of Z-Tel and AT&T and to submit further argument on certain points made by those parties and by WorldCom; AT&T, WorldCom, and Z-Tel replied to the motion. We consider it in connection with the specific issues to which it pertains.

Briefs and reply briefs on exceptions to the supplemental recommended decision have been submitted by Verizon and CTTANY. RCN Telecom Services, Inc. (RCN) has submitted a late reply brief on exceptions with a request for leave to file it; that request is granted.

Following the September 11 attack, we invited comment from the parties on its implications, if any, for this proceeding. In general, Verizon cited a variety of factors that, in its view, made the existing record outdated and required further consideration; the CLEC parties saw no implications for the proceeding whatsoever and urged prompt decision on the basis of the existing record. Later, Department of Public Service Staff, as a party to our proceeding examining

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[15] Several of these parties had not previously participated actively in the proceeding. Consistent with 16 NYCRR 4.3 (c)(2), the Judge authorized their late intervention on the condition that they be bound by the record developed to that point.

[16] As noted, the CLEC Alliance now comprises RCN and Focal.

future regulatory arrangements for Verizon,[17] filed a motion in that proceeding and this, urging us to hold the decision in this proceeding in abeyance and to consider UNE rates in the Incentive Plan proceeding, where they might become part of an overall, integrated negotiated outcome. We granted Staff's motion on November 30, 2001,[18] imposing a 60-day limit on the negotiation effort, directing the parties and the settlement judge to report within 30 days on their progress, and noting that we would then consider alternatives in the event the negotiations were not proving productive.

It is now some 60 days since negotiations began, and no agreement incorporating UNE rates has been reached. Nor do we see any need to delay decision with respect to UNEs for the reasons urged by Verizon in its comments on the implications of the September attack. That event, though vast in its overall impact, has at most a marginal effect on the TELRIC analysis of forward-looking costs being conducted here. Verizon argues that the disaster shows a need for greater infrastructure redundancy, to be achieved either through modification of its own network or through partial duplication of that network by facilities-based competitors (concerns echoed in comments filed by Lightpath); but those considerations, even if sound, are too inchoate to be taken into account here. Even if the September 11 attack turns out to warrant changes in network design, that process will take time, and its results cannot be anticipated. The associated uncertainty does not warrant delaying the decision in this case; for we live in a world of constant change, where decisions must be made on the basis of the best information available at a given time. Later events (relating to network design, the legal status of TELRIC, or a host of other matters) may warrant revisiting those decisions, but if they are deferred pending the pursuit of an elusive certainty, they will never be made. And

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[17] Case 01-C-1945, Verizon New York Inc. - Cost Recovery and Future Regulatory Framework, also known as the Verizon Incentive Plan proceeding.

[18] Cases 01-C-1945 and 98-C-1357, Order Granting Staff Motion (issued November 30, 2001).

while Verizon properly cites the benefits of facilities-based competition, we have long recognized those benefits; and the UNE rates we are adopting here should not impede its development. Meanwhile, we have a responsibility under the 1996 Act to set proper UNE rates and avoid allowing unwarrantedly high UNE rates to impede the development of competition, and we accordingly proceed to set those rates on the basis of the extensive record here before us.

LEGAL CONTEXT; THE STATUS OF TELRIC

This case, like the First Elements Proceeding, has been litigated on the basis of the Federal Communications Commission's total element long-run incremental cost (TELRIC) standard despite the legal cloud cast over the standard by a federal court decision. Because of the importance of the standard, we begin with a review of its background, nature, and current status.

Under §252(d)(1) of the Telecommunications Act of 1996 (the 1996 Act),

> Determinations by a State commission of the just and reasonable rate ... for network elements ...--
>
> (A) shall be--
>
> (i) based on the cost (determined without reference to a rate-of-return or other rate-based proceeding) of providing the ... network element... and
>
> (ii) nondiscriminatory, and
>
> (B) may include a reasonable profit.

In its regulations and order implementing the 1996 Act,[19] the FCC determined that these pricing provisions should be carried out by setting prices on the basis of each element's TELRIC, along with a reasonable allocation of forward-looking common costs.

In Phase 1 of the First Elements Proceeding, we described TELRIC in the context of other costing methods.[20] We noted that TELRIC was a term coined by the FCC to describe the version it was adopting of the more familiar total service long-run incremental cost (TSLRIC) method. An analysis of TSLRIC amounts to an estimation of long-run incremental cost (LRIC) where the increment of service that is studied is the total demand for the service. LRIC, in turn, measures incremental cost (i.e., the cost of producing an additional quantity of a good or service) over a period long enough so that all of the firm's costs become variable or avoidable.

All of the foregoing costing methods are forward-looking, taking account of the costs to be incurred in the future, rather of than embedded, historical costs. In defining the TELRIC method, the FCC added the specification that costs "should be measured based on the use of the most efficient telecommunications technology currently available and the lowest cost network configuration, given the existing location of the incumbent [local exchange carrier's] wire centers."[21] This is the so-called "scorched node" premise, which takes as a given only the location of the incumbent local exchange carrier's (ILEC's) existing wire centers and otherwise contemplates a network designed in accordance with the most efficient technology available, regardless of the technology actually deployed.

After the start of the First Proceeding, the FCC's TELRIC rules were stayed and ultimately vacated by the Eighth

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[19] Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket Nos. 96-98 and 95-105, First Report and Order (rel. August 8, 1996)(the Local Competition Order).

[20] Phase 1 Opinion, pp. 9-15.

[21] 47 C.F.R. §51.505(b)(1).

Circuit Court of Appeals on the grounds that the FCC had exceeded its authority in adopting them.[22] The case nonetheless proceeded to decision on a TELRIC basis, inasmuch as all parties' studies had been based on TELRIC; even Verizon, which objected to TELRIC and reserved its rights to submit other studies if TELRIC were overturned, had submitted a TELRIC study in view of the FCC's regulations. We noted that "TELRIC is certainly a reasonable approach to use, though just as certainly not the only one; and, as [Verizon] recognizes, as a practical matter there is no alternative other than the very unattractive one of temporary rates while a lengthy new case is litigated."[23]

The United States Supreme Court eventually reversed the Eighth Circuit on the issue of FCC authority, reinstated the rules, and remanded for consideration of the substantive challenges that had been raised to TELRIC pricing.[24] That remand eventuated in an Eighth Circuit decision that again overturned portions of the FCC's rules, including the TELRIC definition in §51.505(b)(1), cited above, this time on the grounds that it was inconsistent with the provisions of the 1996 Act requiring UNE prices to be based on the cost of providing the elements. In the Eighth Circuit's judgment, "Congress was dealing with reality, not fantasizing about what might be," and basing prices on the hypothetical network of TELRIC violated Congress's intent that the costs to be taken into account are those of "providing the actual facilities and equipment that will be used by the competitor (and not some state of the art presently available technology ideally configured but neither deployed by the ILEC nor to be used by the competitor."[25] The Eighth Circuit added, however, that it did not reject the use of forward-looking costs in the setting of UNE rates; and it declined to reach the claim that TELRIC rates would amount to an unconstitutional taking of the ILEC's property, regarding that claim as unripe for decision

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[22] Iowa Utilities Bd. v. FCC, 120 F.3d 753 (8th Cir. 1997).

[23] Phase 1 Opinion, p. 15.

[24] AT&T Corp. v. Iowa Utilities Bd., 525 U.S. 366 (1999).

[25] Iowa Utilities Bd. v. FCC, 219 F.3d 744 (8th Cir. 2000).

until actual rates could be evaluated. The Supreme Court has agreed to review the Eighth Circuit's determination, and the TELRIC rule at issue remains in effect pending that review.

Following the Eighth Circuit's decision last summer, Verizon moved to stay this proceeding in view of the uncertainty over the costing standard that would ultimately apply; CLECs generally opposed the motion. As recounted above, the Judge denied the motion and its later renewal, and the proceeding went forward on a TELRIC basis. In its brief to the Judge, Verizon continued to stress the uncertainty associated with the TELRIC standard pending Supreme Court review and urged deferral of any decision, but the Judge saw no more need to recommend deferral than he did earlier to cut off the litigation. He noted that "the TELRIC rules remain in force, and the proceeding has gone forward on a TELRIC basis; the Supreme Court's decision cannot be predicted and is unlikely to be rendered before the end of the year at the earliest; and the issues in the case are ripe for decision. That decisional process should go forward."[26]

On exceptions, Verizon again urges that decision be deferred pending Supreme Court review of the TELRIC standard. It cites the uncertainty and administrative costs associated with frequent rate changes--as would be needed if the Supreme Court rejected TELRIC soon after a TELRIC-based decision were reached here--and it sees the impossibility of predicting the Supreme Court's ultimate decision as warrant for deferring a decision, not for going forward. It adds that the Supreme Court's decision is no longer as far in the future as it was, noting that oral argument in the TELRIC case was scheduled to be held in early October.[27] If new rates nevertheless were to be set now, Verizon would make them temporary until new rates were set in accordance with the Supreme Court's mandate, seeing "no

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[26] R.D., p. 10.

[27] Argument was held as scheduled; the Court's decision is pending.

other way to avoid injustice if the Supreme Court ultimately rules that the current TELRIC standard is unlawful."[28]

Several CLECs object to any delay in our decision, stressing the substantial reduction in UNE rates that would follow from adoption of the Judge's recommendations and asserting a need to accomplish that reduction promptly. They object as well to making rates temporary until they are set in accordance with a Supreme Court decision. WorldCom, for example, charges that Verizon is seeking delay so that it may continue to overcharge for UNEs, and it argues that the Supreme Court will likely not decide the case until early 2002, at which time a lengthy remand to the FCC could ensue. It notes that Verizon objected to delaying a New Jersey UNE proceeding pending Supreme Court review, attributing Verizon's interest in prompt decision there to the fact that it has not yet received §271 approval in that state. The CLEC Alliance notes that regardless of the Eighth Circuit's decision, we retain a statutory responsibility to ensure that rates are just and reasonable, and it argues that the recommended decision shows that they are not. It adds, among other things, that there is a strong public interest in prompt decision, pointing to the FCC's emphasis, in its New York §271 decision, on our active review of Verizon's UNE rates.

In a motion filed August 23, 2001, Verizon renews its request that we postpone decision in the case until after the Supreme Court rules. In the alternative, it would have us reopen the record to take account of a statement in the FCC's reply brief to the Supreme Court. According to Verizon, the statement endorses a TELRIC rate of return that takes greater account of competitive and regulatory risks than did the Judge. Various CLECs respond that Verizon overstates the significance and misrepresents the import of the FCC's statement and is merely seeking, once again, to delay the proceeding.

We see no more need than did the Judge to withhold or postpone decision in this case pending Supreme Court action.

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[28] Verizon's Brief on Exceptions, p. 10.

TELRIC remains the standard that must be applied; we cannot say when the Supreme Court will reach its decision, what that decision will be, or when the ensuing dust will settle; the Eighth Circuit, though rejecting aspects of TELRIC, did not reject forward-looking pricing in principle; and the parties are entitled to a decision on the basis of the comprehensive record that has been compiled. Rates need not be held temporary, given that TELRIC is now the law whatever may be its future fate; and there is no need to reopen the record, as Verizon requests in its recent motion. The statement in the FCC brief cited by Verizon simply explicates the TELRIC standard as it has been in place from the start and applied in this proceeding. It embodies no new policy pronouncement (and, as some CLECs suggest, could not properly do so given its nature and context). Verizon's August 23 motion is denied, and we proceed to decision on the substantive issues before us.

One further aspect of the TELRIC background should be briefly noted. Section 254 of the 1996 Act directed the FCC to establish a universal service support system to ensure the delivery of affordable telecommunications services. In the ensuing proceeding (the Universal Service Proceeding), the FCC ultimately adopted a forward-looking cost model to be used in determining an eligible carrier's level of universal service support. The FCC adopted its cost model in two stages: in the first stage, it adopted the Model Platform, which contains the fixed aspects of the model[29]; in the second stage, it selected the input values for the Model Platform.[30] The presentations and analysis in the Universal Service Proceeding can sometimes be instructive; but it is important to keep in mind the FCC's caution that its model "was developed for the purpose of determining federal universal service support, and it may not be

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[29] Federal-State Joint Board on Universal Service et al., CC Docket Nos. 96-45, 97-160, Fifth Report and Order (rel. October 28, 1998).

[30] Id., Tenth Report and Order, (rel. November 2, 1999).

appropriate to use nationwide values for other purposes, such as determining prices for unbundled network elements."[31]

OVERVIEW OF COST STUDIES, RECOMMENDED DECISION, AND EXCEPTIONS

Cost Studies and Recommended Decision

Two comprehensive analyses of UNE costs and prices were submitted in the proceeding: Verizon's own cost studies, and the HAI 5.2-NY Model (HAI Model) jointly sponsored by AT&T and WorldCom. To state the matter most generally,[32] Verizon's studies began with the investment associated with each network element, determined by identifying the pertinent material cost, applying a utilization factor to develop a material cost per unit, and applying investment loadings to capture certain additional costs. It then used annual cost factors (ACFs)--representing the calculated relationships between expenses and investments, other expenses, or total revenues--to translate investments into monthly costs. In a separate process, Verizon developed nonrecurring charges by estimating relevant labor costs and applying certain ACFs to them. Verizon's study relies, in large part, on its actual historical data and estimates by its engineers, adjusted in a manner intended to reflect TELRIC assumptions. The HAI Model, meanwhile, develops UNE costs in a bottom-up manner, by modeling the construction of a telecommunications network on the basis of demand quantities, network component prices, and costs and expenses.

The parties offered arguments, among many others, based on the inherent reasonableness of the results produced by each study, but the Judge rejected them, finding that "if the costs are reasonably and fairly calculated, the price chips should be allowed to fall where they may."[33] He went on to find

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[31] Id., ¶32.

[32] For a more comprehensive description of the two analyses, see R.D., pp. 20-25. Additional background on aspects of Verizon's study at issue on exceptions is provided below, where pertinent.

[33] R.D., p. 32.

that the HAI Model continued to suffer from many of the same flaws that we identified in its predecessor Hatfield Model submitted in the First Elements Proceeding, and he used the Verizon study, which was sounder in concept despite its need for substantial adjustment, as the starting point for analysis. He summed up his conclusion by noting that "as a matter of theory, HAI is a ponderous tool that is too far removed from the reality of Verizon's circumstances to be used when there is an alternative better grounded in real data. As a practical matter, Verizon's study lends itself to adjustment in a manner that appears able to produce a sound result."[34]

Most of the recommended decision, accordingly, was devoted to adjusting Verizon's studies. The resulting UNE prices were, in general, well below not only Verizon's proposals but also the prices currently in effect. The adjustments will be discussed in this order only to the extent raised on exceptions; for purposes of this overview, we note only the determination on the vigorously argued issue of switching costs. The Judge there found that the parties had argued to a stalemate on the question of what vendor discounts to impute in estimating switching investment and recommended use of a surrogate method, not requiring selection of a discount figure, to determine those costs. Verizon and its opponents alike except to both the surrogate method in principle and to its manner of implementation.

Verizon's Exceptions

As noted, Verizon continues to advocate, as its primary position, deferral of any determination in this proceeding until after the Supreme Court has decided the fate of TELRIC; until that time, its existing UNE rates, set in the First Elements Proceeding, would remain in force. Beyond that, it sees "fundamental errors" in the recommended decision and alleges that adoption of the Judge's recommended rates would violate the statutory requirement that rates be cost-based and

[34] R.D., p. 34.

"would effect an uncompensated taking of Verizon's property for the benefit of competitors, would violate federal law by requiring Verizon to provide UNEs at below-cost rates, and would disserve the Commission's pro-competitive policies by further deterring the development of facilities-based competition."[35] It expresses special concern about substantial recommended reductions in its proposed rates related to the UNE Platform[36] (UNE-P), noting, for example, that the non-recurring provisioning charge was reduced by over 70% and contending that the overall effect of the UNE-P price changes would be to reduce revenues very substantially. More specifically, it excepts to recommended reductions of about two-thirds in local switch usage rates, which it attributes to a series of errors regarding switching costs.

Recognizing that the Judge recommended use of its own studies rather than the HAI Model as the basis for analysis, Verizon criticizes the recommended adjustments to its study on a variety of grounds, both conceptual and computational. It objects in particular to a series of adjustments based on the Judge's finding that it failed to meet its burden of proof, charging that they lack any record basis, fail to credit unopposed evidence submitted by Verizon, and impose a burden impossible to meet. It contends as well that some adjustments would adversely affect service if Verizon's network were in fact designed in the manner contemplated by the adjustment. Finally, it contends that the recommended rates would contravene the public policy favoring the development of facilities-based competition, asserting that they "will provide CLECs with a direct subsidy from Verizon in the form of resale at fire-sale rates, that will eliminate any incentive for the development of competitive networks."[37]

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[35] Verizon's Brief on Exceptions, p. 1.

[36] The UNE Platform refers to an arrangement under which a CLEC orders, and Verizon provides, all the unbundled elements that make up a customer's local service.

[37] Verizon's Brief on Exceptions, p. 6.

CLECs' and Other Parties' Exceptions

Parties other than Verizon offer no overarching critique of the recommended decision, and none of them excepts to the Judge's rejection of the HAI Model. They generally support the recommended decision, but propose various specific modifications, urging us to "finish the job"[38] of moving all the way to properly TELRIC-based costing. Some CLECs characterize the recommended decision as confirming their view that current UNE rates are seriously overstated and point as well to lower UNE rates in other jurisdictions. They defend the Judge's use of burden of proof considerations, a matter requiring more detailed treatment before we turn to specific issues.

BURDEN OF PROOF

As noted, Verizon objects to a series of recommendations in which the Judge cited its failure to have met its burden of proof. Contending that adjustments were made on that basis even where Verizon had supported its presentation with substantial evidence and no party had submitted contrary evidence, it charges that "merely reciting the 'burden of proof' mantra, as the RD frequently does, cannot justify these disallowances and reductions."[39] It cites a series of Appellate Division cases finding error where an administrative agency refused to accept uncontradicted evidence presented by a party, even where the party had the burden of proof; and it contends the Judge's finding, for example, that its engineering judgment was insufficient evidence left it unable to meet the burden of proof that he imposed.

In response, several CLECs challenge the premise that Verizon's evidence often went unopposed, citing the testimony they submitted. Verizon may disagree with their evidence, they say, but that does not mean it does not exist. Beyond that, they dispute Verizon's legal argument, distinguishing the cases it cites and arguing that they are unrelated to the work of this

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[38] AT&T's Brief on exceptions, p. 2.

[39] Verizon's Brief on Exceptions, p. 3.

agency. WorldCom notes, in contrast, the courts' recognition of our independent judgment and expertise in ratemaking, in which we are not confined to the presentations made by the parties. AT&T points to our endorsement, in the Phase 2 Opinion, of the Judge's suggestion that the ILEC in a UNE case bears a burden of proof higher than that of the utility in a traditional rate case.

Whether a party has borne its burden of proof can only be decided on an issue-by-issue basis, and one may disagree in some instances with the Judge's assessment of the record before him. But as a general matter, we are satisfied that the Judge used burden of proof as an analytical tool, not a mantra. Verizon's evidence, in many cases, is not so uncontroverted as Verizon would lead us to believe, and the CLECs are right to refer to our ability to use our independent expertise in assessing the state of the record and whether the party bearing the burden of proof has borne it. The cases cited by Verizon relate, for the most part, to questions of objective fact rather than of expert judgment to be applied to a range of reasonable alternatives, and they are distinguishable on that and other grounds.

It is worth recalling, in this regard, why the utility (or the ILEC) has the burden of proof. The Judge put it as follows:

> The utility's data and experience are a good source of information on what can be expected in the future, but the utility has a clear self-interest in erring on the side of high cost forecasts. For both reasons, it bears the burden of proof, and the regulator must ensure that only proven costs are allowed. In so doing, the regulator should avoid groundless speculation or what Verizon characterizes as "the Panglossian perspective of the CLECs, who seem to believe that all difficulties will magically dissolve in a sufficiently 'forward looking'

> environment."[40] But where a range of estimates is suggested by the record, regulators have always made reasonable adjustments that impel a utility to seek efficiencies, just as it would be impelled to do by a competitive market.[41]

It is also worth recalling how the burden of proof is administered, something pertinent to a number of issues. In the Phase 2 Recommended Decision, the Judge explained that in a traditional rate case,

> the regulated utility has the ultimate burden of proving, by clear and competent evidence, that its proposed rates, and the costs on which they are based, are reasonable; but a rebuttable premise of regularity attaches to activities conducted in the normal course of business, and the utility's initial presentation need not contain, for example, evidence that other ways of conducted all such activities were considered. But if another party discharges the burden of going forward with evidence showing that a claimed cost is unreasonable, then the utility has to persuasively rebut that evidence in order for the cost to be allowed.[42]

The Judge added, however, that because "the activities being reviewed [in a UNE case] are in some respects novel, the traditional premise of regularity is weakened, and it would be reasonable to require more of an affirmative showing that the [ILEC] proceeded reasonably."[43] These observations were and remain valid.

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[40] Verizon's Reply Brief, p. 75 (footnote in original).

[41] R.D., p. 87.

[42] Phase 2 R.D., p. 26.

[43] Id.

With these general comments as background, we turn to the specific issues presented on exceptions. Following the sequence used by both Verizon and AT&T in their briefs, we start with the important and hotly contested issue of switching costs.

SWITCHING COSTS

Introduction

The Judge recommended substantial reductions in Verizon's rates for unbundled switching. They result not only from his recommended treatment of switch material costs already noted, but also from his adjustments to installation costs and to the allocation of costs between usage and non-usage sensitive elements. Verizon argues, overall, that "the recommended reductions in local switching rates . . . have the most significant impact on Verizon's finances. Imposing this crushing financial burden on Verizon would be utterly unwarranted: There is simply no lawful basis for the adjustments to Verizon's proposed switching rates that are recommended in the RD."[44] Other parties argue, conversely, that the Judge did not go far enough in reducing these rates. WorldCom, for example, notes that the recommended rate would reduce the statewide average switching cost of approximately $0.003 per minute of use (MOU) to approximately $0.001 per MOU and would reduce the per-month per-line unbundled switching cost for CLECs providing service via the UNE platform from approximately $7.35 to approximately $2.74. It urges, however, that we go further and reduce the rates to what it sees as proper TELRIC levels, including a statewide average of $0.0008 per MOU.

Material Investment

1. Background and Recommended Decision

This issue has its roots in Phase 1 of the First Elements Proceeding, and its history, fully recounted by the Judge, provides important background here. In Phase 1, we

[44] Verizon's Brief on Exceptions, p. 10.

expressed a lack of confidence in the sharply conflicting cost estimates suggested by the parties' different studies, and we set rates on the basis of an analysis by our Staff. In so doing, we noted, among other things, that in making an adjustment to capture the downward trend in switching costs, we "did not take account . . . of the atypically large discounts received by [Verizon] from its [switch] vendors after 1994 in connection with a major switch replacement program."[45] That decision rested, in large part, on Verizon's attribution of those deep discounts to the switches' having been purchased as part of its program to replace analog switches with digital. Verizon argued that vendors were willing to offer unusually large discounts in connection with such replacement programs (to encourage upgrades that create a market for new software), but that the replacement program was nearly complete and the discounts therefore were unlikely to continue or recur. On rehearing, we rejected Verizon's broadbased critique of the Staff method for setting switching costs as well as WorldCom's claim that the price reduction factor was too low, finding that WorldCom had "offered no new reason for rejecting the fully explained premise that the unusually large discounts associated with analog-to-digital conversion would not be replicated."[46]

Later, in Phase 3 of the First Proceeding, evidence was presented suggesting that the deep discounts might, in fact, be available for all purchases of new switches, not only large-scale replacement programs. Several CLEC parties moved to reopen Phase 1 to redetermine switch costs in light of the newly adduced evidence; Verizon objected on a variety of grounds. We were unimpressed by Verizon's belittling, as "inadvertent misstatement," of its own assertion that the higher discounts were uniquely associated with the analog-to-digital replacements and by its suggestion that the new information lacked significance because of the manner in which switches are

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[45] Phase 1 Opinion, p. 85, n. 1. See also a similar statement in Attachment C to that opinion, Schedule 2, page 1 of 3.

[46] Phase 1 Rehearing Opinion, p. 40.

purchased. We nevertheless denied the motion to reopen, citing the risks of selective adjustment and adding that the new evidence, even if borne out, could not generate a simple arithmetic correction to our Phase 1 calculations. We went on to note as well the likely desirability of reviewing UNE rates in general before too long, and we therefore stated our intention to institute the present proceeding. Finally, in view of the uncertainties associated with the newly adduced evidence, we left switching rates temporary, subject to future refund or reparation, even though all other UNE rates set in the First Elements Proceeding have become permanent.

In the present case, the parties have disputed both the qualitative issue of whether to posit new switch discounts or the lower "growth" discounts (i.e., the discounts associated with adding capacity to existing switches) that would otherwise be available, and the quantitative issue of how each type of discount should be estimated. After reviewing the arguments in some detail, the Judge reiterated his view, first stated in his Phase 3 recommended decision, that, as a matter of theory, growth discounts were not applicable in a TELRIC study, which contemplated instantaneous installation of a new network. He nevertheless went on to hold that several factors precluded application of that theoretical result here and now. He noted, first, that "application of a purely new-switch discount, on the premise that a hypothetical new network designed to serve the full increment of demand was dropped into place instantaneously, could be problematic under the Eighth Circuit's decision" noted above.[47] The Judge recognized that we are not subject to the Eighth Circuit's direct authority (and that its decision in any event had been stayed), but he pointed out as well that the decision had been relied on by United States District Court for the Northern District of New York[48] in its decision in a case growing out of the First Elements Proceeding and other actions.

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[47] R.D., p. 132.

[48] MCI Telecommunications Corp. v. New York Telephone Company, No. 97-CV-1600, (N.D.N.Y., March 7, 2001).

The Northern District said, in light of the Eighth Circuit's decision, that "price determinations made on forward-looking cost calculations cannot be based on the forward-looking costs of an 'idealized network,' but must be based on the incremental costs that an incumbent local service provider actually incurs or will incur."[49] Judge Linsider suggested that statement "calls into question the propriety of an exclusively new-switch discount assumption premised on an instantaneously installed hypothetical network."[50]

Perhaps more important than the legal issue, in the Judge's view, was the factual one of ascertaining what a new-switch discount would be in the hypothetical situation of an instantaneously installed new system. The Judge credited Verizon's argument that the existing new-switch discount was set partly in contemplation of additional sales to which only the growth discount would apply, and he reasoned that the new-switch discount would differ from its current level in the hypothetical situation in which no growth-discount sales were anticipated. On the other hand, he continued, discounts are negotiated in light of the particular purchases contemplated, and "it is entirely possible that the prospect of . . . an extensive series of purchases [associated with installation of an entire network, even over time rather than instantaneously] could have generated discounts substantially higher than those under the existing contracts, and a forward-looking analysis must take account of that prospect."[51] In light of all of these factors, the Judge concluded that

> this is an issue on which the parties have fought hard and reached a stalemate: each has shown the other's position to be untenable. Regardless of the decision ultimately to be reached on the FCC's rule, this record simply establishes no "right" level of discount to use--in part, as noted, because the very act of assuming a switch

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[49] Id., slip opinion p. 25.

[50] R.D., p. 132.

[51] R.D., p. 133.

> purchase pattern would affect the data on the record regarding the level of the respective discounts.[52] Discounts will depend on a host of factors, including the contracts negotiated between vendor and purchaser, and we have no reason to believe that Verizon's existing, complex contracts, relied on by both sides as the basis for the radically different discounts they advocated, would, in fact, read the same had they been negotiated in the various contexts that TELRIC or other forms of long-run forward-looking costing might lead us to posit.[53]

Having reached that conclusion, the Judge went on to estimate switching costs on the basis of a surrogate analysis that used as its parameters the per-line switching costs estimated on the one hand by Verizon and the other hand by AT&T/WorldCom and looked as well to various estimates that had been presented to the FCC by the FCC's staff and a majority of the state members of an FCC/State Joint Board. Taking account of all of those factors, he recommended an estimate of per-line switching costs of $105, somewhat below the $111 arithmetic mid-point of the parameters. He invited the parties to convene a settlement conference at which they might stipulate to some other number that both sides could accept; neither party responded to the invitation.

On exceptions, parties challenge both the Judge's decision not to estimate a discount and the manner in which he conducted his surrogate analysis.

2. Estimating a Discount

Alleging that there is "no reasoned basis in the record"[54] for a decision that splits the difference between the

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[52] The difficulty is analogous to those posed by situations, known in both physics and the social sciences, in which outcomes are influenced by the mere fact of observation. (Footnote in original.)

[53] R.D., p. 133.

[54] Verizon's Brief on Exceptions, p. 11.

parties, Verizon challenges the premise that the parties have argued the issue to a stalemate. It disputes AT&T's contention that a forward-looking construct implies a one-time purchase of new switches, citing the FCC's statement that TELRIC-based rates must recover "the incremental costs that incumbents actually expect to incur in making network elements available to new entrants."[55] Pointing to precedent in the First Elements Proceeding as well as the Northern District's decision, it contends that the proper price to use is "the material price Verizon will actually pay, incrementally, in the foreseeable future, under in-place vendor contracts for the particular equipment being costed."[56] The discount associated with such purchases, it continues, is the growth discount, for digital switches are already deployed in Verizon's network and will never be replaced with new digital switches, inasmuch as the next generation of switching equipment will be available by the time existing switches are to be replaced. The existing installations will only grow, and, for that purpose, the growth discount is applicable. Verizon also notes, as did the Judge, that the new-switch discount would be different in a context in which no growth purchases were contemplated. It adds that a new-switch-only premise would require installing excess capacity to allow for growth and a higher depreciation rate to recognized more frequent switch replacements, and might increase switch prices by creating demand in excess of supply. WorldCom dismisses those arguments as red herrings that introduce assumptions inconsistent with TELRIC.

AT&T, meanwhile, renews its argument that the new-switch discount should be used. It sees no basis for treating switching costs differently from the other network components, all of which are presumed by the TELRIC construct to be part of an instantaneously installed new system and are, nevertheless, priced on the basis of currently available vendor prices. It urges use of a $51 per-line switch material investment--the

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[55] Local Competition Order, ¶685.

[56] Verizon's Brief on Exceptions, p. 12.

figure generated by its restatement of Verizon's cost study on the basis of what it takes to be available new switch discounts--and it suggests that the next generation of switching referred to by Verizon will likely be even cheaper.

WorldCom likewise argues that TELRIC necessarily assumes total reconstruction of the network through new rather than growth switches. It cites the FCC's decision to that effect in the Universal Service Tenth Report and Order and quotes at length from a decision by United States District Court for the District of Delaware endorsing the use of new switch discounts.[57] WorldCom argues that the Delaware District decision is entitled to greater weight than that of the Northern District, inasmuch as the latter was based on the erroneous evidence on switching discounts adduced in Phase 1 of the First Elements Proceeding. WorldCom points as well to the Judge's statement that use of new-switch discounts is valid in theory, contends that the recommended decision assumed an instantaneously installed hypothetical network throughout, and argues that there was no reason to depart from that assumption with regard to switching costs. It disputes the Judge's concern that the new switch discount might be different in a hypothetical situation that failed to contemplate subsequent growth purchases, contending that TELRIC requires just such an assumption.

The Attorney General also urges use of fully discounted switch prices, arguing that the Northern District's statement cited by the Judge constituted dicta--inasmuch as the rates there under review were not based on the cost of the "idealized network" questioned by the court--and that the Northern District had relied on an Eighth Circuit decision that was stayed pending appeal and inapplicable in New York. In any event, the Attorney General contends, the Northern District decision did not preclude use of new-switch discounts. Beyond that, the Attorney General cites the progress made in New York

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[57] Bell Atlantic-Delaware, Inc. v. McMahon, 80 F. Supp. 2nd 218 (D. Del. 2000).

toward competitive telephone markets and argues that "UNE rates that allow Verizon to recover excess monopoly costs would not be just or reasonable in a regulatory regime moving toward competitive markets."[58] In addition, the Attorney General urges us to take into consideration the over-supply of telephone switch manufacturing capacity and the growing availabilty of surplus switches from financially troubled telecommunications companies.

In its reply, Verizon reiterates its view that the FCC's Universal Service decision is inapposite, given the FCC's admonition that the proxy model used there should not be used to price UNEs and its rejection, in the §271 proceeding, of the premise that UNE prices must be based purely on new-switch discounts. Recognizing the conflict between the Northern District decision and that of the Delaware District, it urges assigning greater weight to the former, which is more local, more recent, and more cogent. That the Northern District may have relied on flawed Phase 1 evidence is of no import, since the court's pertinent statement involves not an analysis of the evidence but the principle that we should be guided by what the ILEC will actually pay.

The arguments on exceptions add little to those that led the recommended decision, in Verizon's characterization, to throw up its hands.[59] But it is not throwing up one's hands to recognize that a particular line of inquiry shows a great likelihood of being unproductive and to seek an alternative means of achieving a fair result. That is what the Phase 1 Staff analysis of switching costs sought to do in the face of parties' estimates so far apart as to call both into question, and that is what the recommended decision sought to do here.

Verizon correctly notes that we never had occasion to rule on the Judge's observation, in his Phase 3 recommended decision, that growth discounts are not applicable in a TELRIC

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[58] Attorney General's Brief on Exceptions, p. 6.

[59] Verizon's Brief on Exceptions, p. 10.

study.[60] In the present recommended decision, the Judge has backed off from that observation, and he was right to do so. TELRIC contemplates a new, state-of-the-art network--including, for example, all-fiber feeder, without regard to what is now in place--but it does not necessarily follow that the new network is purchased and installed in a single transaction. And even if it did, any attempt to establish the vendor discounts that would apply in that transaction would be a hopeless exercise in speculation, if not "fantasy." The parties have argued long and hard over what discounts flow from Verizon's existing vendor contracts in their complexity; for the reasons described by the Judge, there is no way to arrive at a reasonable estimate of what those discounts would be under hypothetical contracts growing out of unknown transactions. Beyond that, Verizon has identified additional types of costs that could be expected to be incurred if the complete network were installed all at once, and we lack any reasonable estimate of the amounts of those costs.

To rule out exclusive use of the new switch discount, of course, does not mean that exclusive reliance on the growth discount is proper. For one thing, it has been clear since Phase 3 that relatively deep new-switch discounts are not limited to full-scale switch replacements, and there is no basis for agreeing with Verizon that incremental replacement of the system over time would entail growth discounts only. Beyond that, the Judge correctly noted here as well the difficulties that attend any effort to estimate the actual discounts that would be available: "It is entirely possible that the prospect of such an extensive series of purchases could have generated discounts substantially higher than those under the existing contracts, and a forward-looking analysis must take account of that prospect."[61]

Having determined that the discount to be applied cannot be estimated directly from the existing contracts, we

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[60] Verizon's Reply Brief on Exceptions, pp. 2-3, n. 3.

[61] R.D., p. 133.

might attempt to somehow estimate the discount indirectly, such as by melding new-switch and growth-switch discounts in an effort to capture the real forward-looking cost, independent of vendors' marketing strategies. Alternatively, we can bypass any effort to determine the discount and proceed to estimate the per-line switching costs themselves through some surrogate means, as the Judge did. The latter process appears preferable, for there is no reason to believe that an indirectly estimated discount level will be more accurate than an indirectly estimated cost figure; and the intermediate step of indirectly estimating a discount will not enhance the ultimate result. The goal of the effort then becomes to find a surrogate means of estimating a switch cost that is reasonable, fair, and grounded in the record as a whole, and that is what the Judge sought to do. We therefore turn to the specifics of his method, to determine whether the parties' exceptions warrant any adjustments.

3. Surrogate Calculation

Both sides challenge the specifics of the Judge's surrogate method for estimating per line switching costs. Verizon objects to his having taken account of the FCC's conclusions in its Universal Service Tenth Report and Order, noting the FCC's statement that the Universal Service proxy model was not appropriate for UNE costing; that the FCC had stated, in its New York §271 proceeding, that the inclusion of growth discounts did not violate TELRIC; and that Verizon's data on actual costs substantially exceeded the FCC's cost estimates. It also alleges an error in computations underlying the recommended decision's statement that the FCC's Model's per-line cost was $95; correcting that error (to reflect the fact that switching nodes in Zone 2 are not remotes but, rather, a cluster of one host and three remotes) produces a figure of $100.65.

Other parties offer adjustments that would reduce the outcome of the surrogate analysis. AT&T contends, first, that the lower parameter of the range identified by the Judge should be not the $95 HAI input figure but a $51 figure set forth in

AT&T's June 2000 restatement of Verizon's cost study to take account of available new switch discounts as adduced on the record of this case. Applying the algorithm it sees as implicit in the Judge's analysis (i.e., a downward adjustment of 5.4% applied to the midpoint between the parameters) produces a statewide average switching material investment of $84 per line rather than the recommended decision's $105 per-line figure. In addition, AT&T asserts that while Verizon's $128 per-line figure (used by the Judge as the upper parameter) reflects material investment only, the FCC-based $95 per-line figure used as his lower parameter is a fully installed price, and the comparable Verizon figure (using the installation cost factor allowed by the recommended decision, discussed below) would be $178. Again applying the algorithm implicit in the Judge's analysis, AT&T calculates a fully installed switching cost of $129 per line, which would obviate any separate allowance for installation costs and result in switching usage and digital line port rates that are about 26% and 18% below the levels calculated in the recommended decision.[62] WorldCom likewise contends that the lower parameter should be $51 rather than $95. It points as well to a filing by Ameritech-Illinois showing switching costs below those recommended by the Judge and to still lower rates approved in Michigan.

Z-Tel, which does not object strongly to the surrogate approach in principle, also notes that the Judge's parameters improperly compare a materials-only figure with a fully loaded one and suggests that the lower parameter should be reduced from $95 to $73 per line by removing installation costs computed on the basis of the recommended decision's factor. It also urges recognition of AT&T's material investment figure of $51 per line as well as the possibility that Verizon's $128 figure might be subject to change on the basis of the recommended decision's treatment of cost of capital. Taking account of these data, it suggest the record supports a per-line switching investment of $75-$85.

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[62] AT&T's Brief on Exceptions, p. 13.

Verizon responds, first, that the $51 figure computed by AT&T in its rebuttal testimony should be disregarded, for it was based on an error in information supplied by a switch vendor that was later corrected. Use of the corrected vendor data produces a per-line price, reflecting the new switch discount, of $101, higher than the $95 lower bound used by the Judge.[63] It likewise would disregard the FCC's $95 figure; it agrees that the figure includes loadings and sees the difficulty of accounting for that as an added reason to disregard the figure. It disputes Z-Tel's suggestion that the $105 figure should be adjusted to reflect the recommended cost of capital, noting the figure is an investment unaffected by cost of capital. Finally, it objects to reliance on rates set in other jurisdictions, where circumstances and methods of analysis may differ in ways unknown.

Several of the parties' specific comments are clearly sound and need to be taken into account. Verizon's increase of the Judge's $95 lower parameter to $100.65 is correct, as is the CLECs' observation that that figure is fully loaded and cannot be used as the lower parameter when the higher parameter is not fully loaded. (That observation would apply equally to the corrected $100.65 figure.) Other comments are in error; the CLECs' proposal to use $51 as the lower parameter is clearly misplaced, for the reasons identified by Verizon. Indeed, the errors responsible for the $51 figure reinforce the conclusion that attempting to estimate a proper discount is an exercise in futility.

If a figure of $100.65 less loadings were used as the lower parameter, the midpoint between the parameters would be below the figure identified by the Judge. But there is, of course, nothing magical about the midpoint; and we would in any event have little confidence in a result much below the estimates of $110 and $113 identified by the FCC staff and the majority of state members of the Joint Board, for it is

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[63] Verizon's Reply Brief on Exceptions, p. 7; the calculations said to support the $101 figure are set forth in a proprietary attachment to that brief.

significant that two disinterested entities arrived at such close results. When all is said and done, we are satisfied that the Judge reached a reasonable result on the basis of the record in this proceeding, and we deny the exceptions.[64]

EF&I Factor

As already explained, estimating the cost of a fully installed switch requires application to the switch material cost of an "engineer, furnish, and install" (EF&I) factor. Verizon used a factor of 43.5%. AT&T contended that factor was overstated, far exceeding those used by other telephone companies, and it proposed a 25% factor, comprising what it calculated to be Verizon's own average 15% factor for vendor engineering and installation, plus 10%, representing the average of the 8%-12% range of other companies' telephone company engineering and installation. The Judge found that Verizon had shown no reason other than its own actual experience for adopting its higher-than-average figure for telephone company engineering and installation. He held AT&T's 10% figure to be unsupported and unduly low and recommended, as fair and reasonable, a telephone company engineering and installation factor of 15%. Adding that to the 15% for vendor engineering and installation, he recommended an overall EF&I factor of 30%.[65]

Verizon excepts, seeing no basis for substantially reducing its actual costs other than "the 'burden of proof' shibboleth."[66] It asserts the data cited by AT&T relate to rural telephone companies presumably having smaller central offices

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[64] It is worth noting, moreover, that while we have not used an analysis of discounts to reach the $105 per-line cost, the record with respect to discounts would in no way preclude that result.

[65] The Judge noted that the 30% factor was to be computed with reference to Verizon's claimed switching material costs; the resulting dollar amount, applied to the reduced material costs recommended by the Judge, would imply a factor higher than 30%.

[66] Verizon's Brief on Exceptions, p. 17.

and therefore lower installation costs than Verizon as well as higher per-line material costs (because the discounts enjoyed by Verizon are unavailable to them) and a corresponding lower installation cost percentage. Disputing the Judge's suggestion that the differences between companies cut both ways, given the greater likelihood that Verizon can enjoy economies of scale, Verizon contends that, "in effect, the RD rejected probative, unchallenged, reliable data on Verizon's actual switch EF&I costs, preferring instead to rely on hearsay evidence as to the installation costs purportedly experienced by a sample of unidentified rural companies that clearly are not comparable to Verizon. The premise that this reliance on less relevant, less well-documented data makes the estimated EF&I factor more 'forward looking' is simply perverse."[67]

AT&T responds that Verizon's denial of the record basis for the Judge's adjustment would have us disregard the evidence on which the Judge relied. It contends as well that Verizon relies too heavily on costs associated with its existing network--such as the increased costs associated with multi-story buildings--thereby violating the TELRIC premise of a new network incorporating buildings efficiently designed to accommodate forward-looking switches.

Although actual costs are not the end point of a TELRIC analysis, the evidence presented by AT&T--which Verizon has credibly distinguished from its own circumstances--does not support as substantial an adjustment to Verizon's costs as the Judge applied. On this record, a more conservative adjustment is warranted, and Verizon's EF&I factor will be reduced only to 40%. To that extent, Verizon's exception is granted.[68]

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[67] Id., pp. 16-17 (emphasis in original).

[68] In its reply brief on exceptions (p. 20), AT&T endorses Verizon's method for applying the Judge's adjustment, which develops a new EF&I factor applied against the Judge's recommended investment instead of applying the Judge's 30% factor to Verizon's original investment. The method appears reasonable and should be used with respect to the 40% factor we are adopting here.

Switching Cost Allocation and Rate Design

1. Usage- and Non-Usage-Sensitive Costs

Switching costs comprise traffic-sensitive and non-traffic-sensitive components; the latter do not vary with usage. Verizon proposed to recover non-traffic-sensitive costs through flat-rated port charges (for both line ports and trunk ports) and to recover traffic-sensitive costs through minutes-of-use (MOU) switch usage charges. Several other parties, primarily Z-Tel, asserted that Verizon incurs no usage-sensitive costs in providing unbundled local switching to itself or competitors and switching costs therefore should be recovered entirely on a non-usage-sensitive basis, through monthly recurring port charges.

The Judge concluded that while Verizon had argued successfully against totally non-usage-sensitive rates, Z-Tel had made a strong case for recovering a greater portion of switching costs on a non-usage-sensitive basis, inasmuch as a UNE user purchased all of the switching capacity, including features and functions associated with any given port. More specifically, the Judge noted that in the First Elements Proceeding, a Verizon witness had presented an analysis of switching costs that would warrant allocating only 34% to usage. Recognizing that data may have changed since then, he recommended a rate structure that assigned no more than 40% of switching costs to usage (rather than the 64% of costs assigned to usage in Verizon's study). The Judge went on to note that though the switching costs assigned to usage were associated almost exclusively with peak busy hour usage, they could not be recovered solely through the usage rate for the peak busy hour. The only alternatives were to recover them over all usage as Verizon proposed, or through non-usage- sensitive port charges as Z-Tel proposed. He recommended recovering them over all usage, inasmuch as the record suggested that peak busy hour usage was more closely correlated with total usage than with ports.

Verizon excepts, urging use of its 36% non-usage-sensitive/64% usage-sensitive allocation. It contends it has consistently treated switch port costs as non-usage-sensitive

and the remainder as usage-sensitive, noting that the allocation is easily administered inasmuch as port costs are separately identified by its Switching Cost Information System (SCIS). In addition, it says, that treatment is consistent with cost causation, inasmuch as the port is the only component that is needed when an access line is not being used, and every feature of the switch other than the port may require augmentation as the level of usage on a line increase. Verizon contends as well that the CLEC's purchase of all of the switching capacity associated with a port, including features and functions, is a matter of product definition that does not imply that the associated costs should be recovered through flat rates. It also disputes the Judge's reading of its Phase I presentation, contending that switch components beyond those comprising the 34% of investment said by the Judge to be usage-sensitive are, in fact, usage-sensitive.

AT&T responds that Verizon's past practice with respect to this issue is irrelevant; that the record shows the non-usage-sensitive nature of most switching costs; and that the only switching costs that are truly usage sensitive in Verizon's study are the Line CCS category, which average between 25% and 34%, depending on geographic zone, thereby demonstrating the reasonableness of the Judge's finding that 34% of switching costs are usage sensitive. AT&T urges use of that figure, rather than the 40% used in Verizon's rate recalculations; the latter figure reflected the Judge's recommendation that "no more than 40%" be assigned to usage.

WorldCom goes further in its reply, urging that switching costs be treated as entirely non-usage-sensitive and citing a decision by the Illinois Commission to that effect, reflecting an Ameritech-Illinois proposal. It disputes Verizon's complaint that the recommended rate structure produces rates that are too low, again pointing to results in other jurisdictions. Renewing the arguments for regarding switching costs as non-usage-sensitive, WorldCom suggests that Verizon's switch cost model had been designed to show the contrary. Finally, it argues that usage-sensitive pricing of unbundled

switching undermines fair competition by requiring CLECs to confront a rate structure different from the non-usage-sensitive way in which Verizon incurs its costs.

The Judge fully explained how his recommendation was grounded in the record and why it is reasonable to structure switching rates on the premise than no more than 40% of switching costs are usage-sensitive. The arguments on exceptions provide no compelling reason for modifying that adjustment in concept, and both Verizon's exception and WorldCom's request to move to flat rates are denied. But we are persuaded by AT&T's argument that the proportion of switching costs treated as usage-sensitive should be reduced from 40% to 34% and that the remaining 66% should be treated as non-usage-sensitive. That was the allocation in the study cited by the Judge, and there is no reason to depart from it. AT&T's exception to that effect is granted.

2. Calculation of Usage Sensitive Rates

a. Minutes of Use

Verizon calculated usage sensitive prices in a manner understood by other parties and the Judge to involve the spreading of switch investment over the 251 business days in a year, on the premise that the switch must be designed to handle peak traffic and peak traffic is realized only on business days. Z-Tel advocated spreading the investment over 365 calendar days. The Judge saw a need to take account of weekend usage but also to recognize its lower volume and therefore recommended spreading the costs over 308 days a year, a figure derived by treating each weekend day as one-half of a day; he noted that WorldCom's witness had offered such a proposal as well.

Verizon excepts, contending that the Judge's adjustment, unnecessary in principle, had the effect of imputing an unreasonably high number of minutes of use and a corresponding reduction in usage rates. It explains, in some detail, that it derived its per-MOU switch usage costs by dividing total usage-sensitive investment by busy hour MOUs, applying various loadings to the investment per busy-hour MOU,

and then applying a factor that converts the cost per busy-hour MOU to cost per MOU. The conversion factor is derived by dividing the ratio of busy-hour MOUs to total MOUs in a typical business day by 251, the number of business days in a year. It is that calculation alone that uses the figure of 251, and changing it to 365 or to 308 would require other, corresponding adjustments as well to ensure consistency. To state the matter differently, Verizon disavows any assumption that usage-sensitive costs should be spread only over business day MOUs and agrees that the usage rate must reflect the ratio of total usage sensitive costs to total billable MOUs; it claims to have used the number of business days only in properly calculating that ratio.

In addition, Verizon calculates that the recommended decision's figures imply 338 billion annual minutes of use, in contrast to the 275 billion MOUs implied by its own analysis. It contends its figure is supported by actual data for the year 2000, showing 280 billion Dial Equipment Minutes (DEMs), and it notes, by way of comparison, that the HAI Model input was only about 240 billion DEMs, based on 1998 data. Anticipating an objection to its reliance on data for 2000, it argues that if a higher projected figure were to be used for "forward-looking" purposes, switching investment would have to be increased as well.

In response, AT&T, WorldCom, and Z-Tel dispute Verizon's interpretation of its calculations and its reference to actual data. WorldCom and Z-Tel argue, with algebraic or arithmetic demonstration, that Verizon's computations fail to spread switching costs over all minutes of use. All three parties object to Verizon's reference to actual data, arguing

that it is irrelevant for TELRIC analysis.[69] Verizon disputes that premise, contending, among other things, that a TELRIC analysis must be based on current demand.

As argued on exceptions, this issue poses two separate though related questions: whether the Judge's adjustment was proper in theory; and whether, even if arguably sound in theory, it absurdly implies far too many minutes of use. On the theoretical point, Verizon correctly states that "the usage rate must be based on the ratio of total TS cost to total billable MOUs, whenever those MOUs occur. The issue is how properly to calculate that ratio."[70] But the Judge found, and WorldCom's and Z-Tel's arguments on exceptions confirm, that Verizon's calculations do not calculate that ratio properly and have the effect, Verizon's arguments to the contrary notwithstanding, of spreading switching costs only over business day MOUs, not total MOUs.[71]

Verizon objects as well that the Judge's adjustment implies a number of MOUs far in excess of the current demand, to which TELRIC requires us to refer. As a threshold matter, the discrepancy may be not be due entirely (or even in large part) to the Judge's adjustment and may be caused by other aspects of Verizon's calculations. More fundamentally, and as Verizon itself argues persuasively in the context of loop costs, discussed below, proper treatment of "current demand" has to

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[69] The portions of the reply briefs on exceptions containing this argument are among those Verizon challenges in its July 18 motion; it asks us to allow its sur-reply to this argument because it "did not anticipate that the CLECs would take this tack, and we thus have not yet had an occasion to address this argument in our briefs." (Verizon's motion, p. 2). That a reply brief on exceptions presents an unanticipated response to an argument made on exceptions hardly seems to require allowing a sur-reply; nonetheless, in the interest of a full airing of the issue, we have considered Verizon's submission.

[70] Verizon's Brief on Exceptions, p. 20.

[71] See, in particular, the demonstration at Z-Tel's Reply Brief on exceptions, attachment A. Additional calculations tending to confirm Z-Tel's result are set forth in Appendix B.

recognize "ultimate demand." The system must be sized in that manner to avoid lack of capacity, and rates must then be set, in fairness to both present and future customers, on a premise of levelized usage somewhere between "current" and "ultimate" levels. As discussed below, we do that explicitly in the loop context, through various adjustments related to demand level and fill factor; and it is hardly surprising, and certainly not evidence of error, that the results we reach on switching rates do so implicitly. Verizon suggests that the larger number of MOUs may imply a switching network larger than the one it costed out; but it is important to recognize that the network is sized primarily on the basis of peak busy hour demand, which is unaffected by the Judge's adjustment. The adjustment applies only to the mechanism for spreading the costs of meeting that demand over the number of MOUs throughout the year. For all these reasons, we are satisfied that the Judge's resolution of this issue was reasonable, and Verizon's exception is denied.

b. Time-of-Day Rates

In calculating its switching rates, Verizon also applied time-of-day adjustments that Z-Tel regarded as arbitrary. The Judge noted that Verizon had not responded specifically to Z-Tel's criticisms and invited parties to address the time-of-day adjustments on exceptions.

Z-Tel objects to time-of-day pricing on the grounds that a single rate is easier to deal with; that it offers no economic efficiency benefits, because the rating periods, in Z-Tel's view, are only loosely correlated with actual peaks and most local service in any event is flat rated; and that time-of-day adjustments create the illusion that the allocation of fixed switching investment is other than arbitrary. WorldCom argues to similar effect, stressing the difficulty of implementing time-of-day rates properly.

Verizon disavows some of Z-Tel's arguments but says it does not object to a rate structure without time-of-day deaveraging as long as it provides for recovery of total identified switch usage costs.

We, too, do not agree with all of Z-Tel's arguments, but we see no need to impose time-of-day pricing on the parties here.

Port Additives

"Port additives" are certain optional switching features whose costs Verizon separately calculated. AT&T contended that Verizon had not substantiated those cost claims and proposed to reduce Verizon's calculated costs by 89%, representing the proportional reduction applied by AT&T to the switch digital line port UNE to correct for AT&T's view of the proper vendor discount and EF&I factor. It suggested further that the rates be set at zero on the premise that the administrative costs of collecting them might exceed the port additive costs as so recalculated. The Judge found AT&T's proportional reduction reasonable but noted that the amount of the adjustment should be recalculated on the basis of the recommended decision's conclusions regarding switch material costs and EF&I. He considered it unlikely that the resulting rates would be too low to be worth collecting but invited the parties to consider that on exceptions.

Verizon excepts to the port additive adjustment "on the same grounds as it objects to the general switch cost adjustments that the RD would mirror in the port additive rates."[72] It expresses doubt that rates recalculated on the basis of the Judge's adjustments would be too low to be worth collecting.

Broadview excepts, acknowledging that the recommended reduction in the port additive rates is a move in the right direction but expressing some concern about the application of any charges for port additives. It suggests that the recommended reductions in loop rates and switching rates could be offset by port additive charges imposed on UNE platform

[72] Verizon's Brief on Exceptions, p. 22. It thus appears that Verizon does not specifically object to the concept of adjusting its port additive rates to reflect whatever adjustment might ultimately be made to switching rates.

customers. It urges that "all costs associated with UNE-P [be] carefully examined to insure that reducing one set of rate elements (i.e., switch usage rates) is not counterbalanced by an increase or additional set of new rate elements (i.e., features, port additives)."[73]

AT&T does not except, but submits various recalculations of the port additive rate, noting, among other things, that adoption of the Judge's recommendations on switching costs (to which AT&T excepts, for the reasons described above) results in a 44% reduction in Verizon's claimed port additive costs.

Verizon responds that Broadview offers no good reason for disallowing the charges, noting that the purpose of the proceeding is to set rates on the basis of its costs, not to ensure particular gains or losses to particular players. It adds that AT&T's recalculations treat the switching EF&I factor erroneously.

Broadview's exception is denied, for the reasons properly noted by Verizon. AT&T's recalculation is moot, given the further recalculations required by this order.

Tandem Switching

The Judge recommended that tandem switch rates be reduced by the same percentage as local switch rates, plus an additional 10% reduction to recognize Verizon's failure to explain why it assumed that the vast majority of its tandem switches would be purchased from one of its two vendors. (In the context of end-office switches, Verizon had successfully defended its premise of an equal mix.) Verizon notes that its exceptions with respect to local switch costs apply here as well.

Although Verizon objects to the reductions recommended by the Judge, it does not suggest that tandem switch rates should be treated differently from local, and there is no reason

[73] Broadview's Brief on Exceptions, unnumbered third page.

to do so. Tandem switch rates should be reduced from the level proposed by Verizon in the manner recommended by the Judge.

Refunds

Because of the uncertainty regarding vendor discounts and the associated switching costs, the switching rates set in the First Elements Proceeding were left temporary, subject to refund or reparation. In its brief to the Judge, AT&T urged us to require Verizon "to refund all switching rates paid by CLECs in excess of Verizon's forward-looking economic costs for switching retroactive to April 1, 1997."[74] Noting that AT&T had offered no argument in support of its request and that Verizon had not addressed the issue in brief at all, the Judge asked the parties to consider further on exceptions whether we should exercise our discretion to require refunds in the event the temporary rates were reduced.

On exceptions, AT&T again urges refunds, citing the substantial reduction in switching rates recommended by the Judge (which, it claims, would be even greater if rates were set on a proper TELRIC basis) and the consequent overpayment by CLECs to Verizon during the period the temporary rates have been in effect. Renewing a frequently advanced claim, it attributes these overpayments to Verizon's alleged "material misrepresentation of fact on new switch discounts" in Phase 1, and it urges us to "make AT&T partially whole for those vast anti-competitive overpayments" by ordering refunds retroactive to July 1, 2000.[75]

Z-Tel and Met-Tel also urge refunds. Z-Tel asks that the refunds be retroactive at least to September 30, 1998, the date we put the parties on notice we were aware of errors in Verizon's Phase 1 filing. It acknowledges our finding, reiterated by the Judge, that Verizon's errors in Phase 1 were

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[74] AT&T's Initial Brief, p. 80.

[75] AT&T's Brief on Exceptions, pp. 15-16. As Verizon notes in reply, AT&T does not explain why it modifies its position on exceptions and requests refunds back only to July 1, 2000 rather than to April 1, 1997.

likely careless rather than deliberate but it asserts that, in any event, the errors "were clearly made by Verizon, and Verizon alone should bear the cost of rectifying [them], particularly when considering the magnitude of the overpayments. . . . It is entirely unreasonable to require Z-Tel to forgo refunds of the millions of dollars overpaid solely as a result of Verizon's own carelessness (or recklessness and malfeasance)."[76] Z-Tel urges that the refunds be paid in cash with interest at 12.6%, the current yield on B2/B bonds. Anticipating a possible argument that the errors at issue were not responsible for the entire difference between the temporary rates and those set here, Z-Tel asserts that the benefits of identifying the portion of the difference attributable to the errors would be outweighed by the difficulty of performing the exercise. In the event such an attempt were made, however, Z-Tel would urge that the refund incorporate at a minimum the effects of Verizon's alleged errors in calculating the switch discount and in using 251 as the number of days over which switching costs should be spread. Finally, Z-Tel favors retroactive adjustment of Verizon's reciprocal compensation rates, inasmuch as the switching rate is a component of the reciprocal compensation rate.[77] Verizon responds, among other things, that any refund of reciprocal compensation payments should be mutual, encompassing those paid by Verizon as well as those received by it.

Met-Tel disputes the premise that refunds are discretionary, contending that both New York law and the Telecommunications Act of 1996 require refunds here. It adds that even if we conclude that refunds in general are a matter of discretion, they would be required in any instance where an

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[76] Z-Tel's Brief on Exceptions, p. 13.

[77] "Reciprocal Compensation" refers to an arrangement between two local exchange carriers in which each compensates the other for the transport and termination on the second carrier's network facilities of calls originating on the first carrier's facilities. Under present arrangements, it consists of mutual reimbursement of termination costs; the rates are set on a TELRIC basis, with reference to Verizon's transport and switching costs.

interconnection agreement between Verizon and the CLEC provide for a true-up. It suggests a procedure for determining the amount of refunds and urges that they be retroactive to April 1, 1997. Verizon responds that the one New York case cited by MetTel for the premise that refunds are mandatory in fact required reparations, to avoid confiscating a utility's property; that the 1996 Act does not address the subject of refunds; and that the interpretation of particular interconnection agreements is beyond the scope of this case.

In its own brief on exceptions, Verizon objects to any refund requirement. As a threshold matter, it suggests we lacked the power to set temporary rates in the circumstances of the First Elements Proceeding, which did not grow out of a utility request for a rate increase or satisfy other asserted requirements for temporary rates. As for refunds themselves, it maintains, like Met-Tel, that interconnection agreements containing pertinent provisions would govern. Beyond that, it contends refunds--a matter within our discretion--would be inappropriate here, inasmuch as the Judge's recommendations rely on cost study inputs, switching contracts, analyses, and FCC determinations post-dating the setting of temporary rates in May 1997. To order refunds, it suggests, would imply, improperly, that the factual premise for the rates recommended by the Judge existed then. According to Verizon, "there is simply no way of determining what rate would have been set in 1997 had the Commission been fully informed as to the discounts in effect at that time."[78] Finally, Verizon urges that if refunds are ordered, they apply as well to reciprocal compensation payments made by Verizon that were based on switching costs.

In response, AT&T suggests Verizon's objection to the setting of temporary rates is untimely, since the temporary rates were set four years ago and their temporary status was confirmed three years ago. It denies we lacked authority to set temporary rates here, arguing that Verizon reads the statute too narrowly. It points as well to Verizon's assertion, in a brief

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[78] Verizon's Brief on Exceptions, p. 24.

to the court reviewing its FCC's §271 determination, that concerns about switching rates were moot because the rates were temporary and subject to refund if ultimately found excessive.[79]

WorldCom also opposes refunds, in view of "the length of time that the current rates have been in effect, the potential billing imbroglios [growing out of the complicated accounting issues that would be posed in connection with refunds], and the potential for market-impacting effects that the Commission did not intend when it ordered the current rates to remain temporary."[80] If refunds were ordered, WorldCom would limit them to those parties who specifically sought them in their briefs.

Verizon's suggestion that we lack the authority to require refunds here is untimely, inconsistent with positions it has taken elsewhere, and substantively in error. These rates were made temporary when set, and that status was confirmed more than three years ago, when we said that "because the new evidence on switching costs changes the state of the [Phase 1] record, we will direct that rates that include switching costs be kept temporary, subject to refund and reparations, until we evaluate this evidence and review the switching costs in the [present] proceeding."[81] Having failed to press a timely challenge to our authority to impose that condition on the rates then set, Verizon is barred from doing so now.[82]

In addition, Verizon itself has acknowledged and explicitly relied on the temporary and refundable status of these rates in defending against its competitors' motion for a stay of the FCC's decision granting it §271 approval. As AT&T

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[79] AT&T's Reply Brief on Exceptions, pp. 29-30.

[80] WorldCom's Reply Brief on Exceptions, p. 29.

[81] First Network Elements Proceeding, Order Concerning Petition for Reconsideration of Phase 1 Compliance Filing (issued November 6, 1998), p. 7 (emphasis supplied); a similar statement appears at Order Denying Motion to Reopen Phase 1 and Instituting New Proceeding (issued September 30, 1998), p. 12.

[82] See PSC v. Rochester Tel. Corp., 55 N.Y.2d 320 (1982).

points out, Verizon successfully argued to the United States Court of Appeals for the District of Columbia Circuit that there could be no irreparable injury associated with allegedly excessive switching rates, inasmuch as the rates would be subject to refund if proven to be excessive.[83] On that basis as well, Verizon cannot now be heard to challenge our decision to make these rates temporary.

Finally, Verizon's arguments against our authority are substantively flawed. It argues that the sources of our statutory authority to set temporary rates are inapplicable to the present case: PSL §§113(1) and 97(1) apply, in its view, only where the utility seeks a rate increase, which Verizon did not do here; PSL §113(2) deals with situations in which a utility receives a refund of amounts it had paid (such as taxes); and PSL §114 allows temporary rates pending the conclusion of a proceeding, but these rates have remained temporary long after the conclusion of Phase 1.[84]

Verizon reads our authority too narrowly. PSL §97(1) gives us broad authority to change rates "upon such terms, conditions or safeguards as [we] may prescribe," and it goes on to authorize temporary changes in rates. It is not limited to proceedings instituted by a utility filing, and, together with §§113(1) and 114, it establishes a comprehensive statutory structure that permits us to act promptly to set rates subject to later refund, reparation, or recoupment, as circumstances may warrant.[85] In this instance the circumstances so warranted: UNE rates needed to be set promptly; there were doubts about the record on the basis of which we were acting; and the best way to act promptly while protecting the interests of all parties was

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[83] AT&T's Reply Brief on Exceptions, pp. 29-30, citing Verizon's Brief in Opposition to AT&T's and Covad's Emergency Motion for a Stay, p. 14, fn. 12.

[84] Verizon's Brief on Exceptions, p. 23, fn. 56.

[85] The need for and breadth of that authority was recognized even before it was expanded by the enactment of §§113 and 114. See City of New York v. New York Tel. Co., 115 Misc. 262 (Sup. Ct., New York Spec. Term, 1921).

to set temporary rates subject to refund or reparation once the situation was further clarified. We clearly described what we were doing, and, as noted, no party has until now questioned our authority to do so.

That we have authority to direct refunds here, accordingly, is clear. Less certain, at this point, is whether and how we should exercise our considerable discretion over the use of that authority. In view of the many computational and other uncertainties, including the possible need for additional information on minutes-of-use, we are reserving judgment on the issue for now, and we encourage the parties to pursue a joint proposal for resolving the matter. If they are unable to reach agreement on a joint proposal, we will decide the matter after requesting and reviewing the additional information that may be needed.

INVESTMENT LOADINGS

In an early step of its cost analysis, Verizon applied to the material cost of its investment various investment loading factors to generate a total installed cost that includes engineering, furnishing and installation (EF&I) costs; land and building (L&B) costs; and power supply costs. Verizon, AT&T, and the CLEC Coalition except to various aspects of the recommended decision's treatment of the land and building factor, but before turning to those it is necessary to note two calculation matters raised by Verizon.

First, in connection with his adjustment to the switch EF&I factor, the Judge recognized that if the level of investment is reduced, the factor percentage level must be increased in order to recover the same level of expenses. Verizon notes the Judge's recognition of that point, and excepts to the recommended decision's failure to make similar adjustments to other investment loading factors as a corollary to its reduction in the level of material costs.

Verizon's point, to which no party responds,[86] is well taken. The loading percentages will be adjusted accordingly.

Second, in its adjustments to ensure that the L&B factor avoided double recovery of central office space used by collocators and separately paid for, the recommended decision estimated that 2.5% of Verizon's central office space would be used for collocation. (Verizon's estimate was 1.019%; the CLEC Coalition's estimate was 3.2616%.) Verizon notes on exceptions that the workpapers accompanying the recommended decision's rate calculations treated the 2.5% figure as a downward adjustment to the land and building factor itself, and it presents alternative calculations correcting that error. Verizon's point, to which no party responds, is well taken and the correction will be made.

Land and Building Investment Loading Factor

Verizon adjusted its initially calculated land and building factor to correct a number of errors identified by other parties. The result of these adjustments turned out to be an increase in loop costs instead of the anticipated decrease, and WorldCom charged that Verizon had produced these results by fundamentally changing its costing method. Verizon defended its calculations, arguing, among other things, that the increased loop costs were offset, via a reduced land and building factor, in the land and building costs recovered through rates for other UNEs; overall, total recovered L&B costs did not increase.

The Judge recommended no adjustment, finding Verizon's step-by-step explanation of its calculations reasonable; but he added that his conclusion "rests in large part on Verizon's representation that total L&B costs recovered through UNE rates will not be increased, and that the increased loop costs will be offset by reduced recovery of L&B expense through rates for

[86] The CLEC Coalition uses the opportunity to reiterate its opposition to the FLC (defined and discussed below and implicated in the calculation adjustments called for by Verizon) but takes no position on the adjustments themselves.

other UNEs."[87] Verizon had said that it would recalculate those UNE rates as part of its compliance filing, but the Judge directed it to do so in its brief on exceptions and to demonstrate that the reductions in other UNE rates were adequate to avoid any double count.

Verizon includes, with its brief on exceptions, calculations said to provide the required demonstration. It contends that L&B investment (net of land and buildings dedicated to administrative support) comes to approximately $1.36 billion, and that application of its proposed L&B factor to the UNE rates recommended in the recommended decision will recover only $1.32 billion. Accordingly, it says, there is no double recovery. Verizon recognizes that its initial filing in this proceeding recovered only about $900 million of L&B costs, but it attributes that to the errors corrected in its rebuttal testimony, arguing that the measure of double recovery should be the total forward-looking, non-administrative L&B cost of $1.36 billion.

AT&T responds that Verizon's calculation confirms the presence of a substantial increase in claimed land and building costs and urges disallowance of the $432 million difference between the costs here claimed and the $900 million initially sought. To Verizon's claim to have shown the absence of any double count, AT&T responds that the Judge did not refer to a "double count" but directed Verizon to show that "total L&B costs recovered through UNE rates will not be increased," a showing it has failed to make.

Although AT&T in its reply to exceptions emphasizes the concern over a net increase in costs, the double-count question figures prominently as well: the Judge concluded his direction to Verizon by requiring it to "demonstrate . . . that the reductions in [rates for other UNEs] are adequate to avoid any double count," and AT&T, in its own brief on exceptions, reserved the right to pursue the matter further "after having an opportunity to review Verizon's attempt to comply with the

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[87] R.D., p. 109.

directive of the RD that it demonstrate no double recovery of costs."[88] The Judge assumed, in effect, that any increase in total L&B costs would be tantamount to a double count, inasmuch as all L&B costs had already been fully captured before the adjustments that initiated this dispute. Although the parties now portray the two issues--double count and overall increase--as distinct, each stressing one to the exclusion of the other, the Judge regarded them as identical.

In any event, what Verizon has shown is that it reduced the L&B factor as anticipated, but that the application of that reduced factor to additional RT investment (whose costs had previously been recovered directly) produces, without double count, an overall increase in total L&B costs recovered by applying the L&B loading factor. This appears to contradict its initial claim, which the Judge had asked it to substantiate, that "the increase in loop costs that was noted in WorldCom's [initial] brief [to the Judge], and that resulted from the application of the (restated) L&B factor to RT equipment investment, was not an increase in the total L&B costs that Verizon would recover through UNE rates. Rather, it was offset by the reduction in the L&B factor itself and the consequent reduction in the L&B costs that would be recovered through rates for other UNEs, such as local switching."[89]

According to our Staff's calculations, the three revisions made by Verizon to eliminate the double count had the net effect of increasing overall UNE costs by $60 million (loop costs went up by $73 million but other UNE costs declined by only $13 million). Verizon may have shown the absence of any double count, but it still has not explained why collecting the L&B costs at issue through the L&B loading factor rather than directly has resulted in an overall increase in UNE costs. Accordingly, we will apply only the adjustment to eliminate direct recovery of the L&B costs at issue; and rates should be

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[88] AT&T's Brief on Exceptions, p. 38.

[89] Verizon's Reply Brief, p. 15 (emphasis in original).

set on the premise of total L&B costs of about $900 million,[90] consistent with Verizon's initial claim.

Calculation of the L&B Factor

Noting the Judge's discussion of the application of the FLC (discussed above) in calculating the land and building factor, the CLEC Coalition argues that a double count results if the FLC is applied together with another adjustment, which it refers to as the "TPI adjustment" and Verizon terms the "Current Cost/Booked Cost" (CC/BC) ratio. The CLEC Coalition favors elimination of the FLC generally, but if that argument did not prevail, it would urge that the TPI adjustment be eliminated to avoid the double count.

Verizon replies that the two adjustments do not overlap. The CC/BC ratio, it explains, applies current prices to the embedded equipment reflected on Verizon's books. The FLC reflects ubiquitous deployment of forward looking technology, as required by TELRIC. The two together, Verizon asserts, convert book investments to forward-looking investments.

Verizon's response is persuasive, and the CLEC Coalition's exception is denied.

ANNUAL COST FACTORS

Introduction

As already mentioned, Verizon used annual cost factors to convert TELRIC investments into annual costs for UNEs and to develop nonrecurring charges. The factors are expressed as ratios whose numerator is pertinent expenses and whose denominator may be relevant investments, other expenses, or revenues. Six of the eight ACFs use an investment denominator; they are identified as (1) the depreciation ACF, (2) the return, interest, and federal income tax (RIT) ACF, (3) the ad valorem tax ACF, (4) the network ACF, (5) the wholesale marketing ACF, and (6) the other support ACF. The common overhead ACF is an

[90] The figure to be used is further specified and explained in Appendix C.

expense-to-expense ratio used to identify and allocate common overhead expenses, special pension enhancement payments, and savings associated with the Bell Atlantic/NYNEX merger. Finally, the gross revenue loading ACF, expressed as an expense-to-revenue ratio, allocates uncollectibles and Commission expenses.

To develop its ACFs, Verizon began with 1998 expenses, which it claimed to have adjusted (from $7.866 billion overall to $5.316 billion overall) to insure compliance with TELRIC, to reflect decisions in the First Elements Proceeding, and to capture an assumed level of productivity and savings. In addition, it asserted, the ACFs reflect no growth in costs since 1998, thereby sparing UNE customers the effects of inflation. Verizon contended that "the ACFs provide customers with the benefits of productivity gains, even when specific programs have not been identified to achieve these gains, while insulating customers from cost increases, even when the increases are known and certain."[91]

Verizon maintained that its ACFs had been developed in a manner largely consistent with that used to develop carrying charge factors (CCFs) in the First Proceeding.[92] It argued as well that substantial reductions in the expenses captured by the ACFs, as urged by some parties, would unlawfully and improperly deny it the opportunity to recover the costs it actually expects to incur in providing UNEs, thereby violating the statutory mandate that rates be just and reasonable and the FCC's requirement that UNE rates reflect "the incremental costs that incumbents actually expect to incur in making network elements available to new entrants."[93] Verizon explained as well that it applied three generic adjustments to its ACF calculations "in order to insure that the ACFs used in this proceeding accurately

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[91] Verizon's Initial Brief, p. 39.

[92] The differences between the two processes are described at Tr. 2,366-2,369; they are discussed here only to the extent they are controversial.

[93] Local Competition Order, ¶685.

reflected TELRIC assumptions."[94] The adjustments were said to exclude retail costs, account for inflation and productivity, and apply a forward-looking-to-current conversion.

The Judge resolved a series of objections to the ACFs. They are discussed here only to the extent they are raised by parties on exceptions.[95] Following the format of the recommended decision, we consider cost of capital issues separately as the next major heading.

Productivity

1. In General

In estimating the expenses to be allocated through the various ACFs, Verizon assumed productivity savings of 2% above inflation for network related expenses (primarily maintenance) and 10% above inflation for non-network-related expenses; it asserted that those were the figures we applied in Phase 1 of the First Elements Proceeding and elsewhere. The CLEC Coalition argued that application of the concepts we used in the First Proceeding required a substantial increase in imputed productivity. It argued that the 10% figure applied in the First Proceeding represented an annual rate of 5% applied over two years (1995, the base year for the data, to 1997, the year the prices were to take effect). Here, 1998 data are being used and the rates were expected to take effect in 2001, suggesting a productivity factor of at least 15% (5% over three years) or even 20% (if a fourth year is recognized).

The Judge regarded as insufficiently ambitious the 3.33% annual productivity figure implied by Verizon's proposal to apply a 10% adjustment over a three-year period but seriously questioned as well the 5% and higher annual productivity figures

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[94] Verizon's Initial Brief, p. 41.

[95] In several instances, parties allege errors in one another's rate calculations or in those prepared by Staff and appended to the recommended decision. Inasmuch as all rates require recalculation in light of our decisions, those allegations are discussed only in the event they raise substantive issues requiring resolution.

advocated by the CLEC Coalition. Noting, on the basis of Verizon's own presentation, that the average productivity factor used by regulators in price cap proceedings implied an annual productivity level of about 3.9%, the Judge applied that annual figure over a period somewhat in excess of three years and recommended an overall productivity adjustment of 12%. For maintenance, he recommended a productivity figure of 3%, using annual figures implicit in the Phase 1 adjustment but recognizing the longer interval in the present case. Parties on both sides of the issue except.

Verizon maintains there is no record basis for the Judge's recommendations. Noting that its expenses have actually increased, it argues that the Judge misread the precedents that he relied on for imputing, in the absence of evidence that they are achievable, productivity adjustments greater than those proposed by Verizon itself. It contends, among other things, that the annual productivity figures cited in the Phase 1 Opinion and relied on by the Judge had been used only to calculate the productivity improvements implied by the price reductions in Verizon's Performance Regulatory Plan (PRP) and did not represent productivity gains that were either achieved or achievable. It argues as well that the Judge failed to recognize the need to take account of inflation, estimates of which are included in the productivity figures cited by the Judge. Disputing the Judge's characterization of its 3.33% annual productivity improvement as too low, it explains that if inflation is taken into account, the annual figure becomes 5.88% in real terms, exceeding the productivity figures cited by the recommended decision. Finally, Verizon regards the productivity adjustment as particularly unreasonable given the Judge's recommendations that rates be adjusted to reflect savings associated with the Bell Atlantic/GTE merger and that no allowance be made for special pension enhancement (SPE) expenses. Arguing that mergers and workforce restructurings are two important ways to achieve productivity growth, Verizon charges "it is an unreasonable double count to increase the level of assumed productivity, disallow SPE costs, which must be

incurred to achieve these assumed gains, and then separately add on merger savings."[96]

AT&T and the CLEC Coalition respond that there is ample record basis for the Judge's recommendation, pointing to his discussion of the evidence submitted on both sides. They contend, among other things, that the recommendation is fully consistent with the decision in Phase 1, which Verizon itself relied on, and extends the logic of that decision to reflect the longer interval here between base year and rate year. They are untroubled by the gap between allowed and actual expenses, noting that actual expenses are not the standard used in a TELRIC analysis.

In its own exception, the CLEC Coalition maintains that the 3.95% annual productivity factor referred to by the Judge is too low. It argues that the implicit productivity factor in price cap proceedings in states formerly served by NYNEX is higher than the overall average in the survey submitted by Verizon and that that differential should be taken account of here. It also urges, in view of the timing of the new rates, that four years of productivity be recognized rather than three.

Verizon responds that the CLEC Coalition misstates the data with respect to other price cap proceedings and suggests that the longer interval referred to by the Coalition means, in effect, that Verizon will have to absorb even more unrecovered cost increases.

A productivity adjustment captures, in regulated rates, a reasonable degree of productivity improvement beyond what may be reflected through more specific adjustments. In applying it, we recognize that the specific adjustments do not exhaust the available cost savings, but we must take care as well that the savings not be unfairly overstated or double counted. As described below, we will reflect in the rates set

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[96] Verizon's Brief on Exceptions, p. 62. Special pension enhancement expenses refer to certain costs associated with offering enhanced retirement benefits to its employees in order to reduce the workforce; they are discussed further below.

here a placeholder estimate of savings associated with the Bell Atlantic/GTE merger, and recognition of those specific savings warrants tempering the Judge's general productivity adjustment, which is, again, simply a surrogate for specific savings that cannot be quantified. Verizon's exception on this point is granted, and general productivity will be reflected at the 10% and 2% rates proposed by Verizon.

2. Copper Distribution Facilities

The CLEC Coalition excepts as well to the Judge's rejection of its proposal to apply the higher, non-maintenance productivity adjustment to maintenance related to copper distribution facilities. The CLEC Coalition had contended that very little copper distribution plant is turning over and that the higher adjustment "properly reflects the improvement in maintaining whatever copper plant may be in place."[97] The Judge was persuaded by Verizon's rebuttal and concluded that the premise of no plant turnover had not been established. On exceptions, the CLEC Coalition concedes the Judge's point with respect to copper feeder facilities but disputes it with regard to copper distribution facilities. It therefore urges application of the overall productivity factor to maintenance expenses related to copper distribution facilities.

Verizon responds that copper distribution facilities are, in fact, being phased out; that there is no basis for a reduction in these costs beyond that effected by the CRAF, discussed below; and that, in any event, the pertinent accounts include both distribution and feeder facilities, precluding application of the adjustment to one but not the other.

Verizon's response is persuasive; the exception is denied.

Forward-Looking-to-Current Factor

According to Verizon, CCFs were traditionally calculated by finding the relationship between current expense

[97] CLEC Coalition's Initial Brief, p. 22.

and current investment and then applying the resulting ratio to convert the investment into customer charges that permit recovery of both investment and expenses. In a TELRIC context, the numerator of this factor--current expense--is significantly reduced to reflect forward-looking TELRIC assumptions, and unless the denominator is likewise reduced, the correspondingly lower factor, when applied to forward-looking TELRIC investment, will underrecover expenses to a degree not contemplated by the TELRIC method. Reducing the denominator is impractical, inasmuch as TELRIC investments cannot be determined before the end of the study process. Accordingly, Verizon proposed an adjustment, termed the forward-looking-to-current (FLC) factor, that would divide the ACF by .70, representing the approximate ratio of total incremental costs to the current level of those costs as calculated in the First Proceeding and in proceedings in Massachusetts and Pennsylvania.[98] It applied the FLC factor to the network, wholesale marketing, other support, and common overhead ACFs--those in which a reduction in investment could not be assumed to imply a comparable reduction in expenses. It did not apply the FLC to the depreciation, RIT, and ad valorem ACFs, which are directly related to investment levels, or to the gross revenue ACF, which directly reflects the level of expenses. Verizon noted that even with the FLC applied, its studies reflect only $5.316 billion in recognizable costs, in contrast to its claimed actual costs of $7.571 billion.

The FLC drew the fire of numerous parties, most of whom saw it, in AT&T's words, as "nothing more than a poorly disguised attempt by Verizon to recoup its embedded, inefficient operating costs. Such recovery would violate TELRIC . . . ."[99]

The Judge found the FLC to be sound in concept. He reasoned that in Phase 1, the CCFs had been calculated for the most part as the ratio of historical expenses to historical

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[98] Dividing the ACF by .70, of course, is the same as multiplying it by 1.43. Because the FLC is expressed as the result of the division, a smaller factor is equivalent to a higher cost.

[99] AT&T's Initial Brief, p. 47.

investment, and we were persuaded that application of that ratio to TELRIC investment would adequately capture pertinent forward-looking savings. Here, in contrast, the numerator of Verizon's proposed ACF is its forward-looking TELRIC expense yet the denominator remains historical investment; the ratio, accordingly, is lower than it would have been in Phase 1. Nevertheless, that lower ratio is applied to forward-looking TELRIC investment, "thereby in effect double counting the TELRIC adjustment, as Verizon argues. Seen in this light, the FLC does not convert TELRIC costs to embedded; it merely tries to restore a 'twice-TELRICed' cost calculation to one that recognizes TELRIC only once--as was the case initially in Phase 1."[100]

Although he found the FLC sound in concept, the Judge adjusted it from 70% to 75%, on the basis of Verizon's estimate of TELRIC investment, submitted in response to a post-hearing question from Staff. He noted as well that "use of the FLC to avoid double counting the effects of TELRIC requires being sure that the remaining 'single count' is not understated. To that end, expense adjustments should be rigorously applied where warranted."[101]

Verizon does not except to the Judge's modification to the FLC, noting only that further adjustments are needed to reflect changes in TELRIC investment resulting from the Judge's other recommendations; it recalculates the figure as 66%. Several CLECs continue to object in concept to the FLC.

Noting the FLC's significant effect on cost factors, AT&T contends the Judge overstated the distinction between the Phase 1 CCFs and the ACFs proposed here. It argues that the forward-looking adjustments applied to the expenses forming the numerator of the ACF (and cited by the Judge as the basis for concluding that the FLC is needed to avoid any risk that the cost calculations might be "twice-TELRICed") are, for the most part, the same as the adjustments to the CCF calculation that we ordered in Phase 1. Verizon's proposed CCFs in Phase 1 used

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[100] R.D., p. 43.

[101] R.D., pp. 43-44.

current expense as the numerator, but the CCFs actually applied in setting rates incorporated forward-looking adjustments that we required, including the elimination of avoided retail costs, recognition of productivity improvements, elimination of special pension enhancement expenses, recognition of merger savings, and recognition of savings resulting from forward-looking plant improvements. On that basis, AT&T renews its claim that the FLC is nothing more than Verizon's effort to take back the forward-looking cost savings it has purported to offer. In its reply brief on exceptions, AT&T objects to what it considers to be Verizon's uninvited recalculation of the FLC on the basis of extra-record information.

WorldCom argues to similar effect, contending that the FLC is an improper attempt to recover embedded costs through UNE prices, in violation of TELRIC principles. The CLEC Coalition likewise objects to any FLC adjustment, adding that the adjustment, if nevertheless adopted, should be calculated on an account-specific basis. It disagrees with the Judge's observation that such specific adjustments, though desirable, would be impracticable and contends that the information needed

to apply account-specific adjustments is available from Verizon.[102]

Verizon responds that the CLECs have merely restated arguments correctly rejected by the Judge, asserting that "their fulminations do nothing to bring into question the RD's finding that the adoption of a FLC is required to prevent the inherently unreasonable double counting of phantom savings."[103] It reiterates its own argument that its cost presentation included only $5.3 billion in costs, compared with its actual 1998 costs of $7.6 billion, and that its TELRIC investment came to $16.5 billion, in comparison with actual investment of $21.9 billion. It contends as well that the CLEC Coalition has

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[102] Z-Tel took no exception to the use of an FLC in principle but excepted broadly to the manner in which it had been calculated. It withdrew that exception in a letter dated July 6, 2001, acknowledging that it had unintentionally misstated what it regarded as the flaw in the Judge's recommendation but noting that its withdrawal of its exception should not be understood as support for the FLC. In its reply brief on exceptions (p. 6), Z-Tel argues that what it sees as an inconsistency in Verizon's position with respect to the FLC suggests we "should, at a minimum, raise the FLC to 0.975, although the evidence . . . suggests it is perhaps best to eliminate the FLC altogether." Verizon moved to strike that passage of Z-Tel's brief on the grounds that it effectively renews Z-Tel's withdrawn exception in a manner denying Verizon the opportunity to respond. Z-Tel responds that its comments, purportedly showing how an FLC could be calculated in a manner consistent with TELRIC, constitute a procedurally proper response to WorldCom's argument on exceptions that the FLC is inconsistent with TELRIC.

Z-Tel's arguments on this issue in its reply brief differ from those initially presented and withdrawn, but they do not in any event respond to Verizon's exception and they are portrayed as a response to WorldCom's exception only in Z-Tel's reply to Verizon's motion to strike. In effect, the arguments constitute a challenge to the recommended decision's endorsement and calculation of the FLC and could have been presented on exceptions, thereby allowing for response by Verizon. To allow presentation of the arguments now, especially after Z-Tel explicitly withdrew its initial exception on the point, would be unfair, and Verizon's motion to strike this portion of Z-Tel's reply brief on exceptions is granted.

[103] Verizon's Reply Brief on Exceptions, p. 32. The recommended decision, it should be noted, was concerned about the double-count but did not characterize the savings as "phantom."

not called into question the Judge's finding that an account-specific FLC would be impracticably cumbersome to compute, suggesting that if the exercise were as easy as the CLEC Coalition contends, the CLEC Coalition could have performed it in its brief on exceptions, thereby permitting Verizon to respond to the analysis.

The CLECs have not shown the FLC to be unnecessary for its stated purpose; at most their arguments imply that it should have been applied in Phase 1 as well. That it was not applied there does not preclude its use here, for it appears to be a proper methodological refinement. (Methodological refinement, of course, can raise rates as well as lower them; the test is whether the adjustment makes sense.) The general exceptions to the FLC accordingly are denied, and we reject as well the CLEC Coalition's proposal to calculate an FLC on an account-specific basis; the Judge properly found any such effort to be impracticable. That said, we reiterate the Judge's observation that "use of the FLC to avoid double counting the effects of TELRIC requires being sure that the remaining 'single count' is not understated. To that end, expense adjustments should be rigorously applied where warranted."[104] We have taken account of that recommendation in our decisions.

We have recalculated the FLC on the basis of our determinations today; the restated figure is 65%.

[104] R.D., pp. 43-44.

Removal of Retail Avoided Costs

Consistent with the premise of the FCC's UNE pricing regulations, Verizon's studies reflected the assumption that Verizon was a purely wholesale company; they sought, therefore, to remove avoidable retail costs from consideration. AT&T argued that Verizon had not gone far enough in that direction and that, among other things, it should have excluded Universal Service Fund (USF) contributions, which are assessed on the basis of retail end-user revenues and accordingly would not be incurred in a wholesale-only environment. Verizon responded that the hypothetical wholesale-only environment would likely involve changes in the USF and that it was unlikely that Verizon and other ILECs would be relieved of all responsibility for universal service. More fundamentally, Verizon pointed to the Eighth Circuit's rejection of the wholesale-only premise that underlies exclusion of USF expenses, arguing that that aspect of the court's decision had not been stayed pending Supreme Court review and that we therefore were obligated to take it into account.[105]

The Judge adopted Verizon's retail adjustment as a placeholder, noting that AT&T had not addressed itself to the effect of the Eighth Circuit's decision on its USF adjustment and that Verizon had not presented any estimate of how the decision would affect its own figures. He noted as well that the Eighth Circuit's decision on this matter "pertained to resale rates, not UNEs. Extending it to the calculation of excluded retail costs for purposes of UNE pricing may have the benefits of consistency, but the CLEC Alliance [which had raised the issue before the Judge but did not file a brief on exceptions] presents arguments, on which judgement can here be reserved, against doing so."[106] The Judge accordingly invited further consideration of this issue.

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[105] More specifically, the Eighth Circuit determined that the 1996 Act called only for removal of retail "costs that are actually avoided," a lesser amount than the "avoidable" retail costs that the FCC required be removed.

[106] R.D., p. 44, n. 97.

On exceptions, AT&T asserts that the TELRIC standard remains in place pending Supreme Court review of the Eighth Circuit decision and urges us to "simply ignore the most recent Eighth Circuit decision in [our] decision on all issues raised in this docket."[107] It sees no reason to single out retail avoided costs for special treatment, noting, as did the Judge, that the portion of the Eighth Circuit's decision at issue pertained to resale rates, not UNE prices.

Verizon, in contrast, contends it would be irresponsible to ignore the Eighth Circuit decision, which, though directed specifically to resale rates, is equally applicable to UNE pricing. It cites in this regard our statement in Phase 1 that there was no basis for distinguishing between resale rates and UNE prices for purposes of estimating the retail costs to be excluded[108] and that the Eighth Circuit decision accordingly is directly applicable. With specific reference to the Universal Service Fund matter, Verizon argues that the Eighth Circuit decision removes the entire premise for AT&T's adjustment, and it reiterates its argument that even without the Eighth Circuit decision, it would be unreasonable to assume that Verizon would have no USF responsibilities in a wholesale-only environment. Finally, responding to the Judge's invitation, it submits a recalculation of its avoided costs computed in a manner it sees as consistent with the Eighth Circuit decision and estimates that the adjustment would thereby be reduced by approximately $175 million.

In its reply brief on exceptions, AT&T argues that the Eighth Circuit, in a portion of its decision not previously cited in this case, explicitly ruled that Universal Service Fund costs should be excluded from the costs of providing network elements inasmuch as they are not based on actual costs.[109] The

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[107] AT&T's Brief on Exceptions, p. 31.

[108] Phase 1 Opinion, p. 96. It is noteworthy that in Phase 1, Verizon advocated a distinction here while AT&T opposed it.

[109] AT&T's Reply Brief on Exceptions, p. 84, citing Iowa Utilities Board v. FCC, 219 F. 3rd 744, 753.

Eighth Circuit accordingly did not remove the basis for AT&T's adjustment, as Verizon suggests; rather, says AT&T, it affirmed it. Verizon asks, in its post-briefing motion, that this portion of AT&T's reply brief be disregarded, inasmuch as AT&T had not raised the argument in its initial brief, where it contended only that the Eighth Circuit decision was irrelevant here. Should we deny that request, Verizon would respond that the Eighth Circuit was dealing with above-cost contributions to the USF, which Verizon agrees should not be recovered in rates and which it has not sought to recover. The point here, it says, is whether they should be again be removed in calculating retail avoided costs. Finally, AT&T objects as well to Verizon's recalculation of avoided costs, characterizing it as a "completely extra-record improper submission of what purports to be a recalculation of Verizon's entire avoided cost study."[110] It urges that the recalculation be disregarded. Verizon responds that the recalculation was requested by the Judge.

Turning first to the procedural issue, AT&T's argument with respect to the Eighth Circuit's treatment of the USF should have been raised on exceptions, in response to the Judge's request to brief the issue. But in the interest of full consideration, we will entertain Verizon's response rather than striking the passage in AT&T's brief.

Taking account of all the arguments before us, we reject AT&T's USF adjustment as unsupported and unnecessary, if only because Verizon has already removed USF contribution from its calculations. But we also see no need to modify the retail avoided cost adjustment further in light of the Eighth Circuit, inasmuch as the portion of the decision not stayed relates to resale rather than UNEs, and a TELRIC-based decision on UNEs should continue to reflect avoidable, rather than only avoided, retail costs.

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[110] AT&T's Reply Brief on Exceptions, p. 84.

ACF Versus CCF

Verizon's ACF method, in contrast to the CCF mechanism used in the First Elements Proceeding, assigns some costs and expenses not on the basis of investment but on the basis of expenses or revenues. As a result, a portion of the common overhead ACF is assigned to non-recurring charges which, because they entail no investment, would bear no assignment of common overhead under the CCF method. The CLEC Coalition objected to this change, urging continued use of CCFs in order to avoid what it regarded as an unwarranted increase in non-recurring charges. The Judge agreed with Verizon, however, that non-recurring charges should bear a portion of the overhead costs from which they benefit, and he therefore found the ACF method for allocating costs to be reasonable.

The CLEC Coalition excepts, asserting that because common overhead costs are incurred on a recurring basis, they should not be recovered through nonrecurring charges. In addition, it contends that we have required use of CCFs in the context of collocation rates and that the applicable FCC rules require that UNE and collocation rates be calculated on the same basis. It contends further that approval of the ACF method will entail a departure, without adequate explanation, from the UNE pricing method adopted in Phase 1 of the First Proceeding.

In response, Verizon cites testimony that the existence of nonrecurring activities has a direct effect on the level of these expenses.[111] It argues further that the FCC regulations cited by the CLEC Coalition require only that both UNE rates and collocation rates be set on a TELRIC basis and do not require that the TELRIC standard be applied in the same manner to different groups of rates. In any event, Verizon adds, it has been recognized throughout the proceeding that the factors ultimately adopted in this module would apply to collocation rates as well as to UNE rates.

Verizon's response is persuasive, and the exception is denied.

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[111] Tr. 3,313.

Network ACF

The network ACF "includes repair, rearrangement and testing expenses as well as testing equipment capital costs, plus plant account and general network loadings."[112] In calculating the factor, Verizon assumed a reduction in "R dollars," the costs associated with subscriber troubles, on the premise that such troubles would diminish with the placement of newer copper plant. It did not reduce "M dollars," attributable to rearrangements associated with customer moves, municipal requirements, and network upgrades, seeing no basis for assuming that such costs would decline.

The Judge held that Verizon had failed to refute the reasonable expectation that moves and rearrangements would be less costly in a forward-looking system. He cited, in this regard, a statement by Staff in its scoping memorandum prepared early in the proceeding as well as a press release by SBC (another regional Bell operating company) stating that new loop infrastructure "will substantially reduce the need to rearrange outside plant facilities when installing new or additional services."[113] He regarded WorldCom's 50% adjustment to M dollars as unduly high, however, and recommended a 30% adjustment unless parties could show on exceptions that a different figure was warranted.

Verizon excepts, contending that despite Staff's statement in the scoping memo, Verizon's witness had shown in uncontroverted testimony that there was no technology that would permit reductions from historical levels of M dollars. It objects as well to reliance on the SBC press release, arguing that WorldCom had offered no testimony on how it was relevant and that Verizon's witnesses had shown, among other things, that projected savings such as these might not emerge. Verizon regards it as unreasonable to reject the expert testimony of its witnesses in favor of a press release discussing another company's network, insisting there is no record basis to assume

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[112] Verizon's Initial Brief, p. 54.

[113] Exhibit 393 (offered by WorldCom), p. 7.

that SBC's network is consistent with the one contemplated by Verizon's studies. Verizon particularly objects to application of the 30% adjustment to the pole and conduit accounts, which encompass items whose cost will not decline as a result of technological advances.

AT&T responds that Verizon's exception merely reiterates its conclusory testimony, regarded as inadequate by the Judge, that network reconfiguration will continue to be required even in a forward-looking network. According to AT&T, Verizon fails to respond to the Judge's observation that Verizon had not recognized the extent to which those activities might be less costly then they had been in the past. AT&T charges that Verizon's discussion of Exhibit 393 does not address the Judge's fundamental concern that Verizon had not borne its burden of proof, and it notes that Verizon likewise failed to consider whether the 30% adjustment recommended by the Judge should be replaced by some other number, insisting only that no adjustment at all would be proper. AT&T specifically disputes, as lacking any record basis, Verizon's proposal to treat poles and conduits differently.

Possible differences between SBC's network and Verizon's might well preclude reliance on SBC's experience for purposes of estimating the amount of an adjustment, but the Judge did not use the SBC statement for that purpose. Rather, he saw it as confirming the reasonable inference, already reflected in the Staff scoping memorandum, that even though forward-looking technology would not obviate network reconfiguration, it would reduce its cost. Despite its burden of proof, Verizon's effort to refute that premise pertained to the continued need for reconfiguration, which the Judge acknowledged, but not to its cost; and the Judge reasonably found that an adjustment was warranted. He conservatively regarded WorldCom's 50% adjustment as excessive and adopted a 30% figure instead, and Verizon's exception, limited to the adjustment in principle, offers no basis for any other number. Verizon does, however, provide a qualitatively persuasive basis for not applying the adjustment to pole and conduit accounts,

where there are less likely to be technological advances that reduce costs. Verizon's exception is granted to the extent that the adjustment will not be applied to poles and conduits; it is otherwise denied.

In a separate matter under this heading, WorldCom contended that the Network ACF was overstated because of a diminution in the adjustment--the copper repair adjustment factor (CRAF)--designed to eliminate recovery of expenses associated with repairing deteriorated copper plant. In the First Proceeding, the "deteriorated copper repair reduction," an important portion of the CRAF, had been set at 60%; Verizon here proposed to lower it to 35%, thereby reducing the overall CRAF from 42% to 25%. The 35% deteriorated copper repair reduction results from averaging the 60% used in the First Proceeding on the basis of a 1996 study with a new estimate of 10%. WorldCom charged the new figure lacked evidentiary support and was simply an unexplained estimate; Verizon argued that its reduction to the CRAF reflected the notion that newer plant already in good condition was less likely to experience large trouble rate improvements in the future. The Judge found that argument to make sense in concept, but he regarded Verizon's 10% estimate to be inadequately supported. Verizon had associated that figure with units that would be experiencing excellent service, and the Judge saw no basis for assuming that all equipment would have as small an improvement as the best units. In the absence of a better estimate, and in view of Verizon's burden of proof, he substituted a 25% estimate for Verizon's 10% and averaged that 25% figure with the 60% of the First Proceeding.

Verizon excepts, arguing that no party had offered testimony challenging its 10% figure and that cross-examination of its witness, who had directly pertinent expertise, reinforced its reasonableness.[114] It denies it failed to meet its burden of proof, arguing that if the 25% figure used by the Judge had been submitted in responsive testimony, Verizon could have offered rebuttal. It recognizes that its 10% figure is based on part on

[114] Tr. 5,272-5,287.

judgment, but it argues that the judgment "reflects the expert opinion of a witness with years of relevant experience who was willing to face cross-examination to test the reasonableness of the exercise of his judgement," and that there is nothing in the record to challenge that judgment.[115]

In response, AT&T maintains the record provides a basis for questioning the 10% figure and contends that evidence and argument submitted by several CLECs and cited by the Judge support the Judge's conclusion.[116] It asserts that Verizon's effort to pretend the evidence is not there does not make the evidence disappear, and that the weight to be assigned to the evidence is a matter to be determined by the Judge and, ultimately, by us.

The record on this issue is not so conclusive as either side would have it. The pages of the recommended decision referred to in AT&T's reply brief on exceptions relate in large part to matters other than the specific CRAF adjustment; but the pages of the transcript cited by Verizon do not sustain its 10% figure against the criticism that a number associated with the best performing equipment should not be universally imputed. The Judge reasonably took account of that unrefuted concern in making a conservative adjustment to Verizon's figure, and Verizon's exception is denied.

Wholesale Marketing ACF

The wholesale marketing ACF captures the expenses of "advertising, product management, and customer interfacing functions."[117] Verizon claimed to be seeking recovery here only of the costs that would be incurred in a wholesale market, but nevertheless included certain advertising expenses. Several CLECs objected, contending that there would be no need to advertise the availability of UNEs at wholesale and that

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[115] Verizon's Brief on Exceptions, p. 69.

[116] AT&T's Reply Brief on Exceptions, pp. 78-80, citing R.D., pp. 46-48.

[117] Verizon's Initial Brief, p. 59.

allowing advertising expense would require CLECs to pay twice for advertising--once to Verizon and once through their own advertising channels. The Judge disallowed 85% of the claimed advertising expense, noting that we had disallowed 90% in the First Elements Proceeding but that evidence on this record suggested that some wholesale advertising was now under way and warranted a reduction in the disallowance.

Verizon excepts, contending, as already discussed, that the Eighth Circuit decision precludes assuming a wholesale-only environment. In a mixed wholesale/retail TELRIC environment, Verizon continues, it would be doing the same sort of advertising it does today and, accordingly, no disallowance should be applied. Beyond that, Verizon reiterates its arguments that even in a wholesale-only environment, it would engage in market stimulation advertising, brand awareness advertising, and advertising to the CLECs themselves.

AT&T responds that Verizon is merely reiterating the arguments on advertising that the Judge found unpersuasive. It sees no record basis for Verizon's claim that as a retail/wholesale provider in a TELRIC environment it would be doing the same sort of advertising it does today. (AT&T's more general arguments on the wholesale-only issue have already been noted.)

As already explained, the Eighth Circuit's decision with respect to resale rates, though not stayed, does not require changing the assumptions applicable to UNEs. Verizon has shown no basis for departing in principle from the decision we made in the First Proceeding, and the Judge adequately tempered that result by reducing the amount of the disallowance in on the basis of evidence presented here. Verizon's exception is denied.

Common Overhead ACF

"The common overhead ACF reflects common overhead expense, SPE or equivalent expenses[,] and savings from the Bell Atlantic/NYNEX Merger."[118] Exceptions are raised with regard to all three components.

1. Common Overhead Expenses

Common overhead expenses are those associated with activities, previously designated as general and administration (G&A) functions, including executive, planning, general accounting and finance, external relations, legal, and human relations. The recommended decision disallowed certain expenses related to Y2K concerns, rejecting as unproven Verizon's argument that the incurrence of those costs merely served to defer other costs and that no disallowance accordingly was warranted.

Verizon excepts, contending that the only relevant evidence was offered by its witness, who had day-to-day familiarity with the pertinent budgets and testified that the Y2K costs only deferred the incurrence of others. AT&T responds that the Judge properly found that Verizon failed to prove its case, inasmuch as Verizon had "offered no analysis or quantification to support its witness's creative assertion" and that "the fact that Verizon's witness asserted a proposition does not mean that the finder of facts has no choice but to accept that proposition."[119]

Verizon's argument on exceptions simply refers to its witness's testimony, which the Judge found inadequate. Y2K costs are inherently a one-time event, and Verizon has not disproven the reasonable premise that they should be disallowed as such. Its exception is denied.

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[118] Verizon's Initial Brief, p. 63.

[119] AT&T's Reply Brief on Exceptions, p. 69

2. Special Pension Enhancement Expense

Special Pension Enhancement expenses are those associated with Verizon's offering of enhanced retirement benefits in order to reduce its workforce. In Phase 3 of the First Proceeding, we denied Verizon's request to recover some $387 million of such costs. We cited procedural grounds, related to the timeliness of the claim, and substantive grounds, including, among other things, the need to recognize possible offsetting savings. We nevertheless authorized renewed consideration of the issue in this proceeding, albeit it on a prospective basis only; and we added, in response to AT&T's request for rehearing, that Verizon bears the burden of showing any allowance to be procedurally and substantively proper.[120] In the present proceeding, Verizon seeks to recover some $400 million of SPE, a figure based on the average of 1998-1999 SPE expenses, adjusted to remove avoidable retail costs. It contends, in essence, that the productivity reflected in its cost studies can be achieved only if it continues to restructure its workforce in a manner requiring the expenditure of SPE costs.

Various CLECs argued, among other things, that these costs are incurred to overcome the effects of past inefficiencies, that they would not be incurred by an efficient forward-looking company, and that allowing them would contravene TELRIC. The Judge agreed with Verizon that early retirement incentive costs could be incurred in a TELRIC environment and held that the costs to be allowed here, if any, "should reflect the normal level of costs that Verizon could be expected to incur in that environment."[121] He found, however, that Verizon had not borne its burden of proving that its claimed $400 million of costs would be incurred in a forward-looking environment; that there was no basis on the record for

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[120] Phase 3 Opinion, pp. 21-22; Phase 3 Rehearing Opinion, pp. 6-7. A full discussion of the issue's background appears in the Phase 3 Recommended Decision (issued October 2, 1998), pp. 18-20.

[121] R.D., p. 59.

identifying some lower amount; and that recovery of SPE expenses should again be disallowed. In reaching that conclusion, he cited evidence[122] that there had been considerable variation in annual SPE costs between 1994 and 1999, calling into question Verizon's reliance, in forming its estimate, on the costs incurred in 1998 and 1999, the second and third highest of the six years. He noted as well that the six years encompass two mergers, which could be expected to involve unusual levels of early retirement, and the transition from monopoly to competition, which could also be expected to involve an unusual degree of workforce reduction. Finally, he noted again that allowance of the FLC adjustment requires special diligence to be sure that all forward-looking expense reductions are properly reflected.[123]

Verizon excepts, disputing the premise that these are transitional costs incurred to move to a properly sized workforce and asserting that such costs are incurred by all businesses needing to restructure or refocus their workforces in a manner that may involve reductions in some areas and increases in others. It notes that its workforce overall was not substantially reduced between 1995 and 1999 and that nonmanagement workforce actually grew in order to meet the company's service related commitments. More specifically, it notes that one of the two mergers referred to by the Judge was not completed until 2000, after the period analyzed, and that AT&T itself, a company that has not experienced major mergers and not been subject to rate of return regulation, has also incurred SPE costs in recent years.[124] Finally, Verizon contends that to recognize an assumed level of productivity and merger savings without allowing the costs that must be incurred to realize those savings "is analogous to adopting rates that

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[122] Exhibit 410,CC-VZ-154 (revised supplemental response).

[123] R.D., pp. 59-60.

[124] Tr. 3,058.

reflect cost savings from a change in technology, while ignoring the costs of developing that technology."[125]

In response, AT&T reviews the history of the issue and supports the Judge's rejection of what it characterizes as Verizon's "by now threadbare arguments."[126] It contends that Verizon has failed to demonstrate why it will continue to need workforce refocusing in the future and why its 1994-1999 experience provides a reliable basis for projecting the future. It notes that the 1994-1999 period included movement from cost-of-service regulation to incentive regulation, substantial corporate restructuring (including a significant merger), and the transition to dealing with at least limited competition. The CLEC Coalition likewise objects to any allowance, noting, among other things, Verizon's failure of proof.

Verizon's exception, like its argument to the Judge, makes a good case for the proposition that SPE costs should not be viewed entirely as a transitional matter and that they are likely to be incurred in some amount on an on-going basis. But the exception, again like the argument to the Judge, fails to provide any basis for estimating that on-going cost. The historical years studied by the company involved major changes in its operations and organization, and even if, as Verizon argues, its overall workforce did not decline, there is certainly reason to assume an atypically high degree of "refocusing."

As the party with the burden of proof, Verizon should have done more to parse its historical experience into its normal and non-normal components; and its failure to do so, together with the need, already noted, to review these expenses rigorously because of our approval of the FLC, could justify continued total disallowance of the item, as the Judge recommends. But burden of proof, for all its importance, is ultimately a device to be used for the purpose of setting of just and reasonable rates, and to disallow all SPE costs here on

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[125] Verizon's Brief on Exceptions, p. 65.

[126] AT&T's Reply Brief on Exceptions, p. 70.

burden of proof grounds would be to reach a result that was procedurally justified but substantively wrong. In the absence of a better estimate, we will allow $60 million of SPE costs, representing 75% of a five-year average of those costs in the early 1990s, before the advent of the mergers and competitive markets that tend to increase these expenses.[127] In doing so, we recognize the qualitative reality that these costs will not disappear in a TELRIC environment, but we keep the allowed amount properly low in view of Verizon's failure to prove a higher amount warranted.

3. Merger Savings

Verizon reflected, in its common overhead ACF, the savings associated with the NYNEX/Bell Atlantic merger but contended that the further savings associated with the Bell Atlantic/GTE merger could not yet be estimated. The Judge saw no doubt that an estimate of savings associated with the Bell Atlantic/GTE merger should be reflected, and he instructed Verizon to include an estimate of those savings in its Brief on Exceptions, which would follow the date for Verizon's submission on the matter in Case 00-C-1945, where the savings are being addressed. He invited all parties to comment on how to reflect those savings, inasmuch as rates would likely be set here before the conclusion of Case 00-C-1945.

AT&T urges recognition here at a minimum of the estimated savings submitted by Verizon in Case 00-C-1945, suggesting that the amount ultimately calculated in that case will likely exceed Verizon's estimate and that reflecting that minimum amount in UNE rates should not await the outcome of the separate proceeding. It would provide for further adjustment in UNE rates when Case 00-C-1945 is completed. In its reply brief on exceptions, AT&T questions two aspects of Verizon's estimate of the merger savings--its offsetting of projected 2003 merger savings by removing projected savings for 2001 and its removal of procurement expense savings and sales and marketing savings.

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[127] See Resale Opinion, p. 59.

Verizon objects to any separate recognition of the Bell Atlantic/GTE merger savings, contending that their achievement is already reflected in its productivity adjustment, which the recommended decision has already increased. It insists that "realizing cost savings from mergers is one of the primary ways that companies can increase their productivity."[128] The CLEC Coalition responds that Verizon's productivity data predate the Bell Atlantic/GTE merger and that separate adjustments would not overlap.

We agree with the Judge that savings associated with the Bell Atlantic/GTE merger should be reflected here, and there is no basis for finding that they are already subsumed in Verizon's productivity adjustment.[129] Verizon's estimate of those savings (and its estimate of savings attributable to the NYNEX/Bell Atlantic merger) are being examined in Case 00-C-1945, and we should not here prejudge the outcome of that case. Accordingly, we adopt Verizon's savings estimates as placeholders and will set UNE rates on that basis; those rates should be adjusted prospectively at the conclusion of Case 00-C-1945 to reflect its results.

Depreciation ACF

In Phase 1 of the First Proceeding, we determined that the depreciation lives to be used in estimating UNE costs should be those set for Verizon consistent with the FCC's triennial represcription process; in so doing, we rejected Verizon's request to use shorter depreciation lives (and consequently higher expense) based on generally accepted accounting principles (GAAP). Consistent with that determination, Staff stated, as part of its effort early on to assist the parties in setting the scope of this proceeding, that

> the Commission decided in [the First Elements Proceeding] that TELRIC depreciation rates should be based on depreciation lives used in calculating

[128] Verizon's Reply Brief on Exceptions, p. 40.

[129] As noted above, we are granting Verizon's exception with respect to the amount of the general productivity adjustment.

> booked depreciation on a regulatory basis. If the service lives for [Verizon's] plant changed since rates were set in [the First Proceeding], the new service lives and depreciation rates should be used in developing TELRIC element costs.[130]

Claiming consistency with that precedent and guidance, Verizon proposed use of the depreciation lives we adopted for regulatory purposes effective January 1, 1998. The Judge, however, agreed with AT&T that rates should continue to be set on the basis of the longer service lives set by the FCC in 1995 and used in the First Proceeding. He found that the service lives we adopted in 1998 had been set pursuant to Verizon's Performance Regulatory Plan (PRP) and did not embody changes of the sort to be taken into account pursuant to Staff's August 1999 memo. He noted that Staff had expressed important reservations about those service lives, which Staff said it had reviewed only with respect to the benchmark established in the PRP; a full study conducted without the PRP's constraints might well have produced a different result. The Judge added that the 1998 changes predated Staff's August 1999 memo and that Staff, had it contemplated use of the 1998 changes here, could have said so. He regarded these considerations as outweighing Verizon's unsubstantiated concern that the 1995 depreciation rates had become stale.

On exceptions, Verizon contends that Staff was aware, when it stated in its memo that changed depreciation rates should be used in developing TELRIC costs, that the only mechanism for change was the one provided for in the PRP, and that Staff had determined, in the letter cited by the Judge, that the revised depreciation rates were consistent with the PRP guidelines. It suggests that Staff's reference to the different results that might be reached through a complete depreciation study was simply a "general reservation of differences, [providing] no basis for rejecting the use of regulated

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[130] Staff memorandum dated August 11, 1999, quoted at Tr. 3,360 and in Verizon's Initial Brief, p. 69.

depreciation rates,"[131] and that no testimony had been offered, by Staff or anyone else, as to the specific concerns Staff was referring to. In contrast, it adds, Verizon offered a witness prepared to testify on its depreciation ACF.

In response, AT&T dismisses Verizon's exceptions as cursory and unresponsive to the Judge's reasoning. It renews its claim (on which the Judge did not rely) that its own depreciation witness was better qualified to testify on the subject than Verizon's witness.

In agreeing with AT&T that the 1995 depreciation lives should be used, the Judge overstated the significance for this proceeding of Staff's reservations about the 1998 lives. Service lives for Verizon's plant have, in fact, been changed since the First Elements Proceeding, and the fact that those changes were made in the manner contemplated by the PRP--something Staff would certainly have recognized when it provided the guidance in its scoping memo for this proceeding--is no reason to reject the use of those lives here. And though the special circumstances of the 1998 lives preclude reliance on them as precedent in any post-PRP consideration of depreciation, those shorter lives may well be appropriate for a TELRIC study, in that they better reflect the treatment of depreciation in the competitive market contemplated by TELRIC. Accordingly, Verizon's exception is granted.[132]

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[131] Verizon's Brief on Exceptions, p. 73.

[132] Verizon also asserts that the Staff calculations accompanying the recommended decision erroneously fail in some instances to use the recommended depreciation rates. There is no need, however, for any adjustment on that account. The depreciation ACFs calculated by Staff in fact differ in some instances from the Phase 1 depreciation CCFs, but that is not the result of a failure to use the proper depreciation rates. The difference results simply from insertion of the recommended service lives and salvage factors into Verizon's study for this proceeding, rather than its Phase 1 study.

COST OF CAPITAL

Introduction

Cost of capital presentations were made by Verizon and by AT&T jointly with WorldCom. Verizon proposed a figure of 12.6%, which it regarded as conservative in light of its study's conclusion that a forward-looking weighted average cost of capital related to the supplying of UNEs would be in the range of 13.03% to 13.38%. AT&T/WorldCom estimated the weighted average cost of capital to be in the range of 9.17% to 9.91%.

The parties differed little in their estimates of the cost of debt but disagreed sharply on cost of equity and capital structure. The differences reflected in part Verizon's view that it should be seen as a fully competitive enterprise subject to all the associated risks and entitled to a correspondingly higher return on investment and AT&T/WorldCom's contrary view that an incumbent local exchange company (and supplier of UNEs) remains an inherently less risky operation.

Verizon's witness calculated a cost of equity of 14.78%, based on a discounted cash flow (DCF) analysis of a proxy group comprising the companies included in the Standard and Poors (S&P) Industrials, and a debt cost of 7.77%. Verizon contemplated a debt/equity ratio in the range of 25%/75% to 20%/80%; the former implied an overall capital cost of 13.03%, while the latter implied 13.38%. In its studies, it used a figure of 12.6%, equal to the figure it uses in its own business decisions[133]; in light of its witness's calculations, it regarded that figure as conservative.

AT&T/WorldCom's witness calculated an equity cost of 10.42%, averaging the results of a DCF analysis of a proxy group comprising the regional Bell holding companies and the larger independent telephone companies (10.24%) and a capital asset pricing model(CAPM) analysis (10.6%). AT&T/WorldCom envisioned a capital structure ranging from 54% debt/46% equity to 20% debt/80% equity, implying an overall cost of capital (assuming a

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[133] Verizon's Reply Brief, p. 63.

debt cost of 7.86%) ranging from 9.17% to 9.91%; the midpoint of that range is 9.54%.[134]

In the First Proceeding, we adopted a weighted average overall cost of capital of 10.2%, reflecting a cost of equity of 12.1% and a debt/equity ratio of 40%/60%.[135] Relying in large part on our analysis in the First Proceeding, the Judge recommends an overall cost of capital of 10.5%, comprising a cost of equity of 12.19%, a cost of debt of 7.39%, and a debt/equity ratio of 35%/65%. Verizon and AT&T except, the former challenging several aspects of the Judge's analysis and the latter contending that the Judge's figure is at the high end of the range of reasonableness and that proper application of his own analysis would have produced a substantially lower number.

The Recommended Decision

Noting the continued pertinence of our discussion of the issue in the Phase 1 opinion,[136] the Judge first determined that AT&T's proxy group again reflected Verizon's risk profile better than did Verizon's proxy group, and he recommended its use. He reasoned that just as TELRIC should not be understood to contemplate "a fantasy network" that makes use of speculative technology, so, too, should it not "be taken to require basing the cost of capital on a 'fantasy marketplace,' in which the provision of local telephone service is as competitive as the sale of detergent."[137] While such a market is the goal, it has not yet been achieved with respect to local service and appears even more remote with respect to UNEs. To recognize the movement that has been achieved, however, he recommended use of

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[134] Tr. 2,292, reflecting the updated estimates in rebuttal testimony, as slightly increased in a letter to the Judge from AT&T's counsel dated January 31, 2001.

[135] Phase 1 Opinion, p. 40.

[136] Phase 1 Opinion, pp. 38-39.

[137] R.D., pp. 76-77.

a capital structure of 35% debt/65% equity, rather than the 40%/60% structure we contemplated in Phase 1.

Next, again relying on the Phase 1 precedent, the Judge rejected Verizon's renewed request to recognize quarterly dividends and flotation costs in calculating the cost of capital. In Phase 1, we rejected those measures as "unnecessary and contrary to precedent," and the Judge saw no need to modify that result here.

Finally, the Judge noted that in the Phase 1 Opinion we rejected AT&T's proposal to use a multistage DCF model rather than the single-stage model advocated by Verizon, that AT&T's arguments in the present case resembled in many ways those in Phase 1, and that there continued to be no basis for rejecting the single-growth model and adopting a three-growth model as a matter of principle or theory.[138] He went on to suggest, however, that the unusual circumstances that had led us to use a multistage DCF model in a limited number of cases appeared to exist here as well and warranted some adjustment to the result produced by the single-stage DCF analysis. He considered a range of options, found their results to vary widely, and ultimately concluded that the best course of action was to calculate a cost of equity by applying, to the current cost of debt, the equity risk premium[139] that emerged in Phase 1. That risk premium came to 4.8 percentage points; applying it to the debt cost here of 7.39% produced a cost of equity of 12.19%, which the Judge found to be well within the range supportable by the record as a whole. Because Verizon challenges various aspects of the Judge's analysis, it is here set forth in full:

> Using the AT&T proxy group with updated data would suggest, under a one-growth DCF model, a return on equity of 14.77%--almost the same as the return Verizon calculated on the basis of its own proxy group. The

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[138] R.D., p. 78.

[139] That is, the difference between the cost of debt and the cost of equity, reflecting the greater risk associated with equity.

figure comprises a dividend yield of 2.45% (measured as of March 30, 2001) and a growth rate of 12.32% (based on I/B/E/S growth rate as of March 15, 2001). Several factors suggest that result is unreliable and out-of-line, incorporating a growth rate that will not be sustained.

For one thing, the equity return calculated in the First Proceeding, 12.1%, exceeded the cost of debt calculated there (7.3%) by 4.8 percentage points. The present cost of debt (measured, as in Phase 1, as the average of Moody's composite rate for Aa rated debt and S&P's composite rate for A rated debt as of April 3, 2001) is 7.39%, and a 14.77 equity cost would exceed that figure by 7.38 percentage points. There is no explanation for so substantial an increase in equity risk premium, and it calls the calculated equity return seriously into question. Beyond that, there are several factors that could account for an extraordinarily high growth factor in the short run, among them the growth of wireless and data/internet and international services. These are unlikely to continue to sustain the growth factor in this way, and some remedial adjustment seems warranted.

Several alternatives present themselves. A three-growth DCF, applied to the AT&T proxy group, using the I/B/E/S growth rates for the first five years, an average of that growth rate and AT&T's alleged sustainable growth rate (6.29%) for the ensuing 15 years, and the sustainable growth rate thereafter produces an average equity cost of 10.30%. A two-stage analysis, using the sustainable rate after the first five years, produces an average cost of 9.26%. These figures appear unduly low, particularly when compared to a broadbased average calculated in the Merrill Lynch Quantitative Profiles analysis, using a three-stage growth model. The April 2001 edition of that document calculated a DCF return of 11.2% for both the S&P 500 and for a group of 29 telecommunications companies.

In view of these widely divergent estimates and the ongoing major changes in the industry that may account for them, it seems to me that a fair and conservative result can be obtained by applying to the current cost of debt the same equity risk

> premium that emerged in the First Proceeding. The cost of debt, as noted, is now 7.39%, and the equity risk premium in the First Proceeding was 4.8 percentage points. That suggests a cost of equity in this proceeding of 12.19%, a figure well within the range supportable by the record as a whole. The resulting overall cost of capital, using a debt/equity ratio of 35%/65%, comes to 10.5%.[140]

Exceptions

1. Verizon

Verizon contends the recommended cost of capital is unreasonably low, failing to reflect its risk in offering UNEs. Disputing the Judge's view that it would be wrong to contemplate vibrant competition in the offering of UNEs, it asserts that the FCC's Local Competition Order provides for UNE rates to approximate those that would be charged in a competitive market.[141] It argues that the increase in competition since issuance of the Phase 1 opinion and anticipated further increases justify the higher risk premium that troubled the Judge, and it charges that the recommended decision's "treatment of this issue is result-oriented, unbalanced, and ignores the record."[142] According to Verizon, the 14.77% cost of equity that resulted from application of a one-growth model to AT&T's proxy group was consistent with the results of its own witness's analyses, and the Judge's rejection of that result because of its high implicit risk premium conflicts with the requirement of the Local Competition Order that rates be set to simulate those that would prevail in a competitive market. Verizon alleges as well that the recommended decision fails to recognize risk factors other than competition such as operating leverage, the pace of technological change, and the regulatory environment. It stresses the last in particular, pointing to regulation's

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[140] R.D., pp. 79-80.

[141] Verizon's Brief on Exceptions, p. 74, citing Local Competition Order, ¶¶635, 679, and 738.

[142] Verizon's Brief on Exceptions, p. 75.

imposition of large and thus far unrecovered investment in operational support systems and to the TELRIC construct, which requires rates well below actual costs.

Verizon disputes as well the Judge's treatment of capital structure, noting that it reflects only a relatively minor adjustment to the capital structure per Verizon's books, even though the Local Competition Order requires use of a market value capital structure which, according to Verizon, would contain more than 80% equity. It sees no basis for rejecting its witness's cost of capital analyses, some of which did not rely exclusively upon the S&P Industrials with their associated risk. It suggests several alternative figures to show the extent to which the Judge's 10.5% cost of capital is understated: using the recommended decision's proxy group and 11.8% cost of equity together with a 20%/80% debt/equity ratio produces a cost of capital of 11.23%; using Verizon's recommended capital structure and the 14.77% cost of equity that results from the recommended decision's single-stage DCF analysis produces a cost of capital of 13.3%; and using the recommended decision's capital structure with the 14.77% cost of equity produces a cost of capital of 12.20%.[143]

Finally, Verizon notes that the cost of capital used by AT&T in making its investment decisions is 15.31%, and that the 12.6% reflected in Verizon's studies is equal to the figure Verizon has used in making its own investment decisions.[144] Noting once again that its witness's analyses called for a cost of capital of 13.03% to 13.38%, Verizon reiterates its view that 12.6% would be a conservative estimate of the true cost.

AT&T disputes Verizon's criticisms of the recommended decision, noting that Verizon failed to mention the Merrill Lynch analysis that produced a cost of equity substantially lower than that recommended by Verizon's witness. More specifically, it charges that Verizon's claim of vibrant competition is unsupported by the record and cites our

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[143] Verizon's Brief on Exceptions, pp. 78-79.

[144] Id., p. 79, citing Tr. 2,892.

statement, in a recent opinion, that Verizon continued to dominate the special services market; it contends the same can be said with respect to the provision of UNEs.[145]

AT&T characterizes as "the most peculiar aspect of Verizon's argument" its discussion of regulatory environment, contending that Verizon "may not be awarded a higher cost of capital because it has failed to present a credible case for recovery of its alleged OSS development costs or because it would prefer to base UNE rates on its historical rather than its forward-looking costs."[146] Among other specific points, AT&T contends that the internal cost of capital rates that it used for its own planning purposes are of no relevance here. Referring to its own exception, next discussed, it contends that the Judge's recommendation is at the high end of the range of reason and should be reduced by at least 100 basis points.

2. AT&T

AT&T contends that the Judge failed to follow through on his conclusions, and that a proper application of his analysis would result in a weighted average cost of capital no higher than 9.19%.[147] It endorses the Judge's conclusions with regard to the state of competition in the UNE markets, the consequent propriety of using the proxy group advanced by AT&T, and the need to depart here from the single-growth model. It goes on to cite the great importance in the calculation, as evidenced from the Judge's figures, of the choice between a single-stage and multi-stage model and to agree that the single-stage growth figure would be unsustainable. Turning to the Merrill Lynch analysis cited by the Judge, which calculates a

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[145] AT&T's Reply Brief on Exceptions, p. 92, n. 42, citing Cases 00-C-2051 et al., Verizon New York, Inc. - Special Services, Opinion No. 01-1 (issued June 15, 2001).

[146] AT&T's Reply Brief on Exceptions, pp. 93-94.

[147] Verizon points out in response that the 9.19% figure appears to be an arithmetic error and should be 9.9%, given AT&T's statement that it represents the sum of 2.6% and 7.3%. (Verizon's Reply Brief on Exceptions, p. 41.)

DCF return of 11.2% for both the S&P 500 and a group of 29 communications companies, it contends that both of those groups are riskier on average than Verizon's UNE line of business. It therefore regards the study's 11.2% figure as a ceiling and excepts to the Judge's recommendation of a 12.19% cost of equity on the basis of his risk premium calculation. It urges reduction of the cost of equity to 11.2% and a resulting overall weighted average cost of capital of 9.19%.

Verizon responds that AT&T proposal here is unsupported by record evidence and is below the 9.54% cost of capital urged by its own witness. It disputes as well AT&T's claim that its figure is compelled by the Judge's reasoning, noting that the Judge relied on the Merrill Lynch analysis only as a basis for assessing the reasonableness of a multi-stage DCF. The analysis itself is not part of the record and played no role in the Judge's calculation of the recommended cost of capital. It argues again that its own 12.6% cost of capital is a conservative figure worthy of being adopted.

Discussion and Conclusion

The Judge for the most part followed the precedents we set in Phase 1, departing from them only when it appeared that the one-growth model produced an unreliable result incorporating an unsustainable growth and that the alternatives seemed no more reasonable. In view of the circumstances that appeared to account for the widely divergent results, he resorted to what amounts, essentially, to an update of the result we reached in Phase 1.

AT&T's exception provides no basis for reducing the result reached by the Judge in order to capture the "logical conclusion"[148] of his analysis; it simply calls for using some of the factors he took into account in a manner that suggests, through the application of AT&T's own judgment, a different figure. We are unpersuaded by that judgment, and AT&T's exception is denied.

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[148] AT&T's Brief on Exceptions, p. 18.

Verizon's exception, meanwhile, amounts in essence to an argument that the Judge failed to take adequate account of the competitive risks that it faces in offering UNEs. But that, too, is a matter of judgment; and we are satisfied that the Judge's analysis accounts adequately for those risks, particularly given our decision (discussed above) to use shorter depreciation lives and thereby mitigate Verizon's risk as well as Verizon's right to petition for increased UNE rates in the future in the event it believes it can justify such action. All told, an equity risk premium of 4.8 percentage points reasonably recognizes the risks at hand.

Applying that risk premium to an updated cost of debt (as of January 3, 2002) of 7.33% suggests a return on equity of 12.13% and an overall return of 10.5%, as shown in the following table:

	PERCENTAGE	COST	WEIGHTED COST
Debt	35%	7.33%	2.6%
Equity	65%	12.13%	7.9%
Total	100%		10.5%

LOOP COSTS

Introduction and Overall Method

Verizon studied the costs of providing unbundled access to two- and four-wire analog loops and two- and four-wire

digital loops.[149] Its cost studies claim to assume a fully forward-looking design based on next-generation digital loop carrier (DLC) technology, supported by fiber optic feeder cable, even though DLC is nowhere near universal deployment. Among other things, DLC provides for the conversion of analog signals into digital format in a remote terminal (RT) located in the outside plant, allowing for the direct delivery of digital line signals to digital line switch ports. Verizon maintains this configuration is always less costly than one that terminates an analog signal at the switch, assuming costs are analyzed by taking account of the loop/switch combination as a whole rather than of the loop alone. According to Verizon, "comparing loop costs, without reference to switching costs, is a fallacy that undermines most CLEC analysis of the relative costs of all-copper loops and fiber-fed DLC-equipped loops at short lengths."[150] Verizon cites in this regard our endorsement, in the First Elements Proceeding, of a 100% fiber feeder/DLC configuration, and it continues to regard that premise as consistent with TELRIC.

Verizon's loop architecture also assumes the use of forward-looking GR-303 technology, which, among other things, permits a smaller number of switch ports to serve a given number

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[149] According to Verizon, "a two-wire analog loop is a transmission circuit consisting of two wires that is used to both send and receive voice conversation in the 300-3000 Hz frequency range. This is the basic loop type used for providing voice-grade 'POTS' ["plain old telephone service"] service. A four-wire analog loop consists of two pairs, one to transmit and one to receive. It is used in certain private line and data service applications. A two-wire digital loop is a two-wire loop suitable for the transmission of certain high-speed data services. In particular, Verizon's two-wire digital ('premium') loop can be used to provide ISDN - Basic Rate interface ('BRI') service to an end-user customer. A four-wire digital loop will support DS1-level transmission. It can be used, among other things, to provide ISDN - Primary Rate Interface ('PRI') service to an end-user customer. (Tr. 2,421-22.)" Verizon's Initial Brief, pp. 108-109, n. 247.

[150] Id., p. 112.

of POTS loops.[151] Nevertheless, Verizon's studies consider not only the "integrated" DS1-level GR-303 interface but also a more costly DS0-level "universal" (non-GR-303) interface. This use of universal DLC (ULDC) interfaces rather than integrated DLC (IDLC) is controversial and is discussed below.

Along with the foregoing technology assumptions, Verizon's study posited use of existing outside plant routes and lengths, on the premise that they are driven by factors, such as geography and local land-use requirements, that will not change in a forward-looking environment. To determine the equipment that would be deployed along those routes, it randomly selected 55 wire centers (representing all three of its proposed density zones) and asked its outside plant engineers to develop a forward-looking design for each of the 242 feeder routes within those wire centers. It explained that "the engineers were asked to assume current customer and central office locations, and current routing of feeder cable, but otherwise to develop designs that were in no way constrained by the current, 'embedded' deployment of facilities. In this way, Verizon insured that the loop design underlying its studies would be fully forward-looking."[152] In determining the quantities of equipment to be deployed, Verizon made assumptions regarding utilization factors, and it applied what came to be called an "environmental factor," said to take account of zone-specific

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[151] The initially analog signal appears at the switch port as a DS0 digital channel (a voice-grade digital channel, i.e., a digital channel of the lowest capacity), having been converted to that format at the remote terminal. There is, however, no DS0-level loop/switch interface, and DS0s are grouped as a 24-channel DS1 for interconnection. The GR-303 interface group comprises up to 28 DS1 channel groups interconnecting a remote terminal and a switch, and it obviates a one-to-one association of switch ports and loops by taking advantage of the fact that only some customers will be requesting service at any given time and establishing a connection between a DS0 channel and a loop only when the customer picks up the phone. That phenomenon is referred to as "concentration." (Verizon's Initial Brief, p. 115.)

[152] Verizon's Initial Brief, pp. 118-119.

differences in the amount of work required to install outside plant. Finally, it developed a "link cost calculator" that costs out the facilities designed by the outside plant engineers.

Verizon studies were subjected to a variety of criticisms, some of which continue to be raised on exceptions. As in the recommended decision, issues related specifically to digital subscriber loops (DSL) are discussed in a separate section.

Network Design and Loop Configuration

A major source of controversy in the First Elements Proceeding was Verizon's assumption of 100% fiber optic feeder; other parties argued, in general, that for relatively short loops (various cross-over points were identified) copper feeder would be less expensive, and the Hatfield Model contemplated its use. We ultimately determined to use the 100% fiber feeder network, finding that when installation and maintenance, among other things, were taken into account, fiber offered cost and operational advantages that warranted its use even for relatively short narrow band loops.[153] In the present proceeding, there is general (though not universal) agreement that all-fiber feeder is the technology of choice as long as it is deployed in a manner that maximizes its advantages; but several CLEC parties denied that Verizon had done so.

After reviewing the arguments, the Judge concluded that Verizon had "for the most part, successfully defended its network design."[154] But he applied several adjustments, which are the subject of exceptions by Verizon (for having been made at all) and by WorldCom (for not having gone far enough).[155]

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[153] Phase 1 Opinion, pp. 82-84; Phase 1 Rehearing Opinion, pp. 22-29.

[154] R.D., p. 87.

[155] One network configuration issue--the number of remote terminals per central office terminal--is considered in the context of fill factors.

1. Concentration Ratio

As already suggested, the concentration ratio represents the degree to which the number of loops can exceed the number of ports on the premise that a connection between a port and a loop will be needed only when the customer picks up the phone. WorldCom called for increasing the ratio from the 3:1 proposed by Verizon to as high as 6:1; Verizon contended, among other things, that so high a ratio could result in inadequate port capacity and blocked traffic. The Judge found that Verizon had not borne its burden of proving a 3:1 concentration ratio to be the absolute maximum but that a ratio as high as 6:1 could indeed imperil service and, "to ensure that prices set on the basis of a reasonable, least-cost premise,"[156] he recommended a concentration ratio of 4:1. Verizon and WorldCom except.

Verizon continues to advocate its 3:1 concentration ratio, which it says represents the judgment and experience of its network engineers on the best way to balance the countervailing interests in minimizing port costs per loop through a higher concentration ratio and avoiding the call blocking that would result if a free switch port were unavailable when needed because the ratio was too high. It reiterates its argument that a Verizon document cited by WorldCom in support of a 6:1 ratio did not in fact support that ratio in practice, contends as well that the Judge's recommended 4:1 ratio had no support in the record, and insists that the only relevant data in the record was Verizon's expert's testimony in support of the 3:1 ratio. Verizon adds that the 3:1 ratio is used in an actual network planning guideline and that it has no interest in increasing its own retail costs through an inefficient network design, given that its local exchange rates are capped by its PRP. Verizon warns that we "should be extremely reluctant to endorse potential service-affecting changes in network management guidelines based on

[156] R.D., p. 88.

nothing more than intuition."[157] It suggests as well that a forward-looking construct might require a lower concentration ratio because of longer holding times attributable to internet usage.

WorldCom, meanwhile, continues to urge a 6:1 concentration ratio, contending that it is supported by Verizon's economic and network planning studies. In its view, a 4:1 ratio does not make optimal use of NGDLC technology and therefore does not reflect least-cost network design as required by TELRIC. Verizon responds that WorldCom has offered no basis for challenging the Judge's conclusion that a concentration ratio as high as 6:1 could imperil adequate service, and it reiterates its explanation that the Verizon planning document relied on by WorldCom used the 6:1 ratio only as a strawman in a study conducted before the 3:1 concentration ratio was established as the actual field design guideline. WorldCom's reply, meanwhile, disputes Verizon's claim that no party provided evidence contrary to its 3:1 proposal, asserting that "Verizon is not given license to claim that no contradictory evidence exists simply because it does not like the contradictory evidence with which it was presented."[158] WorldCom characterizes Verizon's concerns about effects on service as a red herring and reiterates its argument that Verizon's concerns about call blockage arise form inefficiencies in the legacy network that would not exist in a forward-looking construct.

In effect, WorldCom's exception continues to claim that the Verizon planning document it cites is something other than what it appears to be, and Verizon's exception ignores the fact that while the planning document cannot be relied on to establish a 6:1 concentration ratio, it constitutes record evidence that a 3:1 ratio is not the only one that could be reasonably considered. In settling on a 4:1 ratio, the Judge reasonably took account of the state of the record as a whole

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[157] Verizon's Brief on Exceptions, p. 28.

[158] WorldCom's Reply Brief on Exceptions, p. 30.

and of the countervailing interests at stake. We adopt that ratio for costing purposes; both exceptions are denied.[159]

2. Integrated v. Universal DLC

Verizon studied two alternative loop/switch interfaces: the integrated DS1-level interface and the universal DS0-level interface. The latter is more expensive, but Verizon maintained its use was dictated in some circumstances by service choices made by the CLEC. Several CLECs disputed that premise.

The Judge credited the CLECs' argument that GR-303 technology should be able to obviate UDLC at least in the near future and that a properly forward-looking TELRIC analysis should take account of that. He noted as well, however, that the capacity may not be available now and that its timing was less than certain. Applying a procedure used in the First Proceeding in analogous situations, he recommended that rates be set now on the basis of UDLC connections in the situations where Verizon proposed to do so, but that they be adjusted downward one year from the date of the recommended decision, to reflect IDLC connections, unless Verizon could show that it would be unreasonable to make that adjustment. Verizon and several CLECs except.

Verizon objects to what it characterizes as a rebuttable presumption that the UDLC rate should be eliminated within one year. The issue, it asserts, is that GR-303 systems support only a DS1-level interface--"a fact that is not a minor, as yet unresolved technical blemish but one that lies at the heart of the GR-303 concept. There is no technical development that will 'cure' that fact, and no party introduced evidence to

[159] Verizon notes further that the 4:1 ratio was applied, in the Staff workpapers accompanying its rate recalculations, to universal interfaces and DS-1 central office terminals, neither of which support concentration, and that these errors should be corrected whatever the concentration ratio may be. Verizon's point is well-taken and the needed correction will be made.

the contrary."[160] Accordingly, a CLEC wishing to take advantage of GR-303 would have to purchase an entire DS1 level interface, comprising 24 DS0 channels, and doing so would be uneconomic for a CLEC wishing to purchase only a few loops at a particular central office terminal. Verizon therefore maintains the UDLC is a lower-cost alternative for some CLECs even in the forward-looking environment.

AT&T, WorldCom, and Covad object to any UDLC rate even for the short term. They contend that GR-303 technology can accommodate DS0 unbundling, pointing to record evidence of several methods for doing so. WorldCom asserts that the current state of Verizon's network should be disregarded inasmuch as GR-303 technology is technologically deployable and does not require access to a universal interface. Covad notes that there was no intimation in the First Elements Proceeding, where Verizon advocated use of IDLC, that use of that technology would require CLECs to purchase loops in groups of 24. It characterizes the recommended decision as giving Verizon a gift by allowing it to charge on the basis of embedded costs for one year.

In response, Verizon does not deny the technical feasibility of connecting a single voice-grade loop to an ILDC interface, but it insists that doing so would be inefficient, requiring the CLEC to bear the costs of a full DS1-level interface and, under some of the alternatives technologically available, requiring additional equipment. In response to Covad's observation about the Phase 1 decision, it notes that the purpose of this proceeding is to update and improve the rates set in Phase 1.

In a related issue raised for the first time on exceptions, AT&T and WorldCom urge that even if the recommended decision is adopted on this issue, the UDLC rates should not be applied to loops purchased as part of the UNE platform (UNE-P). WorldCom notes that Verizon's testimony proposed to price loops on the basis of UDLC only where the CLEC interconnects with

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[160] Verizon's Brief on Exceptions, p. 29.

Verizon's loop network (UNE-L), which is not the case when UNE-P is purchased. They urge clarification on that point; AT&T adds a request for clarification that the UDLC rate would apply to UNE-L only where the CLEC elects to interface with Verizon at the DS0 level rather than the DS1 level. In addition, AT&T asks for clarification that the digital port rate applies to UNE-P.

In response, Verizon objects to what it characterizes as this deaveraging of UNE-P loops, suggesting that it would discourage facilities-based competition by imposing higher loop rates on CLECs that install their own switches. It suggests, instead, that a blended rate be set for all UNE loops, reflecting the relative proportions of IDLC, UDLC, and copper interfaces that will be encountered in the actual forward-looking network.

It seems clear that a IDLC connection can be made with a single DS0 loop; the question is whether it can yet be done in a manner that avoids making available to the CLEC (and, in fairness, requiring the CLEC to pay for) the remaining 23 DS0 loops in the DS1 bundle. The Judge properly recognized that that question is now unanswered but may eventually be answered positively, and we deny both exceptions. During the interval remaining before the review of the matter in May 2002, Verizon should work with interested CLECs to ascertain whether a single DS0 loop can, in fact, be unbundled and connected to an IDLC interface in a cost-effective manner.

In requesting clarification that UDLC rates would not apply to loops purchased as part of the UNE-P, AT&T and WorldCom seek a form of deaveraging that appears to be an unwarranted refinement in view of the uncertainty regarding the continued need for UDLC. In the event it becomes clear, when the matter is revisited in May, that UDLC-based pricing for DS0 loop connection will remain in place, the deaveraging favored by AT&T and WorldCom should be further examined. In addition, parties at that time should consider the possibility that the additional costs of a UDLC DS0 connection are better regarded as a switching cost rather than a loop cost. For now, rates should be set on a blended basis, along the lines suggested by Verizon.

Demand Forecast and Utilization Factors

Determining the needed level of investment requires assessing the demand for service over a pertinent period and the utilization (or "fill") factor for the equipment, i.e., an "estimate of the proportion of [the] facility that will be 'filled' with network usage."[161] Higher fill factors imply less investment and consequently lower rates; the countervailing risk is that too high a fill factor may imply investment insufficient to provide adequate service.

In this section we first discuss the demand forecast, which the parties and the Judge considered in the context of the fill factor for loop distribution plant. That fill factor, which attracted the greatest degree of attention, is considered next, followed by a number of other fill factor issues related to loops. Fill factors related to other elements are discussed later in this order.

1. Demand Forecast

Verizon took account of "ultimate demand," that is, it recognized growth over a ten-year period. The Judge agreed with Verizon that the FCC had not ruled out the use of ultimate demand, which had to be taken into account to insure that the contemplated system would be properly sized, but he agreed as well with AT&T that current customers should not bear the full cost of serving demand that is not expected to eventuate for ten years. He dismissed AT&T's method for allocating those costs as needlessly complex and cumbersome, and he determined that ultimate demand should be recognized by taking account of the net present value of the ten-year average demand, assuming annual growth of 3%--the midpoint of the 2% to 4% annual growth that Verizon envisioned.

On exceptions, Verizon sees no basis for the adjustment, maintaining that planning on the basis of ultimate demand is needed to prevent service disruptions that would

[161] Local Competition Order, ¶682.

affect current customers and that the cost of the needed cushion is properly regarded as a cost of serving current demand. Current customers, it continues, pay charges that represent only the current period costs of the ultimate demand while future customers pay the future period costs; overall, "the customers in each period pay only the costs accrued in that period for the investments necessary to effectively serve the demand in that period, including 'cushion' investments."[162] In Verizon's view, the Judge's recommendation would guarantee underrecovery, since it would take no account of the additional investment needed to serve the future demand that is, in effect, being reallocated into the present. Verizon notes as well (and is joined in this regard by AT&T) that while the recommendation was to use the present value of the ten-year average demand, Staff's workpapers show that the adjustment was made on the basis of the simple average. In addition, the adjustment was applied to the whole loop rather than just to distribution cable, even though most of the other loop components are not sized on the basis of ultimate demand.

AT&T replies that Verizon's justification for imposing the cost of the entire network on current period customers is inconsistent with the ultimate demand planning concept, intended to avoid having to add increasing amounts of new spare capacity on an ongoing basis. Arguing that Verizon's method would require current period customers to pay the cost of currently required network facilities plus those needed for ten years of future growth and demand, it asserts that "Verizon is attempting to have its cake and eat it too by suggesting that it be permitted to recover the costs of ultimate demand at the front end, and then treating the ultimate demand concept as if it were in fact not ultimate at all but rather adjustable upward with every incremental growth in demand."[163] With regard to the implementation errors cited by Verizon, AT&T agrees that Staff's workpapers failed to use present value analysis but contends

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[162] Verizon's Brief on Exceptions, p. 34.

[163] AT&T's Reply Brief on Exceptions, p. 43.

that its use would decrease calculated loop costs rather than increase them. It also disputes the suggestion that loop components other than distribution cable are not designed on the basis of ultimate demand, pointing to Verizon's instructions, in the survey on which its cost study rests, that the entire loop be designed to accommodate ten years of anticipated growth.[164]

WorldCom likewise notes that without the Judge's adjustment, costs would be spread only over current demand, and today's customers would be forced to bear the costs of future growth.

The Judge struck a fair balance between the need to take account of ultimate demand for planning purposes and the need to spread the costs of doing so in a manner that is fair to both present and future customers. Verizon's exception establishes no flaw in the balance he struck, and it is denied. The calculation carrying out the Judge's recommendation should be corrected in the manner agreed on by both parties. His adjustment should be applied to the entire loop unless Verizon can show, when it makes its compliance filing, that loop components other than distribution cable were not sized on an ultimate basis even though it appears, from the instructions cited by AT&T in its reply brief on exceptions, that they were.

2. Distribution Fill Factor

In the First Elements Proceeding, we adopted a 50% distribution fill factor. In the present case, Verizon assumed a 40% fill factor while various CLECs called for factors ranging from 50% to 75%. Emphasizing that "in resolving this issue we are pursuing not truth so much as fairness and reasonableness,"[165] the Judge found that the record suggested a range of reasonable factors running from something above 40% to something below 56%. Using Verizon's analysis but adjusting it in several respects, he settled on a distribution fill factor of 50%. Verizon, WorldCom, and AT&T except.

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[164] Id., p. 44.

[165] R.D., p. 96.

Verizon's quantitative analysis in support of its 40% fill factor[166] began with a 60% factor, reflecting two lines per zoned household--necessary to accommodate long-term potential peak demand in the distribution area--and actual household demand of about 1.2 lines. Actual demand will be reduced on account of undeveloped land, vacancies, and the fact that some customers will not use Verizon's infrastructure; and Verizon therefore multiplied its 60% factor by 90% to reflect unbuilt but zoned land, 95% for vacancies, 90% for customers who do not use Verizon's wireline network, and 90% for breakage.[167] The resulting figure was a fill factor of 41.6%.

In considering Verizon's analysis, the Judge first determined, in view of the recent trend, that AT&T's estimate of 1.3 lines per household appeared more reasonable than Verizon's figure of 1.2, but he invited parties to present updated data, if available, on exceptions. Verizon reports in its brief that the figure for January 2001 was 1.26 lines per household, but it continues to argue that 1.2 is a better long-run, forward-looking estimate because increased penetration of DSL service and cable modems will cut into demand growth for second lines. AT&T responds that the Judge's figure of 1.3 lines is supported by record evidence and logical analysis.

The Judge next reduced Verizon's adjustment for undeveloped parcels from 10% to 5% on the premise that undeveloped parcels will presumably be developed in the future. Verizon argues that new undeveloped land is added in a service area as existing undeveloped parcels are filled, resulting in a dynamic equilibrium in which population growth is balanced by the platting and zoning of new land. Even in mature areas, it

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[166] Verizon maintained as well that the 40% factor was supported by the estimates of its central engineering staff presented in Phase 1 and by application of adjustments and corrections to the 50% factor we there adopted.

[167] Breakage refers to what is otherwise termed the "lumpiness" of investment, i.e., the existence of minimum quantities of installable capacity, which makes it impossible to precisely match new installations with demand.

adds, developed lots may be lost to abandonment or changes in use. The Judge also reduced from 10% to 5% Verizon's adjustment for customers lost to competitors, reasoning that the loss of customers would be offset somewhat by customers acquired as undeveloped parcels are developed. Verizon regards the Judge's treatment as fallacious, inasmuch as the land usage estimate relates customer locations to the maximum possible number allowed by zoning while the competitive loss adjustment applies to actual customers, the percentage of whom will be lost to competition will not decline as the number of living units increases. With respect to both adjustments, AT&T replies that Verizon would place too much weight on the judgment of its own experts and allow insufficient leeway for the exercise of the Judge's judgment and our own. It contends that the Judge's treatment of these adjustments falls within the range of reasonableness identified on the record. The CLEC Coalition likewise endorses the Judge's reasoning, noting, among other things, the overlap among Verizon's adjustments.

Verizon adds, overall, that the Judge is in effect asserting that Verizon should be deploying less spare capacity than it currently deploys, and it urges us to recognize the potential effects of such a determination on service quality.

WorldCom's exception continues to urge a fill factor higher than 50%, noting that a recent publication of Telcordia (formerly Bellcore) shows a nationwide average loop fill factor of 65%. It asserts that the loop rates resulting from the 50% fill factor proposed by the Judge "remain unjustifiably high."[168] It notes as well that the FCC used a 75% fill factor in its universal service order.

Verizon replies that the FCC made it clear that its universal service proxy model is not applicable to UNE pricing and that the Telcordia figure--which is, in any event, extra-record--refers to feeder cable, not distribution cable.

In resolving this issue, it is important to keep in mind the Judge's point that there is no one "right" number that

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[168] WorldCom's Brief on Exceptions, p. 23.

we are seeking; rather, we need a fair and reasonable estimate that takes account of the available information and the concerns at stake. The matter is inherently one on which informed judgments can differ.

The Judge found that AT&T's estimate of 1.3 lines per household is a better figure than Verizon's 1.2 lines; that view is strengthened by the recent data reported by Verizon. The Judge's other modifications to Verizon's adjustments, like the adjustments themselves, were less tied to specific evidence, but they, too, rested on sound rationales. Verizon's critique of the Judge's reasoning certainly suggests that it would have been wrong to disallow the adjustments entirely, but that is not what the Judge did. He recognized the conceptual merit of the adjustments but, applying his judgment to all the information before him, found a need to reduce them to avoid the risk that their net overall effect was overstated. The resulting fill factor of 50% is well within the range suggested by the record as a whole, and Verizon's exception to it is denied.

3. Other Utilization Factors

a. Remote Terminal Electronics

Verizon proposed a fill factor of 84% for RT electronics, which it sought to justify as the 90% objective fill factor, adjusted downward to allow for growth (4%) and churn (2%). The CLEC Alliance and WorldCom urged a 90% factor, arguing, in effect, that churn and growth were adequately accounted for in the difference between 100% fill and 90% fill. The Judge credited Verizon's explanation of why the objective fill factor of 90% did not in itself allow adequately for growth and churn, but he also found that Verizon had failed to show why its separate growth and churn factors were necessary and reasonable. Taking account of the need for fairness and of Verizon's burden of proof, he recommended a fill factor of 88%, which would allow a total of 2% for growth and churn.

Verizon excepts, contending that its fill factor is supported by the record and that the Judge cited no data and provided no analysis in support of his adjustment. Pointing to

the record, it explains how it calculated the 4% churn factor and 2% growth factor; cites recent data suggesting a statewide churn factor as high as 5.5% and suggests it was conservative in using the 4% figure associated with the New York metropolitan area; and argues that the two adjustments are cumulative and that each would be required in the absence of the other. It adds that forward-looking utilization factors can not be measured, because they are based on a network design not yet fully deployed, but that its analysis was based on engineering judgment and actual data and suggest the Judge's rejection of that analysis on burden of proof grounds sets a standard that cannot be met.

In response, AT&T cites the Judge's statement that "Verizon has explained why the objective fill factor of 90% does not in itself allow adequately for growth and churn, but it has not shown that its separate growth and churn factors are both necessary and reasonable."[169] It contends that Verizon's exception focuses only on the second clause of that statement, failing to recognize the implication of the first clause that growth and churn are recognized in part, albeit it not adequately, in the 90% factor. Accordingly, it suggests, the Judge found an additional 2% allowance to be adequate. WorldCom likewise defends the Judge's recommendation as record-based, but continues to support it own 90% fill factor.

Verizon has met its burden insofar as it has shown that growth and churn are separate matters, and the Judge properly found that they were not adequately allowed for in the 90% objective fill factor. But there nonetheless is overlap between the reasonable ranges for these items, and the Judge reasonably concluded that 88% was a figure that adequately took account of all of them. Verizon's pure reliance on actual data is insufficient; again, some forward-looking analysis is required. We adopt the Judge's recommendation as a sound exercise of judgment.

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[169] R.D., p. 99.

b. RT Enclosures and COTs

For remote terminal enclosures, Verizon used fill factors of 70.9% in the Manhattan zone, 56.7% in the major cities zone, and 44.8% in the rest-of-state zones. The CLEC Alliance and WorldCom recommended a factor of 84%, which the Judge rejected on the basis of qualitative considerations identified by Verizon as suggesting that figure was too high. He found, however, that Verizon had failed to make a quantitative showing in support of its own fill factors and, "recalling once again that Verizon bears the burden of proof, and recognizing that there is considerable flexibility in designing RT enclosures (even if not as much flexibility as WorldCom and CLEC Alliance would have it), [he recommended] that Verizon's proposed RT enclosure fill factor in each zone be adjusted upward by 15%."[170] He likewise recommended a 15% upward adjustment in Verizon's utilization factor for central office terminals (COTs), rejecting the CLEC Alliance and WorldCom's recommended factor of 90% but noting the need to take account in this utilization factor of Verizon's failure to show convincingly that more than two RTs per COT would be unacceptable.

Verizon excepts, again alleging no quantitative or analytical support for the Judge's adjustment, based solely on a finding that Verizon had failed to meet its burden of proof. It adds that the utilization factors for RT enclosures and COTs are not an input parameter to its cost studies; rather, they emerge after the fact from the routes designed by Verizon's engineers on the basis of forward-looking engineering considerations, including the need to allow for growth and modularity in the size of available facilities. There is, accordingly, no one spreadsheet item that can be adjusted, and Staff's workpapers applied the adjustment by multiplying the number of lines served by the facilities by 115%. Verizon argues that the result of that calculation include facilities that exceed their capacity (that is, with utilization factor greater than 100%) or that are

[170] R.D., pp. 99-100.

unreasonably close to their capacity. Verizon presents in a attachment to its brief examples of these phenomena, contending they demonstrate the adjustment to have been unwarranted.

AT&T responds by again asserting that Verizon has ignored the analysis in the recommended decision, which refers, among other things, to Verizon's ability to deploy facilities in a way that can maximize their utilization. It suggests the Judge did not explicitly find that Verizon had failed to meet its burden of proof but, instead, simply recognized that burden, placing it in the context of the regulator's need to keep in mind that the "utility has a clear self-interest in erring on the side of high cost forecasts."[171] AT&T therefore regards the Judge's skepticism about Verizon's specific factors as proper and asserts that "since ultimately all factors reflect prediction and judgment, they are not susceptible to proof to a mathematical certainty. [His recommended decision] is quite correct in not accepting uncritically Verizon's own judgments as to the precise level of fill factors for RT enclosures and COTs."[172] Finally, AT&T sees the 15% adjustment as affecting the costs to be recovered by Verizon through its UNE rates, and in no way undermined by the fact that when it is applied on a facility-by-facility basis--something necessitated only by the design of Verizon's cost study--it results in some facilities exceeding 100% of their capacity. The adjustment, according to AT&T, "will of course have no real world effect on the actual utilization or capacity of any particular Verizon network facility."[173]

WorldCom's exception, meanwhile, maintains that Verizon's assumption of only two RTs per COT fails to capture forward looking efficiencies and that the matter is not adequately addressed by the Judge's adjustment to the fill factor. It urges a fill factor of 90% and an assumption of five

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[171] R.D., p. 87, cited at AT&T's Reply Brief on Exceptions, p. 48.

[172] AT&T's Reply Brief on Exceptions, pp. 48-49.

[173] Id., p. 50.

RTs per COT in order to spread COT costs over more loops, citing a portion of the proprietary record as support for its premise. WorldCom urges as well an 84% fill factor for RT enclosures, renewing its contention that Verizon's fill factors are unreasonably low and contending that the Judge's 15% adjustment is inadequate.

In response, Verizon argues that its network planning guidelines--cited by WorldCom as encouraging multiple RTs--note the additional costs that may be associated with multiple RTs, including the need for round-the-clock access. Because of such concerns, it continues, multiple RTs are used only where the alternative would be grossly inefficient underutilization of COTs, which is not the case in Verizon's studies. It sees no basis for the utilization factors proposed by WorldCom and notes, among other things, that minimum size RT enclosures often cannot be installed on the sites that are available, requiring the use of a larger enclosure and consequently reduced fill factor.

The possible difficulties identified by Verizon with respect to multiple RTs preclude outright adoption of a multiple RT network design premise, but, as already suggested, the potential use of multiple RTs is something that can be reflected in the COT fill factor. The Judge's 15% adjustment does so, and it is adopted.

With respect to RT enclosures, the Judge's adjustment again took account of the record as a whole, and recognized the design flexibility that was available. AT&T has explained why the seeming anomaly identified by Verizon on exceptions is not dispositive, and the Judge's adjustment is adopted.

Environmental Factor

To test its intuitive hypothesis that the amount of work required to install outside plant might vary by geographic area, Verizon analyzed its engineering and construction records information system (ECRIS) data to identify such variation and

found higher costs in dense areas such as Manhattan.[174] The study compared, by geographic region corresponding to Verizon's nine strategic business units (SBUs) and three density zones, the actual labor time required to perform outside plant work operations against the standardized time for the same work operations. The standardized times, developed by Verizon's consultant H. B. Maynard and Company, estimate "the standard, average time for performing the function, regardless of where in the State it is performed, except for minor differences in the travel time to and from the work site."[175] Actual and standard times alike take account of the types and amounts of plant that is placed, rearranged, or removed; but the actual time considers, as well, factors that depend on locale and density specific conditions. These include, among others, "traffic conditions at the work site; terrain requiring hand digging; locations requiring the removal and restoration of fences, posts, and other objects; locations requiring landscaping; locations requiring minimum two-person crews; locations requiring the removal of waste contaminants (with contractors); locations requiring security arrangements."[176]

The analysis was performed by Verizon's statistical consultant NERA, which examined more than 388,000 individual work operations associated with over 4,000 outside plant estimate jobs throughout the state. The study found that the Manhattan had an actual-to-standardized-labor-time ratio of 1.59, the highest in the State, and that the statewide average ratio was 1.37. (Verizon explained a statewide average greater than 1.0 by noting that the ECRIS standardized times do not account for all the costs actually incurred in performing outside plant work, omitting the locale-specific conditions that

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[174] It should be recognized that previous deaveraging studies took account of inter-zone differences in technology, equipment deployment and loop length. They did not take account of zone-specific differences in the amount of work required to install outside plant.

[175] Verizon's Initial Brief, p. 137.

[176] Id., pp. 137-138, n. 313, citing Tr. 2,472-2,473.

show up in actual worktimes.) Asserting that NERA's statistical analysis shows the differences in the ratios to be statistically significant, Verizon argued that these costs must be taken into account in determining loop costs.

CLECs objected to the environmental factor on several grounds, contending that it would undo the forward-looking considerations reflected in the ECRIS standard time increments and asserting that application of the environmental factor impeaches the ECRIS database that Verizon otherwise relies on.

The Judge found the environmental factor to be reasonable in principle as a method to recognize empirically derived geographical cost differences. He was unpersuaded, however, by Verizon's attempt to explain why the statewide average actual-to-standardized ratio substantially exceeded unity; if the reason was that the ECRIS standardized times failed to include all pertinent costs, he held, Verizon was, indeed, impeaching its own ECRIS estimates. He therefore recommended that Verizon be required to recalculate the environmental factor in a manner that assumes a statewide average of 1.0 and adjust each regional environmental factor pro rata. Verizon excepts to that modification; AT&T and WorldCom except to adoption of the environmental factor in principle.

WorldCom and AT&T both note that ECRIS data have been relied on for years and that the standard time increments assume forward-looking efficiencies and labor. The environmental factor, they contend, would eliminate those efficiencies. WorldCom sees no basis for Verizon's assertion that the difference between standard time increments and actual times are caused by environmental conditions rather than inefficient work practices, noting that the NERA analysis measured only the differences and did not attempt to determine their causes. It contends as well that the record shows that ECRIS estimates include locale-specific costs,[177] obviating any adjustment on that account. AT&T suggests that the effect of the environmental factor, even when reduced as recommended by the Judge, shifts

[177] Citing Tr. 4,702-4,704.

costs among geographic density zones within the State in an unjustified manner.

Verizon responds that while ECRIS already reflects such locale-specific items as travel time and hourly labor rates, the environmental factor captures, in a manner superior to ECRIS, other matters such as traffic jams and weather conditions that cannot be anticipated for specific jobs. That these factors "vary systematically by geography," it says, "shows that they cannot be facilely attributed to inefficiency, as WorldCom attempts to do."[178]

In its own exception, Verizon renews its argument that its analysis confirmed, in a statistically significant manner, the intuitive belief that there were significant geographic variations in worktimes for various tasks. The ratio of actual to standardized times for Manhattan was 1.59, the highest identified; the statewide average was 1.37. Verizon objects to the Judge's recommendation to reduce the statewide average to 1.0, noting that it would have the effect of reducing the Manhattan ratio to 1.16. Because the ECRIS standardized times do not account for "locale-specific conditions" such as time lost due to traffic activity or weather conditions, it says, the Judge's recommendation would improperly disregard those costs. It disputes as well the suggestion that the difference between standardized and actual times is attributable to inefficiency, citing its witness's testimony that the PRP provides incentives to efficiency and that the statistically significant geographic variation in any event belies the suggestion. Verizon likewise denies that it is impeaching the ECRIS estimates, which have their purpose but do not necessarily reflect all of the costs that should be taken account of in a TELRIC analysis. It notes that in actual field applications the ECRIS factors are increased by certain locality specific adder variables and that the factors incorporated here simply represent another type of variable.

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[178] Verizon's Reply Brief on Exceptions, p. 23.

AT&T responds that the Judge's recommendation (which it objects to for reasons already noted) would recognize geographic differences without permitting "use of the environmental factor as a backdoor mechanism for increasing Verizon's indicated costs on a statewide basis."[179] Z-Tel likewise responds that the Judge's adjustment insures that the environmental factor recognizes geographic variations without increasing costs overall and expresses skepticism that Verizon would rely on the ECRIS database in the conduct of its business if the database understated costs to the extent Verizon contends here.

It is indisputable that costs differ from one geographic area to another, and proper cost analysis should take reasonable account of those differences. Verizon presented its environmental factor primarily as a mechanism for doing so, and the Judge accordingly understood it as a deaveraging measure that should not increase the overall average cost. His adjustment applied that understanding, reducing the overall environmental factor to unity.

Verizon now contends that the point of the environmental factor is not only to deaverage but also to recognize costs that simply are not included in the ECRIS standardized worktimes. As part of that process, the base to which the environmental factor was applied was first reduced to exclude the locale-specific "adders" already build into ECRIS. Application of the environmental factor represented an effort to restore the adders in a manner that calculates the variation more rigorously; and it is that restoration that accounts for a statewide average ratio (of costs reflecting the environmental factor to ECRIS costs net of any adders) greater than one. Verizon asserts on exceptions that restoration of the adders alone would have produced a statewide average ratio of 1.32, and it argues that the theory behind the Judge's adjustment would

[179] AT&T's Reply Brief on Exceptions, p. 52.

warrant reducing the 1.37 ratio only to 1.32, not all the way to 1.0.[180]

The difficulty with Verizon's position, however, is that it effectively adjusts the ECRIS worktimes to take account of actual costs in a manner that may substantially undo the reflection in ECRIS of forward-looking efficiencies. Verizon itself has characterized ECRIS as one of the features contributing to the TELRIC-compliance of its studies, inasmuch as the ECRIS "standard time increments assume forward looking efficiencies in labor that have not been achieved in actual experience."[181] A TELRIC-compliant study can (and should) take account of geographic variation, but Verizon's calculation of the costs to be added to recognize geographic variation fails to distinguish between costs genuinely attributable to locale-specific circumstances and those resulting from inefficiencies that a forward-looking study should disallow.

That failure on Verizon's part would warrant adoption of the Judge's adjustment, to ensure that the environmental factor is used only to deaverage and not to recognize additional, potentially inefficient, locale-specific costs. But Verizon has shown, as a qualitative matter, that some additional locale-specific costs need to be allowed for, and while it has not shown, as a quantitative matter, how much of its actual costs may be attributed to inefficiency, it seems unreasonable to assume that figure to be more than 50%. Accordingly, we will not deny Verizon's exception outright but will recognize 50% of the costs at issue in its exception. (In other words, the statewide average environmental factor should be reduced to 1.185:1, and the regional factors should be adjusted pro rata.) That result strikes a fair balance, on the state of this record, between recognizing additional costs attributable to geographic variation and limiting the risk of allowing recovery of

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[180] Verizon's Brief on Exceptions, p. 41, fn. 105; Verizon's Reply Brief on Exceptions, p. 22, fn. 63.

[181] First Network Elements Proceeding, Exh. 135, response to ATT-NYT-255.

inefficiencies that should be excluded from a forward-looking study.[182] Correspondingly, the exceptions of AT&T and WorldCom, which would disallow the environmental factor entirely, are denied.

Link Cost Calculator

Verizon's link cost calculator pulls together the various loop cost inputs and calculates an overall result. AT&T alleged ten specific errors in the calculator's operation. Verizon's rebuttal testimony acknowledged and corrected for two of them, and the Judge resolved the remainder (including one as to which Verizon acknowledged the error but applied a correction AT&T deemed inadequate). Only those that continue to be at issue on exceptions are here discussed; the item designations are those applied by AT&T and used in the recommended decision.

Item D. AT&T adjusted the link cost calculator to eliminate the cost for copper riser cable in situations where fiber is assumed to go directly to the customer premises. The Judge was persuaded by Verizon's qualitative explanation that the situation at issue is one in which the fiber goes directly to the customer's building but that copper riser would still be needed to reach customers on upper floors, but he agreed with AT&T that Verizon had failed to establish the frequency with which copper would be needed on that account. He invited Verizon to provide further detail in is brief on exceptions.

In that brief, Verizon asserts that the forward-looking amount of intrabuilding copper needed in large building environments was taken into account in the feeder route survey, and comes to 162 feet. It submits as well an analysis based on Manhattan building height data which, it says, supports that result.

AT&T responds that Verizon has submitted not actual data but an analysis based on new, unsupported, extra-record

[182] To state the matter differently, we are applying a very rigorous productivity adjustment to Verizon's figure, a step warranted by Verizon's reliance on actual data without any persuasive effort to remove the effects of inefficiency.

assumptions regarding building configurations in Manhattan. It objects in general to Verizon being allowed to supplement its evidence and urges us to scrutinize it skeptically.

The Judge properly found AT&T's total disallowance to be wrong in concept, and Verizon's presentation on exceptions establishes that it recognized a reasonable amount of copper riser cable in the situations at issue. No adjustment to the link cost calculator need be made on this account.

Item F. AT&T substituted an average installed pole price of $417 for Verizon's range of $385 to $765 per pole. The Judge found that Verizon had demonstrated on rebuttal both the propriety of not using a statewide average and the flaws in AT&T's analysis, but he expressed concern about Verizon's uncritical reliance on unadjusted embedded pole costs. He recommended a 10% downward adjustment to Verizon's figures as an interim measure, instructing Verizon to present on exceptions an analysis of recent trends in its own pole costs. Verizon submits that analysis as Attachment 5 to its brief, and AT&T does not respond.

The current data submitted by Verizon suggest that the Judge's 10% downward adjustment to installed pole costs was conservative. A somewhat larger adjustment might be warranted, but in the absence of more definitive trends, we adopt the Judge's result.

Item G. Acknowledging an error pointed out by AT&T, Verizon corrected its study with respect to the sharing of poles with electric utilities and cable television companies. AT&T contended in brief, however, that Verizon had in effect taken back its concession by eliminating an adjustment to the multiple sheaths between poles that it believed was inappropriate in the distribution portion of the link. The Judge found that Verizon had not specifically shown why AT&T's multiple sheath adjustment was inappropriate but that AT&T, for its part, had never explained why the adjustment had been offered. He noted that while Verizon bears the burden of proof, its opponents have the burden of going forward with evidence challenging particular aspects of Verizon's study; in the absence of any such evidence,

Verizon had no need to specifically disprove AT&T's adjustment. He invited the parties to address the matter further on exceptions.

AT&T now asserts that the Judge "inexplicably forgives Verizon's entire failure of proof and improperly shifts the burden of proof to AT&T."[183] It contends that it submitted its adjustment to reflect fully the sharing of pole structures in Verizon's cost calculations and that the issue of multiple sheaths was raised only by Verizon in responding to the adjustment. It therefore sees no basis for the conclusion that AT&T bore the burden of proof on the issue.

Verizon responds that its rebuttal testimony reflected and explained its adjustment to correct the error in its original testimony that AT&T had identified. It contends that AT&T has not supported its challenge to Verizon's adjustment and that "Verizon's burden of proof does not 'kick in' with respect to specific challenges until the challenging party's burden of going forward is satisfied."[184]

AT&T's exception does not provide further substantive explanation of its adjustment, as the Judge invited, but simply disputes the Judge's treatment of the burden of proof issue. But that treatment was correct and consistent with longstanding practice, and AT&T's exception therefore is denied.

Item I. AT&T charged that Verizon in effect applied too low a fill factor to inner duct[185] by first assuming that each conduit carries three inner ducts, two of which are used and one of which serves as a spare, thereby establishing a tacit utilization factor of 66.7%; and then applying a 60% utilization factor, reducing the effective factor to only 40%. Verizon contended that the 60% utilization factor accounts for the spare ducts in a duct bank rather than the spare inner duct in a duct,

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[183] AT&T's Brief on Exceptions, pp. 38-39.

[184] Verizon's Reply Brief on Exceptions, p. 23.

[185] "Inner duct" refers to small pipes or tubes placed inside a conventional duct to allow the installation of multiple wires or cables.

but the Judge found that it had failed "to disprove the reasonable allegation that it overstates costs through overlapping fill factors that provide more excess capacity than is needed,"[186] and he adopted AT&T's adjustment.

Verizon excepts, arguing that the recommendation effectively assumes that only the number of conduits needed at any given time would be deployed in a trench. That, however, would require frequent costly and disruptive outside plant work to open trenches and add new conduits as demand grows. It argues that the third inner duct cannot be used to satisfy demand growth because it is there to provide contingency capacity, and cannot be used on a planned basis to support cable additions or emergency maintenance. In any event, it adds, inner duct would not be used at all in conduit containing copper distribution cable.

AT&T responds that Verizon has not shown any flaw in the Judge's conclusion that a 40% fill factor overstates the amount of needed excess capacity and it again charges that Verizon is seeking to have current users pay 100% of the cost for facilities that would be only 40% used.

Verizon's arguments explain why two types of fill factor need to be recognized here, but they fail to demonstrate the absence of overlap between them and the need for a cumulative fill factor as low as 40%. The Judge's resolution of the issue was reasonable, and Verizon's exception is denied.

Dark Fiber

"Dark fiber" refers to a fiber optic strand within an in-place fiber optic sheath that is "not connected to electronic equipment needed to power the line in order to transmit information."[187] It is offered only on an as-is, where-available basis, where spare facilities exist. Rhythms/Covad accordingly argued that Verizon incurs no capacity costs in connection with dark fiber and that CLECs purchasing it should not pay capacity

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[186] R.D., p. 117.

[187] Verizon's Initial Brief, p. 155.

costs. The Judge agreed with Verizon, however, that "when all is said and done, the provision of a dark fiber cable would mean one less spare was available for other purposes, and the purchasing CLEC should bear the associated costs."[188] Noting, however, the possibility that Verizon might be able to recapture a dark fiber cable if it were needed--a possibility raised by Rhythms/Covad on the basis of information from a New Jersey proceeding--the Judge suggested that such a right of recapture might reduce or eliminate the capacity costs associated with dark fiber. The record was unclear with regard to the right of recapture, and he asked Verizon to clarify the matter on exceptions.

In its brief on exceptions, Verizon confirms that its New York dark fiber tariff provides no right of recapture. It adds that even if there were a right of recapture, the CLEC would be using and benefiting from a Verizon facility and should pay a capacity cost for the period in which it is used. Rhythms/Covad suggest that Verizon's offering of that argument--which they dispute--betokens an intention to recapture dark fiber despite its tariff provision, and they argue that Verizon's reference to a tariff provision that they regard as inconclusive fails to provide the clarification of the matter requested by the Judge. It seems clear, however, that the tariff provision precludes recapture and that capacity costs should be allowed, as the Judge recommends; we need not reach the hypothetical question of whether the existence of a right of recapture would warrant a different result.

Rhythms/Covad except to what they characterize as the Judge's failure to address himself to their separate argument that no fill factor should be applied to dark fiber. They assert that dark fiber in effect is a product of fill factors, coming into existence because Verizon placed more fiber in service than was needed and that the cost of the spare fiber is already recovered through the application of fill factors in

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[188] R.D., p. 118.

other rates. They warn that allowing a fill factor for dark fiber would permit multiple recovery of those costs.

Verizon responds that UNEs always are drawn from spare capacity and are not provisioned by assigning to the CLEC a loop that is already in use. It explains that "an overall pool of interoffice fiber exists, with a level of spare that is reflected in the appropriate utilization factor, and all orders for fiber transport facilities, whether 'lit' or dark are filled from the spare in that pool. (A similar analysis applies to loop dark fiber.)"[189] It therefore sees no basis for a fill factor for dark fiber any different from that used generally.

Verizon's response is persuasive; Rhythms/Covad's exception is denied.

House and Riser Cable

House and riser cable is placed in a multi-story building, running from a point of interconnection within the building, often in the basement, to the network side of the customer's network interface device. Several issues related to house and riser rates were posed and resolved by the Judge; the issues that persist on exceptions involve the fill factor and the house and riser asset inquiry charge.

1. House and Riser Fill Factor

In the First Elements Proceeding, Verizon proposed and we adopted a fill factor of 65% for house and riser cable. In the present proceeding, Verizon proposed to reduce that factor to 40%. AT&T suggested the 56% fill factor it recommended for distribution plant generally, and the CLEC Coalition urged retention of the 65% factor used in the First Proceeding. The Judge recommended a fill factor of 60%, finding, among other things, that Verizon had not shown why it here proposed to apply the distribution fill factor to house and riser cable even though it had proposed a much higher factor in the First Proceeding.

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[189] Verizon's Reply Brief on Exceptions, p. 24.

Verizon excepts, contending that the factor proposed in the First Proceeding should not govern here inasmuch as the purpose of this proceeding is to update, extend, and refine the studies used earlier. It cites the difficulty and expense of augmenting capacity within an existing building and asserts that with the exception of undeveloped lots, the factors bearing on utilization factor for distribution cable generally apply as well to house and riser cable. If anything, it suggests, use of the same factor overstates the achieved utilization in high rise buildings, given the need to provide extra capacity at construction in order to avoid costly additions later. It notes as well AT&T's use for house and riser cable of the same 56% fill factor it uses for distribution cable generally.

AT&T responds that Verizon's exception merely asserts that the factor adopted in the First Proceeding should not govern here but fails to offer any reasons or explanation. The CLEC Coalition likewise asserts that Verizon has not shown why the factor should be reduced to such a great extent and it notes that AT&T, in recommending the same factor for distribution and house and riser, called for the factor to be 56%. The CLEC Alliance cites the argument that house and riser utilization should be higher than distribution utilization generally because it serves a fixed area with more predictable growth rates and comparatively smaller augmentation costs.

As the Judge found, the factors tending to increase the house and riser fill factor in comparison with that for distribution cable are offset by the countervailing factors identified by Verizon. It is noteworthy as well that AT&T, like Verizon, appears to believe that offset is total, advocating use of the same fill factor (56% in AT&T's case; 40% in Verizon's) for both elements. At the same time, we cannot disregard the fact that in the First Proceeding, Verizon advocated a much higher fill factor for house and riser cable than for distribution cable. Verizon is not bound by the First Proceeding, nor are we, and methodological improvements are among the purposes of the present case; but the considerations cited here as warranting the same fill factor for the two

services are not newly discovered and Verizon has not fully explained its significant change of position.

In all, it appears to us that house and riser cable should have a higher fill factor than distribution cable, but that the difference should be less than the ten percentage points the Judge recommends. We will use a factor of 55%, the midpoint of the 50%-60% range.

2. Asset Inquiry Charge

The house and riser asset inquiry charge is imposed when a question about ownership of house and riser cable cannot be answered through the database available free of charge on Verizon's website and intervention by engineers is needed. AT&T urged rejection of the charge, contending that it improperly requires CLECs to bear the costs created by historical inadequacies in Verizon's inventory records. The Judge determined that a strict TELRIC construct might require disallowance of the costs even if Verizon had not acted imprudently (in the classical regulatory sense) in designing its system, inasmuch as the costs might not have been incurred at all had the embedded record keeping system been designed with the provision of UNEs in mind. He nevertheless recommended allowance of the costs, on the grounds that "there is no showing of imprudence; the costs are real and calculated in a forward-looking manner; it seems likely that at least some of these costs would be incurred in connection with a database that contemplated provision of UNEs; and denying the costs outright would incur the risk of assuming a 'fantasy' record keeping system."[190]

The Attorney General excepts, arguing, first, that Verizon needs accurate information regarding asset ownership for its own business purposes, without regard to provision of UNEs. Accordingly, it incurs the associated costs even without providing UNEs. In addition, the Attorney General asserts, it may be proper for CLECs to pay for the cost of making house and

[190] R.D., pp. 122-123.

riser asset records available to them, but the recommended decision does not state that Verizon has documented those particular costs. Verizon does not respond.

Verizon has reasonably documented the costs at issue (subject, of course, to the generally applicable adjustments we are adopting), and the Judge reasonably explained why they should be allowed, taking account of the sorts of concerns raised by the Attorney General. The exception does not warrant changing that result, and it is denied.

Loop Rate Deaveraging

Verizon proposed to continue the existing arrangements for deaveraging loop rates into three zones: Manhattan (Zone 1A), major cities (Zone 1B), and the remainder of the State (Zone 2).[191] FairPoint proposed an alternative, revenue-neutral, deaveraging plan intended to foster local exchange competition in some of the more densely populated areas now included in Zone 2; in effect, it would distinguish between small cities and suburban areas on the one hand and rural areas on the other. FairPoint offered five specific proposals, all intended to insure "that the Rural rateband would . . . apply to truly rural areas and not to the downtown area of smaller cities and towns. Each proposal is grounded in the complementary principles that there is a strong correlation between population density and loop costs, and that areas with similar population density should be grouped into the same unbundled loop rate band."[192]

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[191] The FCC's rules require us to "establish different rates for elements in at least three defined geographic areas within the state to reflect geographic cost differences" (47 C.F.R. §51.507(f).) In the First Proceeding, decided while that rule was stayed, we initially established only two zones: Zone 1 (called "major cities" and comprising loops served by central offices with a density greater than 1,500 loops per square mile) and Zone 2 (the remainder of the State). After the TELRIC rules were reinstated, we accepted Verizon's proposal to establish Manhattan as a separate zone.

[192] FairPoint's Initial Brief, p. 2.

The Judge expressed sympathy for FairPoint's goal of promoting the development of local service competition in smaller cities, but he found that Verizon had shown FairPoint's proposals to be flawed in both theory and practice: "Among other things, there appears to be a very significant difference, not adequately recognized by FairPoint, between a densely populated area large enough to encompass an entire central office (or more) and one that constitutes only a portion of a central office that comprises as well areas of much lower density. I recommend rejection of FairPoint's proposals and continued use of three-zone deaveaging in the manner proposed by Verizon and seemingly acceptable to all other parties."[193] FairPoint and Broadview except.

FairPoint's brief on exceptions expresses support for the loop rates recommended for Zone 2 but believes it justified adoption of one of its alternative deaveraging plans. It does not repeat its arguments but responds only to the Judge's concern about deaveraging rates at a sub-central office level. It acknowledges the difficulties associated with any such arrangement, and urges us to consider implementing its alternative rate structure where the zones comprise distinct central offices.

Verizon responds that breaking out a suburban zone from the existing Zone 2 would substantially increase rates for the remaining rural customers; its analysis suggests those rates could go as high as $36.62 per loop per month. It concludes that FairPoint's rate plan would benefit FairPoint but foreclose any possibility of competition in the rural parts of the State.

FairPoint has not shown that the potential benefits of further deaveraging outweigh its practical difficulties and unintended adverse consequences for rural areas. Its exception is denied.

Broadview says it supports the recommended decision's loop rates for Zone 1A (Manhattan) and Zone 2 (rest-of-state), but expresses concern over the recommended rate increase for

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[193] R.D., p. 106.

Zone 1B (major cities), in which most of its customers reside. It asserts that "the prime driver to competitive growth is likely to be small to medium business, those businesses that are often located near or at the fringe of dense urban areas,"[194] in density zone 1B.

Verizon responds that Broadview offers no specific criticisms of the recommended decision's computation of rates for zone 1B and fails to meet the requirement of our rules[195] that exceptions specifically identify the basis on which they rest.

The increase to which Broadview excepts grows out of the fact that the existing Zone 1B rate is artificially low, for it was set in the First Proceeding before Zone 1 had been divided and reflects average costs for that entire zone. When Manhattan was broken out as a separate Zone 1A with a deaveraged, lower rate, the rate in Zone 1B was left unchanged instead of being increased to reflect the higher deaveraged costs in the remainder of the original Zone 1. That historical anomaly is now being corrected; and while Broadview's concern about the resulting Zone 1B increase is understandable, it points to no error requiring correction. Its exception is denied.

In its own brief on exceptions, Verizon notes the FCC's requirement that UNE rates be deaveraged into at least three defined geographic areas to reflect geographic cost differences, cites our conclusion in the First Proceeding that there were no significant geographical variations in the costs of elements other than loops, and explains that it proposed to continue that approach here. It believes the Judge accepted that proposal but did not say so explicitly and asks us to clarify the matter.

It seems clear that the Judge agreed with Verizon that only loop rates should be deaveraged; in any event, we clarify that that is our intention, except for the possible deaveraging of interoffice transport rates discussed below.

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[194] Broadview's Brief on Exceptions, second unnumbered page.

[195] 16 NYCRR §4.10(c)(2)(iii) and (iv).

INTEROFFICE TRANSPORT

Interoffice transport facilities comprise large capacity cables and associated electronic equipment used to carry calls between switches. Within the broad category are dedicated transport--a facility purchased and used entirely by one CLEC--and shared transport, involving facilities used by more than one carrier, each of which pays for its share on a usage basis. The rates for shared transport are based on those for dedicated transport. Accordingly, though the issues disputed on exceptions pertain specifically to dedicated transport, their resolution affects rates for shared transport as well.

Ports Per Node

Verizon's dedicated transport cost study assumes 100% deployment of synchronous optical network (SONET) transport rings with 100% fiber facilities, a forward-looking technology. Each SONET ring provides 48 DS3 connections. AT&T contended that Verizon had understated the number of ports that must be used at each SONET node to provide the 48 DS3s, thereby overstating its investment per DS3 and, in turn, the cost of dedicated interoffice transport. More specifically, AT&T calculated, on the basis of Verizon's assumptions, that each node must have on average approximately 26 ports. (That figure was based on the need for 96 ports to support 48 DS3s, since each DS3 enters the ring at one node and departs it at another. Verizon asserted there were 3.76 nodes per ring, implying approximately 26 ports per node.) Verizon's study, however, assumed only 16 ports per node, thereby substantially overstating, in AT&T's view, the investment per DS3. In rebuttal, Verizon acknowledged the inconsistency identified by AT&T but maintained that even though its current network in fact has 3.76 nodes per SONET ring, its cost study network properly assumed 6 nodes per ring, equivalent to 16 ports per node. It claims to have used the figure of 3.76 nodes that characterizes its existing network only to calculate fiber costs (thereby understating them), but not to calculate SONET costs. The Judge

regarded Verizon's explanation as satisfactory and saw no need for any adjustment. WorldCom and Focal except.

Focal argues that Verizon's claim to have resolved the apparent inconsistency should be rejected because a six-node assumption artificially inflates costs; the assumption is inconsistent with anything observed in Verizon's existing network; and, most importantly, the record lacks evidence that a forward-looking network requires six nodes per ring. It suggests that Verizon proposes that figure in order to "avoid recognizing actual costs that reflect efficient engineering and reap enhanced profits by superficially inflating them."[196] It urges that rates be set on the basis of 26 ports per node--i.e., 3.76 nodes per ring--which it regards as demanded by efficiency, reality, and consistency. WorldCom likewise maintains that Verizon has not borne its burden of proof and that Verizon's explanation requires the assumption that its current network does not incorporate forward looking SONET technology and design.

In response, Verizon regards it as significant that AT&T, which initially advanced the adjustment, does not except. With regard to substance, it contends that there is no evidence in the record to challenge the six-node assumption and that the CLECs objecting to it have not borne their burden of going forward with a prima facie challenge. It disputes as well the premise that a higher number of nodes per ring is inefficient or costly, contending that larger rings (requiring more nodes) entail such efficiencies as less fiber and fewer connections between rings. In Verizon's view, the appropriate balance is a matter of engineering judgment, and the CLECs have offered no basis for challenging Verizon's engineers' judgment on the issue. It notes as well that the HAI Model contemplates very large ring sizes.

That a forward-looking network construct differs from the existing network is hardly surprising, and those differences alone certainly cannot invalidate it. But that type of

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[196] Focal's Brief on Exceptions, p. 3.

difference is the only real basis offered here for contesting Verizon's otherwise reasonable forward-looking assumption. In addition, Verizon has responded credibly to the argument that its construct may increase costs. We see no reason to modify the Judge's conclusions on this issue, and the exceptions are denied.

Optional Digital Cross-Connect System

AT&T objected to Verizon's inclusion of a digital cross-connect system (DCS) on most dedicated transport circuits regardless of whether the CLEC wished to purchase it, arguing that the FCC had allowed CLECs to order dedicated transport and DCS separately; Verizon contended that the extent of its unbundling obligation was not within the scope of this costing proceeding and that no CLEC had yet requested an unbundled DCS product. The Judge directed Verizon to identify the costs of an unbundled DCS product here unless it could cite a conclusive determination that it need not offer the product. He added that Verizon was free to argue elsewhere against any such offering.

Verizon has submitted a calculation of its DCS costs but notes that the resulting rates are intended to apply only to the extent Verizon is obligated to offer the product. It reserves its right to raise issues regarding that obligation in other proceedings.

The CLEC Alliance replies that Verizon has failed to show that it was not obligated to offer the unbundled product pending decision in those other proceedings, and it asks us to order Verizon to provide it on an unbundled basis "until and unless Verizon can sufficiently demonstrate otherwise."[197] The CLEC Alliance's request is beyond the scope of the proceeding and is denied, without prejudice to its further consideration in appropriate forums.

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[197] CLEC Alliance's Reply Brief on Exceptions, p. 13.

Fill Factors

Verizon used a 75% fill factor for interoffice transport. The CLEC Alliance recommended fill factors of between 80% and 90%, arguing, among other things, that even though the equipment installed to accommodate traffic growth might be utilized at a 75% rate, the density and volume of the New York City telecommunications market suggested that existing facilities accommodating existing traffic were likely at full capacity and that the overall fill factor ought to exceed 75%. Verizon's response referred to the need for adequate capacity to ensure a prompt response to orders, a concern the Judge acknowledged. The Judge concluded, however, that "the CLEC Alliance's arguments strongly imply a fill factor higher than Verizon proposed; once again it is important to remember that not only that Verizon bears the burden of proof, but also that in a forward-looking analysis, its own experience provides the starting point but not the conclusion."[198] He therefore recommended a fill factor of 80%; Verizon, WorldCom, and Focal except.

Verizon contends that the Judge offered no derivation or analysis for his higher number and that the witness relied on by WorldCom and the CLEC Alliance lacked engineering expertise and offered no evidence in support of his recommendation. It maintains that its 75% factor is based on the experience, expertise, and judgment of the people who actually build and operate the network and that the notion that utilization should be maintained at as high a level as possible will lead to installation delays and held orders. It points in this regard to our statement, in a recent opinion, that Verizon's efforts to reduce utilization levels were part of the measures taken to improve its performance in providing interoffice facilities.[199]

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[198] R.D., p. 148.

[199] Verizon's Brief on Exceptions, p. 50, n. 127, citing Cases 00-C-2051 et al., Verizon-New York, Inc. - Special Services, Opinion No. 01-1 (issued June 15, 2001), pp. 11-12.

In response, WorldCom charges that Verizon "demeans and ignores the analytical work performed by [the Judge] and [our] Staff,"[200] and it defends its witness against Verizon's attack, noting his telecommunications experience as well as that of the witnesses sponsored by the CLEC Alliance. The CLEC Alliance argues to similar effect, contending that Verizon's recommendations derive "from the practical experience and technical judgment of people who have a traditional monopoly network design mentality that cannot escape inefficient engineering design constructs."[201] It reviews the basis on which its witnesses criticized Verizon's recommendation, asserting that the absence of spare capacity on the existing transport network is irrelevant in a forward-looking TELRIC network.

In their own exceptions, WorldCom and Focal urge higher fill factors than those recommended by the Judge. Focal disputes the Judge's implication that the CLEC Alliance had made a general recommendation for a fill factor between 80% and 90%; in fact, it recommended factors of 90% for most of the components involved. It argues as well that the Judge's recommendation of a remote terminal fill factor of 88% implies an interoffice transport fill factor of at least 90%, inasmuch as the interoffice system as a whole runs at nearly full capacity and has a higher utilization factor than RTs. Most importantly, in Focal's view, utilization rates should be highest for portions of the network with more highly concentrated traffic, such as the interoffice network. WorldCom likewise cites the specific fill factors proposed by the CLEC Alliance.

Verizon responds that the Judge was aware of the CLEC Alliance's fill factors and apparently intended the 80% recommendation as a compromise. It argues as well that the record lacks evidence supporting the comparative fill factor principles asserted by Focal and that there is no basis for

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[200] WorldCom's Reply Brief on Exceptions, p. 38.

[201] CLEC Alliance's Reply Brief on Exceptions, p. 15.

concluding that utilization levels for transport will necessarily be higher than for loop components.

The Judge's recommendation represents his considered assessment of the parties' positions, recognizing, once again, that there is no one "correct" fill factor. In our view, however, the fill factors offered by the CLEC Alliance, which for the most part were at 90%, should have weighed more heavily in that assessment and warrant a fill factor of 85%.

IOF Deaveraging

The CLEC Alliance called for deaveraged transport costs, on the premise that costs would be lower in higher density areas because of higher fill factors and other considerations. Verizon contended that if a separate Manhattan rate were established, it would have to reflect not only the lower costs associated with shorter transport distances but the added costs associated with the high complexity circuit design characteristic of Manhattan.

The Judge directed Verizon to include with its brief on exceptions an estimate of a deaveraged Manhattan dedicated interoffice transport rate, so a judgment could be reached on whether costs differ enough to warrant deaveraging. Verizon has done so, and it states that its analysis demonstrates that the costs of interoffice transport within Manhattan are higher than the statewide average. It adds that it opposes deaveraging in view of the administrative costs and the difficulty of applying deaveraged transport rates to routes that cross density zone boundaries.

WorldCom in response challenges Verizon's estimate, contending, among other things, that it neither demonstrates the claimed need for greater circuit complexity in Manhattan nor takes account of all the efficiencies available there. It asks that Verizon be directed to recompute a deaveraged transport rate reflecting an average ring length of no more than 3.8 miles.

The issues raised by WorldCom preclude adoption of a deaveraged rate on the basis of Verizon's estimate, and the

differences between the parties over whether Manhattan costs are higher or lower than average warrant a determination now that cost differences have not been shown to require deaveraged rates for this element. Parties may comment in greater detail on the matter within 30 days of the date of this order, and we will decide, on the basis of those comments, whether to pursue the matter further.

DSL COMPATIBLE LOOPS AND LINE SHARING

Introduction

Digital subscriber line (DSL) technology entails the use of specialized electronics that permit the transmission over copper telephone lines (as distinct from more advanced optical fiber) of high-speed data signals while at the same time allowing the customer to make ordinary voice calls. The technology takes several forms, collectively referred to as xDSL; of particular pertinence here are asymmetric DSL (ADSL) and high-bit-rate DSL (HDSL).[202]

"Line sharing," meanwhile, refers to an arrangement under which a CLEC is able to provide DSL data service over a loop that is also used by the incumbent carrier to provide retail voice grade service. The voice traffic is transported in the low frequency (0 to 4kHz) range of the loop; the data traffic is transported in the higher frequency spectrum above 4kHz.

Some rates for DSL and line sharing offerings were considered in two earlier accelerated tracks of this proceeding. In Opinion No. 99-12 (issued December 17, 1999)(the DSL

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[202] More specifically, ASDL uses a twisted-pair copper loop; the asymmetry refers to its ability to support a much higher transmission speed to the customer than from the customer. Its use thus permits rapid downloading by a customer of information from the internet or other databases. HDSL uses either a two-wire or a four-wire copper loop; transmission speeds (which are the same in both directions) are much higher when the four-wire version is used. Verizon's tariff includes rates for ADSL loops and for two-wire and four-wire HDSL.

Opinion), we set rates for the nonrecurring charges and one recurring charge that Verizon had proposed for DSL loops. The rates were set on a permanent basis, in the legal sense of not being subject to refund or reparation, but we characterized them as "interim," inasmuch as they were expressly set for further examination here. Later, in Opinion 00-7 (issued May 26, 2000) (the Line Sharing Opinion), we set rates for line sharing. Those rates were made temporary, but "only with respect to quantitative matters that depend on the yet to be admitted [in Module 3] material. To the extent qualitative judgments regarding the applicability of various rate elements to line sharing [could] be made on the basis of the existing record their rate implications [were made] permanent."[203]

Among the issues under this heading is the propriety of Verizon's having priced DSL loops and line sharing on the basis of an all-copper loop architecture. The CLECs attacked that concept on the premise that doing so was inconsistent with the basing of all other UNE costs on a forward-looking, all-fiber feeder architecture and amounted to an unlawful violation of TELRIC requirements. Verizon argued that the use of copper was correct, inasmuch as DSL was an inherently copper-based technology that would not be needed in an all-fiber environment. We generally agreed with Verizon in the DSL Opinion and the Line Sharing Opinion, and Verizon insists that those decisions represent the "law of the case," warranting rejection of the renewed arguments to the contrary by Rhythms/Covad and the CLEC Alliance.[204] One implementation issue with regard to that dispute remains before us on exceptions, along with various parties' concerns about some specific DSL and line sharing rates.

Copper Versus Fiber

As a practical matter, the issue of whether DSL loops should be priced on the basis of copper or fiber was rendered moot by Verizon's stated intention to price xDSL-compatible

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[203] Line Sharing Opinion, p. 17.

[204] Verizon's Initial Brief, p. 169.

loops at the rate applicable to two-wire analog loops, despite what Verizon regards as the higher costs associated with the former. The recommended decision included, for informational purposes only, a distinct, higher rate for an ADSL copper link, and Rhythms/Covad ask for clarification that the rates for xDSL loops are, in fact, the same as the rates for analog loops. Verizon regards such clarification as unnecessary but unobjectionable, and we here provide it.

Covad asks as well that we not adopt any rate, even on an informational basis, for the ADSL copper link, asserting that Verizon provided no cost support for it and the recommended decision engaged in no analysis of it. AT&T likewise asserts that Verizon's copper cost claims were not subject to rigorous review and asks us to specify that we have not addressed their merits.

Verizon replies that its cost study for an all-copper loop was presented in detail and went unchallenged by any CLEC. It denies that its pricing proposal renders its cost analysis moot, noting that if the cost analysis had shown copper costs to be less than fiber, the pricing proposal would not have been adopted. It therefore asks us to adopt its cost estimate subject to any generally applicable adjustments.

Verizon's pricing proposal for DSL loops obviates detailed consideration of its all-copper loop proposal. There likewise is no need to specify a rate for an all-copper loop, even for informational purposes, and we shall not do so.

Loop Qualification Charge

Loop qualification refers to the process by which it is determined whether a particular loop can be used for DSL

transmission.[205] Verizon offers several forms of access to that information. Its "mechanized loop qualification" service affords basic information on loop qualification by querying an electronic database. CLECs wishing additional information are offered "manual loop qualification" and "engineering query," which involve "checking other databases, performing automated [metallic line tests] on loops, and checking paper outside plant records (known as 'cable plats')."[206] These additional services incur additional charges.

The more costly forms of access are needed because the available mechanized databases are not fully populated. Rhythms/Covad therefore objected to the associated charges, arguing, among other things, that the charges require CLECs to cover the cost of correcting Verizon's failure to develop a proper database and that a forward-looking, TELRIC-compliant cost study would assume a market in which Verizon's network took account of the needs of its CLEC customers. The Judge analogized the issue to the house and riser asset inquiry charge, reasoning that while a strict TELRIC construct might contemplate the existence of a more comprehensive database, adopting that construct would incur the risk of assuming a fantasy record keeping system. He distinguished this issue, however, on the grounds that Rhythms/Covad's witness had credibly suggested that Verizon's compliance over the past 20 years with its own guidelines related to its databases would have resulted in more of the pertinent information being included. The Judge believed Verizon had established the

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[205] Copper loops often are equipped with devices that preclude their use to support DSL; the devices were installed in the past to enhance the network in various respects. If loop qualification determines that such devices are present, the loop must be "conditioned" to remove them. The Judge considered various issues related to loop conditioning, and those raising quantitative matters are discussed below under the heading of Nonrecurring Charges. Qualitative issues related to loop conditioning (R.D., pp. 155-157) are not raised on exceptions.

[206] Verizon's Initial Brief, p. 180.

soundness of its historical procedures for developing its database, but he saw little assurance of the extent to which those procedures had been complied with. "In view of that failure of proof, and to provide additional incentive to develop the database as a tool that meets the CLECs' needs as well as Verizon's own needs as a retailer, [he recommended] a downward adjustment of 25% in Verizon's loop qualification charges."[207]

Verizon excepts, arguing that artificially lowering rates to provide it incentives violates the requirement that UNE rates be cost-based. In addition, it sees no evidence "other than the ipse dixit assertion of the Covad/Rhythms witness"[208] that its database procedures were not complied with. It adds that the recommendation ensures that Verizon will not be able to recover its forward looking costs, makes no allowance for the cost of populating the database, and permits CLECS to avoid making a fair contribution to loop qualification costs.

In response, Rhythms/Covad note that Verizon did not cross-examine their witness on this issue and that the witness, a former Bell Atlantic outside plant engineer, has long experience and thorough knowledge of Verizon's practices. They regard the creation of incentives as fully consistent with TELRIC, for TELRIC replicates competitive pricing, which offers incentives to efficiency. They argue that the Judge's recommended rates are, in fact, above TELRIC, inasmuch as they require CLECs to pay for inefficient manual processes. And they dispute what they take to be Verizon's premise that it has been ordered to undertake a crash project to update its databases without being reimbursed for the associated costs; they assert that they seek not such a crash project but only charges that reflect efficient technology.

Once again, the Judge has reached a reasonable result on the basis of the record as a whole, including burden of proof considerations and evidence to which Verizon would assign little if any weight. But the evidence is undeniably there, and the

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[207] R.D., p. 160.

[208] Verizon's Brief on Exceptions, p. 55.

Judge did not act unreasonably or unfairly in crediting it more than Verizon would. His reference to providing a needed incentive should be seen not as sanctioning a below-cost rate but as explaining why the rate was being set toward the low end of the range of reason for those costs.

Splitter Administration and Support Charge

As already explained, "line sharing" refers to an arrangement in which a CLEC is given access to the DSL transmission capability of a copper loop that is also used by Verizon to provide retail voice grade services. The voice traffic is transported in the lower frequency range and the data traffic in the higher frequency range; the voice and data traffic are routed to their respective switches through the use of devices referred to as "splitters." Two scenarios for the provisioning of line sharing were developed in the ongoing DSL Collaborative and were considered in Verizon's cost studies. In scenario A, the splitter is located in the CLEC's collocation space in Verizon's central office; in Scenario C, it is mounted on a relay rack located in Verizon's central office space. In both scenarios, the splitter is owned by the CLEC.

Verizon proposed a splitter administration and support charge (SASC) comprising ACF-type components: a network maintenance factor (to recover splitter repair, maintenance, and similar expenses) a wholesale marketing factor (to recover "product management, advertising and customer-interfacing functions associated with the wholesale market"[209]), and a support factor (to recover a range of support functions such as information management, research and development). Consistent with our decision in the Line Sharing Opinion, the network maintenance factor would not be applied in line sharing scenario A, inasmuch as the splitter would be located in the CLEC's collocation space and Verizon would incur no maintenance costs.

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[209] Verizon's Brief on Exceptions, p. 51.

Rhythms/Covad challenged the SASC on a variety of grounds. The Judge found that many of the arguments echoed more generic concerns about ACFs, particularly whether Verizon had adequately removed costs associated with its own retail activities. He held that those issues were adequately addressed by the recommended adjustments to ACFs generally, which would be applied here as well. The issue unique to splitters, he continued, was whether ACFs should be applied at all to an item of hardware in which Verizon itself has no investment. Verizon maintained that the CLECs' splitter investment was simply a surrogate base to which the ACF could be applied in order to recover real costs. The CLECs countered that doing so was fundamentally at odds with the theory underlying the construction of ACFs.

The Judge's finding on that issue is set forth at length because the parties' arguments on exceptions pay close attention to its wording:

> It seems to me that the CLECs have the better of this argument. What is at stake is not consistency for its own sake--i.e., the claim that ACFs are applied to Verizon's investment and therefore should not be applied to CLECs' investment--but the possibility that the ACFs would have been calculated differently had the historical investment base included investment other than Verizon's own. In that event, the denominator of the ACF ratio would have been greater and the ACF correspondingly lower. But applying the existing ACFs to investment not owned by Verizon entails a clear risk of overrecovery.
>
> This is not to say that Verizon incurs no costs in connection with line sharing of the sort recovered through the ACFs at issue. Its testimony shows that the costs (once those related to retail activities are properly removed) are real, though care must be taken to eliminate as well all costs related to relationships with equipment vendors. But despite its burden of proof, it has not proposed a reasonable way to identify and recover those costs; and recovery therefore should be disallowed.

> Finally, with specific reference to the maintenance costs proposed to be recovered from Scenario C CLECs, Rhythms/Covad have not shown splitter maintenance costs to be de minimis. If Verizon can devise and present on exceptions a better cost estimation and recovery mechanism, those costs should be allowed.[210]

On exceptions, Verizon suggests the Judge "appears to recommended a provisional disallowance of the proposed [administration and support] charge."[211] Noting that the Judge acknowledged the reality of these costs (but expressing surprise at his recommendation that costs associated with equipment vendors be disallowed, seeing no risk of the double recovery warned of by the Rhythms/Covad witness inasmuch as the costs at issue here are included in a different account from those recovered elsewhere), it contends that the only real question is how the amount of the costs should be determined. Its answer is to recover these costs, like other expenses, through ACFs; and it sees no basis for the Judge's concern over applying ACFs to investment not included in the investment base used to compute them. It contends that as long as the expenses included in the numerator of the annual cost factor development match the investments included in the denominator, the resulting factor will properly reflect the relationship and may be applied to investments not included in the initial investment base. It nevertheless recomputes the ACFs on an investment base including aggregate CLEC splitter investment and finds only "an insignificant reduction"[212] in the resulting wholesale marketing and support ACFs. (It does not provide the analogous calculation for the network factor because the allocation of splitters between scenarios A and C could not be determined by the briefing deadline.) Verizon argues that the recalculation "should eliminate the double recovery concern, and thus obviate

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[210] R.D., pp. 171-172.

[211] Verizon's Brief on Exceptions, p. 52.

[212] Id., p. 54.

any basis for unjustly denying Verizon the recovery of what the RD concludes, correctly, are 'real' costs."[213]

Rhythms/Covad argue in response that Verizon misunderstood the Judge's recommendation, which was to disallow so much of these charges as relate to the wholesale marketing and other support ACFs, but provide Verizon a further opportunity on exceptions only to estimate and propose a recovery mechanism for the maintenance costs to be recovered from scenario C CLECs. Instead, Verizon seeks to recover the entire SASC and fails to make the authorized specific showing with regard to maintenance costs. With specific reference to disallowance of vendor costs, Rhythms/Covad notes that Verizon's exception refers to an argument by their witness that was not raised in brief nor cited by the Judge. The Judge's point related to a different argument--that CLEC equipment suppliers perform product management, advertising, and customer interfacing functions with respect to the splitters and that Verizon is not involved in those processes--and Verizon does not address itself to that concern. Rhythms/Covad therefore urge rejection of the wholesale marketing and other support cost components of the SASC consistent with the Judge's recommendation, which Verizon has not shown to be flawed; and continued rejection of the maintenance cost component, inasmuch as Verizon has not responded to the invitation extended by the Judge with respect to those costs.

Rhythms/Covad's readings of the Judge's recommendations are more persuasive than Verizon's. The Judge's invitation to submit a better cost estimate and recovery mechanism was directed to maintenance cost components, and Verizon did not specifically respond. And his concern about vendor costs related to the CLECs' incurrence of those costs on their own.

That said, Verizon's recomputation of the pertinent ACFs in a manner reflecting inclusion of splitter costs in the denominator obviates the Judge's principal substantive concern

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[213] Id.

on this point. If the ACFs are recomputed in this manner, and the SASC is further modified to eliminate costs related to relationships with equipment vendors, the charge may be imposed.

Line Sharing SAC Charges

The collocation service access connection (SAC) charge recovers the costs of providing the physical connection between a CLEC's collocated equipment and Verizon's network. The Judge accepted Verizon's argument that line sharing requires enough cabling to warrant the imposition of two SAC charges for each installation but that the charge should be premised on the use of 165 feet of cable in each instance, rather than the higher amount that Verizon suggested was supportable.

In its brief on exceptions, Verizon notes that the charge set in the Collocation module of this proceeding is, in fact, based on 165 feet of cable and no change is required. Verizon's point, which is uncontested, is correct.

Cooperative Testing

Cooperative testing refers to a joint effort by a Verizon technician and a CLEC technician to ensure, on the installation of a line sharing arrangement, that it is properly installed and working. Verizon proposed a charge of $37.15 per loop for cooperative testing, which it regarded as cost based. Rhythms/Covad objected, contending that CLECs should not be required to pay for work and then pay for testing to make sure the work was performed; at a minimum, they suggested, the charge should be waived wherever the failure of a loop is Verizon's fault, and Verizon should bear the burden of identifying instances in which the charge may be imposed. The Judge held that line sharing involves use of a line already known to be carrying dial tone (in contrast to a stand-alone DSL installation, where a new line must be installed and tested), which "tends to negate at least one possible source of trouble that may be attributable to Verizon. In these circumstances, it seems reasonable to allow imposition of the cooperative testing charge; to provide for its waiver if the trouble is attributable

to Verizon; but to require the CLEC to bear the burden of showing a waiver to be warranted."[214]

Rhythms/Covad except, disputing what they take to be the Judge's assumption that cooperative testing is used primarily for line sharing arrangements; they assert that it is intended primarily for use with stand-alone DSL loops in order to ascertain the presence of dial tone and the existence of continuity (that is, a complete circuit). Rhythms/Covad add that the absence of continuity is a serious problem in connection with stand-alone DSL loops and that the problem is attributable to Verizon, as the party responsible for making the necessary cross connections. Accordingly, and because cooperative testing helps Verizon identify its own provisioning errors, they assert that Verizon should bear the testing costs and the rate should be set at zero.

In his reply brief on exceptions, the Attorney General agrees with Rhythms/Covad's analysis and recommends that Verizon bear the cost of cooperative testing when deploying a new stand-alone line and that CLECs bear the cost in the line sharing context unless the CLEC can establish that the defect identified is one for which Verizon is responsible.

Verizon responds that although cooperative testing is used primarily with stand-alone DSL loops, it is also used occasionally for line sharing and it is only in those situations that the charge would be imposed. It adds that cooperative testing is nothing more than a normal quality assurance procedure, the costs of which should be recoverable.

The posture of this issue is somewhat peculiar: Rhythms/Covad except; the Attorney General supports their analysis; yet the Attorney General's ultimate recommendation is substantially the same as the Judge's. In any event, we are satisfied that the Judge drew a reasonable distinction between the stand-alone DSL context and that of line sharing. In the former, there should be no charge for cooperative testing; in

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[214] R.D., p. 174.

the latter, the charge may be imposed but should be waived if the CLEC can show the flaw to have been Verizon's fault.

NONRECURRING CHARGES

Introduction

Nonrecurring costs (NRCs; the abbreviation refers as well to the nonrecurring charges intended to recover those costs) have been defined by Verizon as "one-time costs that are incurred in responding to a carrier's request for the initiation, change, or disconnection of service."[215] To state the matter most generally, the costs are determined by estimating the worktimes needed to perform the required activities and multiplying them by the appropriate labor rates. NRCs have been a nettlesome issue since Phase 2 of the First Proceeding and continue to be controversial here. The issues are both complex and important, inasmuch as CLECs regard NRCs as upfront impediments to market entry.

In Phase 2 of the First Proceeding, we found that Verizon had failed to meet its burden of proof with regard to NRCs and that the record could have justified rejecting its NRC presentation in toto. Doing so, however, would have been tantamount to finding that the costs at issue were zero, clearly an incorrect conclusion, and we therefore set reasonable placeholder NRCs at a level approximately 57% below Verizon's proposals.[216] Verizon's failures of proof related to both the forward-looking nature of its study and its method for estimating worktimes.

In Phase 3, Verizon proposed additional NRCs. We found that Verizon's estimating methods had been improved in some respects, and we approved several of the new NRCs. We rejected others, as to which the new estimating method had not

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[215] Verizon's Initial Brief, p. 288.

[216] The basis for the 57% adjustment is set forth in the Phase 2 Opinion, pp. 53-54; in general, the adjustment represented the average effect of applying, in each work function for which Verizon had conducted a task oriented costing (TOC) analysis, the minimum rather than the mean TOC data point.

been applied. We also strengthened the procedure used to ensure that NRCs did not double recover costs already recovered through carrying charge factors.

In the present proceeding, Verizon claims to have presented studies designed to satisfy the earlier criticisms. Most of the studies were based on the nonrecurring cost model (NRCM); of the nine studies that did not rely on the NRCM, none is specifically controverted.[217]

The Judge described Verizon's study in some detail[218]; in general Verizon first determined worktimes using today's method of operations and then adjusted those results to reflect the effects of planned mechanization efforts. It therefore contended that the study was forward-looking, resulting in NRCs that often are substantially less than current costs, but it explained further that some activities will continue to require manual rather than mechanized work effort.

Noting the improvement in Verizon's NRC studies between Phase 2 and Phase 3 of the First Proceeding, the Judge found that Verizon's efforts to study its NRCs on a forward looking basis had been still further improved. He did not regard the studies as fatally flawed by their use of existing systems and costs as a starting point, holding that "the key is whether adequate steps have been taken to adjust that starting point to reflect reasonable forward-looking assumptions. Verizon's evidence details those steps, and they appear generally sufficient."[219] To the extent, however, that NRCs reflected continued use of UDLC technology, the Judge recommended that, like the corresponding recurring charges, they be set on that basis for now but they be reduced in a year to a level consistent with IDLC alone unless Verizon can show that step to be unreasonable.

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[217] Verizon's Initial Brief, p. 289, n. 689, listing the nine non-NRCM studies.

[218] R.D., pp. 176-177.

[219] R.D., p. 181.

AT&T excepts to the Judge's general endorsement of Verizon's NRC studies and Verizon excepts to a number of specific adjustments related to NRCs for DSL service.

The Studies in General

Noting the substantial burden cumulatively imposed by NRCs on Verizon's competitors, AT&T argues that Verizon's current NRC submission suffers from the same principal flaw--its reliance on Verizon's existing embedded network--as the submission found unacceptable in Phase 2. According to AT&T, the adjustments made by Verizon in contemplation of planned network upgrades failed to reflect the TELRIC network that underlies its proposed recurring costs. As a result, AT&T contends, NRCs and recurring costs are based on fundamentally different network assumptions, something that TELRIC does not allow. AT&T therefore urges us to find that Verizon has again failed to sustain its burden of proof and to reject the proposed NRCs entirely; should we be reluctant to take that radical a step, AT&T would propose a disallowance of 40%.

Verizon responds that AT&T is merely reiterating arguments fully considered and rejected by the Judge and that his recommendation reflects a careful consideration of the evidence. It characterizes the proposal to reduce the costs by 40% as unlawful and unfair, noting that AT&T presented no affirmative case on NRCs, having offered only a critique of Verizon's studies that was refuted on rebuttal.

AT&T exception is denied. The Judge fully recounted both the history of the issue in the earlier proceeding and the basis on which he found Verizon's current studies to be generally acceptable. AT&T's arguments on exceptions offer nothing new on the point.

OSS Efficiency (Fallout Rate)

The fallout rate refers to the percentage of CLEC orders that cannot be processed electronically and that require more costly manual intervention. AT&T asserted that Verizon's study contemplated excessive fallout rates, as high as 25%--a

figure AT&T says it calculated for a 2-wire loop--and that in a properly designed system, the fallout rate should not exceed 2%. The CLEC Alliance noted that the 2% figure had been adopted in proceedings in Connecticut and Massachusetts; AT&T asserted that the record relied on in Massachusetts was similar to the one before us.

The Judge found that Verizon had not borne its burden of proving that its fallout rate was adequately optimistic. Noting that "fallout rates can be expected to decline as experience is gained with more efficient OSS, and [that] it is important that rates here be set on the premise of minimal fallout," he recommended adoption of the 2% fallout rate advocated by AT&T.[220]

Verizon excepts, arguing that there is no record basis for applying an across-the-board 2% fallout rate. It agrees that "minimal" fallout should be assumed but insists its studies do just that, using different levels of fallout, estimated by its experts, for different types of activities. Contending that AT&T offered no evidentiary support for the 2% figure, it suggests that AT&T was relying on a Southwestern Bell Telephone experience it had cited in other proceedings. That experience, in Verizon's view, is distinguishable, inasmuch as it pertained only to the service order function of simple residential retail service, which cannot be extended to other service categories.

AT&T replies that it in fact offered extensive testimony criticizing Verizon's fallout rates, including the testimony of a knowledgeable witness; it contends Verizon is again alleging "no evidence" when it means "evidence that it considers to be in one way or another insufficient." AT&T adds that the Southwestern Bell experience is a strawman set up by Verizon in its exception, for it had not been referred to by the Judge. The Judge referred, instead, to a Massachusetts decision that had been extensively quoted from in AT&T's reply brief and that Verizon's exception ignores.

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[220] R.D., p. 184.

Verizon contends as well that whether or not the 2% fallout rate is valid, the calculations accompanying the recommended decision applied it incorrectly in one instance, inasmuch as the software translation needed to connect a new UNE-P port and loop would always have to be performed manually. Verizon asserts that no party offered any evidence challenging that claim but that the calculations accompanying the recommended decision nevertheless reflect application of the 2% fallout rate to that activity. Even if the rate is generally adopted, it argues, it should not be applied here.

AT&T responds that Verizon again misrepresents the record, citing testimony by its witness that if a forward looking network construct and forward looking OSSs are assumed, no manual software translation would be needed to connect the new UNE-P port and loop.[221] Accordingly, AT&T contends, the adjustment was properly applied to that activity.

As AT&T points out, the Judge had ample record basis for his 2% fallout rate, and Verizon's general exception here is denied. Verizon's specific exception related to new UNE-P ports, however, is granted; manual software translation is indeed needed in connection with a new UNE-P installation, and AT&T has not shown the contrary.

Loop Conditioning NRCs

Rhythms/Covad contended that Verizon's study overstated the worktimes used in calculating NRCs. In particular, they questioned Verizon's assumption that loop conditioning work must proceed one loop at a time instead of through what it regarded as the more efficient process of deloading multiple loops, and they urged use of the time estimates proposed by their witnesses. Verizon contended that a proper analysis of multiple loop conditioning showed that it would pose service problems and significantly increase costs.

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[221] AT&T's Reply Brief on Exceptions, p. 101, citing Tr. 1,573-1,578 and Exhibit 316.

The Judge found the record inconclusive in a variety of ways and treated the loop conditioning NRC as follows:

> Deloading loops in batches of 25 or 50 may risk degrading service or increasing costs in the manner warned of by Verizon; but deloading only one loop at a time does not appear absolutely essential to system integrity or cost minimization, and might itself jeopardize system integrity by requiring more frequent opening of enclosures.[222]
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> To state the matter differently, Verizon has not borne its burden of proof with respect to its proposed charges, but it has shown ample qualitative reason why the charges should not be reduced to a level consistent with the worktimes advanced by Rhythms/Covad. To reflect the state of the record before me, I conclude that Verizon should recompute its worktimes on the premise that loops are deloaded on average in batches of ten, thereby capturing some of the efficiencies that may be available through multiple deloadings while recognizing the difficulty of extending that premise too far.[223]

Verizon excepts, arguing that it conclusively refuted Rhythms/Covad's 25- or 50-loop proposal and that the Judge's 10-loop proposal poses, to a somewhat lesser extent, the same difficulties and lacks any basis in the record. According to Verizon, multiple deloadings could degrade or cause a loss of service and would generate additional costs to reload loops in the event they were not used for DSL service and were rededicated to voice grade service. Verizon points as well to what it characterizes as unrefuted evidence that, for a variety of technical reasons, there would be only few instances in which

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[222] Without intending to belittle concerns about service quality, I cannot help but note that such warnings have a long history of overstatement, going all the way back to pre-divestiture AT&T's objections to competitive customer premises equipment. (Footnote in R.D.)

[223] R.D., pp. 188-189 (footnote omitted).

multiple deloadings could be performed, and it contends that while the evidence was directed toward the proposed 25- or 50-pair deloading, it applies as well to the Judge's 10-loop proposal. A 10-loop premise, accordingly, requires assuming unachievable economies of scale and produces rates far below cost. Verizon contends further that the Judge ignored its arguments that rates premised on multiple deloadings pose troublesome cost recovery and rate design issues, given that customers typically do not request loops in multiples of ten. Finally, Verizon contends that despite his claim not to have belittled concerns about service quality in invoking pre-divestiture AT&T's objections to competitive customer premises equipment, the Judge did in fact do just that, discounting Verizon's specific testimony on the service quality problems posed by multiple deloadings.

In response, Rhythms/Covad dispute Verizon's claim that its evidence was unrefuted and suggest the Judge chose a middle ground that reflected his assessment of the relative strengths of the opposing bodies of evidence. They review the testimony of their witnesses explaining how multiple loop conditioning could be accomplished, noting that Verizon did not cross-examine these witnesses. They contend that their witnesses' testimony established, among other things, that multiple loop conditioning is consistent with modern cable splicing technology and that single-loop conditioning can degrade service by causing wire insulation to deteriorate.

The Judge fully explained how he reached his conclusion on the basis of the record as a whole, and while Verizon's arguments on exceptions urge a different reading of that record, they do not require it. Verizon may be correct to argue that, in many instances, it will have to condition one loop at a time, but there will likely be instances--such as multiple occupancy residential buildings--in which more than 10 loops may be conditioned at once. The 10-loop premise balances those factors as well, and Verizon's exception is denied.

DUCTS AND CONDUITS

Introduction, Background, and Legal Context

Ducts and conduits differ from nearly all of the other products considered in Module 3 of this proceeding in that they are not classified as UNEs pursuant to the 1996 Act and are not required by federal law to be priced in accordance with TELRIC. Indeed, the FCC method for pricing ducts and conduits (which is not binding on the states) is based on historical costs, and CTTANY urged its use. Verizon, in contrast, urged that conduit rentals, like UNE rates, be set on a forward-looking TELRIC basis, a proposal that would increase the rates very substantially from their present levels, set in 1970 on the basis of historical costs. The Judge provided a detailed description of the background and legal context for duct and conduit pricing[224]; for convenience, we note here the following highlights:

- The federal statute grants the FCC authority over rates for pole attachments (defined to include ducts and conduits), but exempts from that authority any case in which a state regulates pole attachments and certifies to the FCC that it does so in a manner that "consider[s] the interests of the subscribers of the services offered via [the pole] attachments as well as the interests of the consumers of the utility services."[225] New York has so certified.

- The FCC has several times determined that rates for pole attachments, ducts and conduits should be set on the basis of the utility's historical costs. It did so most recently in the "Reconsideration Order" issued in May 2001.[226]

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[224] Supplemental R.D., pp. 2-5.

[225] 47 U.S.C. §224(c)(2)(B).

[226] Amendment of Rules and Policies Governing Pole Attachments and Implementation of §703(e) of the Telecommunications Act of 1996, CS Dockets No. 97-98 and 97-151, Consolidated Partial Order on Reconsideration (rel. May 25, 2001)(the Reconsideration Order).

- Section 119-a of the Public Service Law, enacted in 1978, grants us authority over rates for pole attachments and use of ducts and conduits and specifies certain guidelines to be followed in setting those rates.

- In our 1997 "Pole Attachment Opinion," we determined that we should exercise our authority over pole attachment rates by adopting the FCC's historical cost method. In so doing, we noted the need for "cooperative federalism" and the usefulness of avoiding unnecessary variation in regulatory requirements, all for the purpose of bringing customers the benefits available from the development of competitive markets.[227]

- Verizon argued, in connection with the proposed inclusion of duct and conduit pricing in Phase 3 of the First Elements Proceeding, that our adoption of the FCC's method for pole attachment pricing applied to ducts and conduits as well. It attributes its change of position since then to its "comprehensive review and re-evaluation of costing and pricing issues" in the present proceeding.[228]

More specifically, Verizon asserted that its current rate of 75¢ per foot per year is grossly understated, inasmuch as it was set in 1970 on the basis of even earlier costs and has not been changed since; it noted that the rate was far below the corresponding rates in other states within its footprint. Verizon proposed a forward-looking costing method that takes account of the current cost of construction for new conduit systems. The rates resulting from Verizon's study (and the current rates for comparison purposes) are as follows:

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[227] Case 95-C-0341, Pole Attachment Issues, Opinion No. 97-10 (issued June 17, 2001).

[228] Verizon's Initial Brief, p. 219, n. 501.

Proposed	Conduit Rates (per duct-foot) Current Rate (Statewide)	Verizon Proposed Major Cities[229]	Verizon Rest-of-State
Main Conduit[230]	$0.75	$6.22	$5.41
Subsidiary Conduit	$1.40	$9.49	$7.68

CTTANY's analysis, based on the FCC's historical cost method, began with publicly available ARMIS data on embedded costs, used those data to calculate a net investment figure, and divided that figure by total system length to arrive at the net linear cost of conduit. In calculating net linear cost, it relied not on ARMIS data, which it regarded as unreliable, but on information available from Verizon's continuing property records (CPR); that controversial step is discussed in greater detail below. On the basis of its analysis, CTTANY calculated a maximum rate per foot of 80¢.

The Judge determined, for reasons described below, that ducts and conduits should be priced on the basis of the FCC's method, as CTTANY urged, but without application of CTTANY's adjustment reflecting the use of CPR data. On that basis, he calculated a per-foot cost of $1.50 per duct-foot. Verizon excepts to the rejection of its forward-looking costing method and to the Judge's further recommendation that rates be set, in some situations, on the basis of a CLEC's use of less

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229 Verizon's study did not include Manhattan (or the Bronx), where ducts and conduits are owned not by Verizon but by its wholly-owned subsidiary, Empire City Subway, Limited. Empire City Subway, which offers conduit space to Verizon and other carriers on a nondiscriminatory basis, is regulated by the New York City Department of Information Technology and Telecommunications.

230 "Main conduit" refers to a bank of conduit that directly connects two manholes or a central office vault and a manhole, along with certain associated equipment. Subsidiary conduit refers to conduit extending from manholes to poles or buildings (other than central office buildings) that is needed to extend underground cables to connections with either aerial or block cables.

than one-half of a duct. CTTANY excepts to the Judge's rejection of its CPR-based adjustment.[231]

Historical vs. Forward-Looking Costs

After describing the parties' arguments at some length[232] the Judge recommended use of the FCC's historical-cost method for setting duct and conduit prices. He agreed with Verizon that we were not bound by the FCC's method and that PSL §119(a) need not be read to require basing prices on historical costs, but he rejected Verizon's policy arguments in support of forward-looking pricing. He reasoned as follows:

> Essentially, Verizon insists on the need for consistency between the pricing of conduit rentals on the one hand and of UNEs on the other. But the FCC, the author of TELRIC pricing for UNEs, appears to see no need for that consistency, having very recently reaffirmed historical-cost-based pricing of poles and conduits; and this Commission, as a matter of discretion, has deferred to the FCC in this regard, at least with respect to pole attachments. I see no reason why conduits, whose function is analogous so that of poles, should be treated any differently from them, and the Commission's decision in Opinion No. 97-10 seems controlling here. That, indeed, was Verizon's own position in the First Elements Proceeding, and its attribution of its changed position only to its "comprehensive review and re-evaluation of costing and pricing issues" inevitably suggests a degree of result orientation.
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> Beyond that, it does not appear that forward-looking duct and conduit technology

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[231] The Judge resolved a number of additional issues that are not pursued further by the parties on exceptions and, in general, are not discussed further here. Of these, we note only the Judge's rejection, on various legal grounds, of CTTANY's proposal that we assume jurisdiction over the rates charged by Empire City Subway. The Judge's treatment of the issue is consistent with precedent and law and we explicitly affirm it.

[232] Supplemental R.D., pp. 8-13.

> differs all that much from historical. In contrast to the UNE situation, this is not a case where TELRIC pricing is needed to avoid imposing on CLECs the costs associated with the incumbent's embedded plant (and embedded inefficiencies). Verizon's plea for consistency between UNE pricing and duct and conduit pricing fails to take account of the differences between the two products.
>
> Accordingly, I see no basis for recommending what would be, in effect, a reversal of Commission precedent. Consistent with the Commission's earlier determination with respect to pole attachments, rates for duct and conduit rentals should be set, following the FCC's method, on the basis of historical costs.[233]

On exceptions, Verizon stresses the gap between the Judge's recommended rate of $1.50 per duct-foot per year and its calculated forward-looking costs ranging from $5.41 to $16.56. Arguing that consistency and fairness require pricing ducts and conduits on the basis of TELRIC as long UNEs are priced on that basis, Verizon suggests that departing from TELRIC in the one instance where it produces higher rates "would sacrifice principled decision-making to blatant result orientation, and would highlight the uncompensated taking effected in this proceeding."[234]

In addition to being demanded by fairness, Verizon argues, consistent pricing for stand-alone conduit[235] and for loops is required by economic logic, for only if prices are consistent will CLECs make economically efficient choices

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[233] Supplemental R.D., pp. 14-15.

[234] Verizon's Brief on Exceptions, p. 2. (Unless otherwise specified, citations in this section of the order are to the briefs and reply briefs on exceptions to the supplemental recommended decision.)

[235] Stand-alone conduit, at issue here, is conduit offered by Verizon as a product to CLECs that wish to run their own cable through it. Conduit is also included as part of the supporting structure for loop and transport plant, in which event its costs are recovered through the appropriate UNE rates.

between buying unbundled loops from Verizon and deploying their own loop plant in Verizon's conduit. The Judge noted that the FCC appeared to see no need for that consistency; Verizon suggests the FCC did not consider the question. Verizon adds that forward-looking pricing would permit us to deaverage conduit rates on the same geographic basis as loops and to set separate rates for main and subsidiary conduit, refinements not available under the FCC's method and that might work to the CLECs' advantage inasmuch as subsidiary conduit costs are higher but, according to CTTANY, its constituents for the most part use main conduit.

Asserting that the Judge relied primarily on the Pole Attachment Opinion in recommending use of the FCC method, Verizon argues against "blind adherence to precedent."[236] It contends the earlier decision was directed only to poles and not to conduit and that we recognized the potential distinction in requiring Verizon to submit forward-looking cost studies for consideration here; just as the Phase 1 UNE rates are up for reexamination here, it adds, so should we reexamine the contemporaneous decision regarding poles. In its view, the perceived need for consistency and "cooperative federalism" that we cited in choosing the FCC method for poles should not be decisive here, inasmuch as rates set in various states on the basis of the FCC formula would not necessarily be uniform and any such uniformity that might be achieved would be at the expense of the more important uniformity between conduit and loop rates: "Unbundled loops and stand-alone conduit are, to some extent, economic substitutes for each other. Conduit in New York and conduit in New Jersey are not substitutable in this fashion."[237] Verizon acknowledges that it took an opposite view on this issue in 1998 but regards as unwarranted the Judge's suggestion that its change of position "inevitably suggests a degree of result orientation"; it cites, rather, the cogency of

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[236] Verizon's Brief on Exceptions, p. 5.

[237] Id., p. 7.

the arguments now presented in favor of consistent costing methods.

Finally, Verizon reiterates its effort to refute, point-by-point, the FCC's reasoning in support of its decision to price conduit on the basis of historical costs. The arguments were presented to the Judge and summarized by him as follows:

- The FCC cited stability and simplicity in support of maintaining the status quo; Verizon sees no reason to exempt conduit from the rate changes contemplated in this proceeding and sees no reason for simplicity to be a decisive consideration.

- The FCC noted the complicated procedures that would be needed to develop a new, forward-looking ratemaking formula; Verizon points out that this proceeding has already done so.

- The FCC held that the advantages of forward-looking pricing were likely to be less pronounced in the pole attachment context; Verizon regards that contention as baseless, arguing that even though conduit facilities are not built or replaced on a unit-by-unit, as-needed basis, new conduit does need to be built as demand expands.

- The FCC noted the absence of any congressional directive to deviate from the use of historical costs; Verizon reiterates its point that the FCC's regulations are not binding here.

- The FCC noted that its notice has not specifically raised the possibility of moving to forward-looking costing; Verizon notes that this procedural objection likewise is inapplicable here.[238]

In sum, Verizon argues that neither precedent nor policy warrants doing anything other than exercising our discretion to

[238] Supplemental R.D., pp. 8-9.

price ducts and conduits on a TELRIC basis as long as UNEs are so priced.

If Verizon in its exception points to the small increase recommended by the Judge over the rates set in 1970, CTTANY in reply emphasizes the very large percentage increase now sought by Verizon--between 621% and 729% for main conduit and between 449% and 1,083% for subsidiary conduit. In support of its position that historical cost pricing should be retained, it argues, first, that forward-looking costs are not a proper basis for conduit pricing. It contends, in this regard, that Verizon constructs conduit for its own use and rents only excess capacity to cable operators; that Verizon is reimbursed through make-ready charges for the cost of modifying existing plant to accommodate additional facilities; that conduit plant is nowhere near exhaustion; that conduit differs from UNEs in that its technology is relatively static; and that forward-looking pricing is not needed to provide consistent price signals inasmuch as cable operators already occupy the conduit and will not abandon their facilities-based service in favor of leased UNE arrangements. It disputes Verizon's suggestion that geographical deaveraging would produce more favorable rates, and it denies Verizon's claim that there is no need for interstate consistency, arguing that investment decisions are based on characteristics of the geographic market and that we recognized, in the Pole Attachment Opinion, that investment in New York would be promoted by reduced barriers to competition.

CTTANY points as well to our Staff's informal rejection, over the years, of Verizon's arguments that forward-looking pricing was consistent with PSL §119(a),[239] and it contends that the thoroughly litigated factors that led us to adopt the FCC's method for pricing poles in 1997 remain equally valid today. It notes the FCC'S recent reaffirmance of its

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[239] The Judge held that §119-a "need not be read to require basing prices on historical costs." (Supplemental R.D., p. 14.) We need not reach that issue, inasmuch as we are deciding, on other grounds, to base prices on historical costs.

position and its explanation there of the differences between poles and conduits on the one hand and UNEs on the other.[240] CTTANY asserts as well that Verizon ignores the substantial body of law regulating poles and conduits as essential facilities and rejecting the use of forward-looking costing; and it says that Ameritech, a similarly situated incumbent LEC, recently proposed pricing based on historical costs in an Illinois proceeding.

RCN, in its late filed reply, argues to similar effect, pointing to the distinctions drawn by the FCC between poles and conduits on the one hand and UNEs on the other. It adds that TELRIC is intended to produce prices that are lower than those based on historical costs--a point it says Verizon itself makes in its brief to the Supreme Court in the TELRIC litigation--and that the FCC chose that policy "to foster competition by easing the financial impact of entering a marketplace that a monopoly provider controls and manipulates."[241] Verizon's pricing plan, which would dramatically increase existing duct and conduit rates, would have just the opposite effect. RCN points as well to the importance of following precedent, and it sees no public interest rationale for deviating from the policy of cooperative federalism we adopted with regard to pole rentals.

The arguments on exceptions add little to the thorough airing this issue received before the Judge, and we are satisfied that he properly resolved it. Verizon's exception is denied not out of "blind adherence" to precedent but because the precedent was sound when adopted; remains so now (as the FCC, too, recently held yet again); and deserves to be extended to ducts and conduits, which have more in common with pole attachments than with UNEs.

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[240] It cites the FCC's Reconsideration Order, ¶¶15-25.

[241] RCN's Reply Brief on Exceptions, p. 3, citing Local Competition Order ¶¶705-706.

Use of CPR Data Rather Than ARMIS

In applying the FCC's method, CTTANY used certain data from Verizon's continuing property record, rather than the ARMIS data on which Verizon relied, to determine the number of duct-feet over which net conduit investment should be spread. Verizon objected to CTTANY's recourse to those data and to the manner in which it had used them. The Judge agreed with Verizon, and CTTANY excepts.

The Judge set forth the full background for the issue.[242] Briefly, it should be understood that conduits are structures that provide physical protection for cables. They may consist of one or more ducts, which actually carry the cables. The term "duct-feet" refers to the total length of duct work in the network, while "trench-feet" or "conduit-feet" refers to the total length of the trenches in which the conduit is buried. The relationship between conduit-feet and duct-feet depends on the average number of ducts buried in each trench.

On the basis of ARMIS data, Verizon calculated a total of 265.5 million duct-feet in its network. That figure, together with a net conduit investment of about $903 million, produced a net investment per duct-foot of about $3.40. But ARMIS data showed a duct-to-conduit ratio of 3.8, which CTTANY saw as out of line with the average ratio of 5.74 in the remainder of the former Bell Atlantic footprint. It therefore turned to Verizon's continuing property record, a detailed physical inventory system that CTTANY regarded as more accurate; it noted that the FCC method generally relied on publicly available reports such as ARMIS but permitted use of more accurate data when available. CPR data showed the average number of ducts per main conduit to be 7.91, which CTTANY reduced to 7.21 ducts per conduit to recognize that subsidiary conduit usually held only two ducts. It calculated that adjustment by taking account of the ratio of main to subsidiary duct derived from Verizon's CPR.

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[242] Supplemental R.D., pp. 17-18.

On that basis, CTTANY computed a higher number of duct-feet and a consequently lower investment per duct-foot. After describing the parties' arguments in detail,[243] the Judge found CTTANY's adjustment flawed:

> Verizon's challenge to CTTANY's adjustment is persuasive. In effect, CTTANY is double-counting the greater number of ducts in main conduit: once to determine the weighting to be afforded main conduit and once to determine the number of ducts to which the weighting is to be applied. The proper weighting would be on the basis of main and subsidiary trench-feet, and that weighting would then be applied to the larger number of ducts in main conduit, thereby recognizing that larger number only once. As Verizon has shown, that correct weighting produces, as would be expected, a cost per duct-foot identical to the one produced by simply dividing net investment by the number of duct-feet. Accordingly, I recommend that the rate be set on the basis of the FCC method, using a cost per duct-foot calculated by dividing net investment by the number of duct-feet shown in the ARMIS data, and without reference to the CPR data.[244]

On exceptions, CTTANY maintains that the Judge rejected the best evidence of the number of ducts per conduit, relying, instead, on a questionable number derived from the ARMIS data. It argues that, in an analogous context, pole attachment rates take account of the usable space on poles, something that may be determined from CPR data. CTTANY goes on to reiterate its comparison of the ARMIS-based figure of 3.8 ducts per conduit in New York with the 5.74 ducts per conduit average; asserts that Verizon has provided no evidence to explain the discrepancy; and notes that most of the other states within the Verizon footprint have ratios that cluster around the mean. It contends as well that Verizon's critique of CTTANY's weighting of main and subsidiary conduit implies the impossible

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[243] Supplemental R.D., pp. 19-20.

[244] Supplemental R.D., p.21.

result that subsidiary conduit has less than one duct. CTTANY goes on to argue the inherent accuracy of CPR data, noting that even though it uses 1994 plant data, the plant is long-lived and its physical characteristics are not like to have changed. CTTANY charges that Verizon mischaracterized its calculations and adheres to ARMIS data demonstrated to be inaccurate; and it criticizes the Judge for accepting the ARMIS data "rather than drawing a negative inference from Verizon's stonewalling, and its insistence on using a figure that cannot be correct."[245]

Verizon responds that the issue to be determined is the cost of conduit investment per duct-foot and that the average number of ducts per conduit is irrelevant to that issue. The needed answer can be obtained directly by dividing total net investment by total duct-footage, and the latter figure can be obtained easily from ARMIS. The figure can be obtained from CPR data as well, and the CPR duct-footages are consistent with the ARMIS duct-footages. The ARMIS data, however, are more current. Rather than use this direct approach, Verizon argues, CTTANY used an indirect approach that first calculates net investment per trench-foot and then converts that figure into an investment per duct-foot. Verizon reiterates its efforts to show the fallacies in CTTANY's calculations, adding an explanation of the artifact, noted by CTTANY on exceptions, of less than one duct in subsidiary conduit. But Verizon sees no need even to consider that indirect approach and the complexities it entails, given the ready availability of the direct analysis.

The Judge fully explained his finding that CTTANY's analysis was flawed, and nothing in CTTANY's brief on exceptions rehabilitates the analysis. Verizon properly notes that the exercise here is a simple one--dividing conduit investment by the total number of duct-feet--and that the number of duct-feet suggested by ARMIS data and the number of duct-feet suggested by CPR data are not very different. Why the number of ducts per conduit in New York appears to be below the footprint average has not been conclusively explained, but Verizon has identified

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[245] CTTANY's Brief on Exceptions, p. 8.

a number of factors that may account for it. More importantly, the ratio is not really germane to the exercise at hand, and there is in any event no basis for replacing it with a ratio that is almost as far above the average as it itself is below. CTTANY's exception is denied.

Half-Duct Presumption

To facilitate calculation of a rate reflecting the percentage of conduit capacity occupied by an attachment, the FCC adopted, and reaffirmed in the Reconsideration Order, a rebuttable presumption that the attacher occupies one-half of a duct.[246] Unless the presumption is rebutted, the attacher is charged a rate based on one-half of the calculated cost per duct-foot. The FCC added that "when the actual percentage of capacity occupied is known, it can and should be used instead of the one half duct presumption," and that "the presence of inner duct is adequate rebuttal. Where inner duct is installed, either by the attacher or in a previous installation, the maximum rate will be reduced in proportion to the fraction of the duct occupied. That fraction will be one divided by the actual number of inner ducts in the duct."[247]

In light of those provisions, CTTANY presented rates for a full duct, a half duct, one-third of a duct, and one-quarter of a duct, to be applied depending on the number of inner ducts installed. Verizon objected, contending that the half-duct premise should be applied inasmuch as "Verizon would not, except in extraordinary circumstances, occupy the same duct as a CLEC."[248] In its own study, Verizon calculated rates for a whole duct and a half duct only, and it considered that a reasonable compromise between its interests and the CLEC's. CTTANY contended, however, that where inner duct is used, the attacher typically occupies less than half of the duct and that the FCC's

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[246] Reconsideration Order, ¶¶95-98 and history there cited.

[247] Reconsideration Order, ¶98.

[248] Verizon's Reply Brief, p. 120, citing Tr. 5,756-5,757.

provision for rebutting the half-duct presumption recognizes that reality.

The Judge found no reason to question the FCC's premise that the presence of inner duct rebuts the presumption that the attacher occupies half a duct, and he therefore recommended adoption of CTTANY's proposal to develop rates that assign a correspondingly lower proportion of the total cost to the attacher and to set the rate on the basis of the number of inner ducts present. Verizon excepts.

Verizon argues, first, that developing different rates for different fractional occupancies would be difficult administratively and would impose additional costs, such as those related to inventories of inner ducts. Moreover, it regards fractional rates as unnecessary to insure fair cost allocation, given that it rarely occupies the same duct as a CLEC and that a CLEC occupying an inner duct in effect uses the entire duct. As a practical matter, moreover, its standard practices limit the number of inner ducts to two or three, and the placement of more than three ducts will be even rarer in the future, as cable sizes are increased to include larger numbers of fibers. The two-inner-duct case is covered by Verizon's half-duct proposal, and where three inner ducts are present, one of those ducts would be a maintenance spare, the cost of which should be shared by the occupiers of the duct.

In response, CTTANY cites testimony by Verizon to the effect that modern conduit construction allows for placement of three or four inner ducts, and it points out that even though Verizon may choose not to share a duct with a CLEC, it retains custody over the inner ducts and has the option to lease them to other attachers. It sees no basis for Verizon's administrative objections, asserting that where the number of inner ducts cannot be determined, the FCC formula uses the half-duct rate. Finally, CTTANY characterizes as "ludicrous"[249] Verizon's argument that one inner duct should be excluded from consideration as a maintenance spare, seeing no evidentiary support for such

[249] CTTANY's Reply Brief on Exceptions, p. 12.

treatment. In any event, it says, the FCC took the view that even a spare constitutes part of conduit capacity.

Verizon's objection raises no theoretical arguments not presented to and rejected by the Judge. Its novel arguments are that rates for fractions of a duct less than one-half are unnecessary and administratively burdensome. But administrative burden is unproven, particularly if the half-duct presumption prevails in the event the number of inner ducts cannot be determined. And if the rate turns out to be unnecessary, it will simply not be imposed. The Judge reasonably followed the FCC's premise that the presence of inner duct rebuts the presumption of half-duct occupancy, and Verizon's exception is denied.[250]

OTHER ISSUES

UCRCC

The unbundled CLEC reciprocal compensation charge (UCRCC) is intended to compensate Verizon in situations where it receives certain types of calls from the CLEC for hand off to a second CLEC and must make reciprocal compensation payments to that second CLEC. Verizon calculated the charge on the basis of average actual payments over the period September 1999 through December 1999, and the Judge directed it to recalculate the rate in its brief on exceptions on the basis of a longer sample period terminating more recently. Verizon provides the updated data and a revised rate in its brief; the rate is lower than that initially calculated.

AT&T requests in response that we direct Verizon to update the UCRCC data and rate on a quarterly basis, inasmuch as these payments likely will continue to decline. WorldCom argues

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[250] In its reply brief on exceptions, CTTANY asks us to "accept the RD's decision to adopt the FCC half-duct presumption." (CTTANY's Reply Brief on Exceptions, p. 12.) For the sake of clarity, it should be noted that the half-duct presumption was not challenged by Verizon; its exception related to the Judge's recommendation of the FCCs further point, that the presence of inner duct sufficed to rebut the half-duct presumption and warrant application of a smaller fraction.

that even the recalculated rate is inconsistent with TELRIC, inasmuch as it reflects historical experience instead of being derived on the basis of new TELRIC-based transport and switching rates. It urges that the UCRCC be set equal to Verizon's tariffed reciprocal compensation rates that result from this proceeding; to do otherwise, it argues, would allow Verizon to recover from the originating CLEC more than it would pay to the terminating CLEC for carrying the traffic.

AT&T's request that this rate be updated quarterly is something Verizon has already agreed to,[251] and it seems warranted in view of the ongoing changes in these figures. It is adopted. WorldCom's proposal to change the nature of this charge raises concerns that may be reasonable but is offered for the first time in its reply brief on exceptions. Parties may comment on it within 30 days of the date of this order, and we will then determine whether to pursue the matter further.

OS/DA Rate

Verizon notes that the Judge accepted its proposal for pricing operator services/directory assistance, which is not a UNE, on a flexible basis using TELRIC costs as the lower bound and a market based rate at the upper bound. The rate appendix to the recommended decision, however, provides only an adjusted TELRIC rate, and Verizon therefore asks for clarification that its proposal is approved. We provide that clarification, which is opposed by no party.

The Commission orders:

1. To the extent they are consistent with this order, the recommended decision and supplemental recommended decision of Administrative Law Judge Joel A. Linsider, issued May 16, 2001 and June 18, 2001, respectively, are adopted as part of this order. Except as here granted, all exceptions to those recommended decisions are denied.

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[251] Verizon's Initial Brief, p. 274.

2. Within 20 days of the date of this order, Verizon New York Inc. (Verizon) shall file tariff amendments consistent with this order. Upon filing those tariff amendments, Verizon shall serve copies on all active parties to this proceeding. Any party wishing to comment on the tariff amendments may do so by submitting 10 copies of its comments to the Secretary within 15 days of the date the amendments are filed. The tariff amendments shall not take effect on a permanent basis until approved by the Commission but shall be put into effect on a temporary basis on ten days' notice, subject to refund if found not to be in compliance with this order.

3. For good cause shown, the requirement of newspaper publication of the tariff amendments is waived.

4. Judgment is reserved as to the matter of possible refunds with respect to temporary switching rates.

5. Parties wishing to comment on the matters set by this order for further comment (i.e. possible geographic deaveraging of interoffice transport rates and possible modification of the unbundled CLEC reciprocal compensation charge) shall submit fifteen copies of their comments to the Secretary within 30 days of the date of this order.

6. This proceeding is continued.

By the Commission

(SIGNED) JANET HAND DEIXLER
Secretary

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Mintues-of-Use Calculation (See Footnote 71 of the Order)

Z-Tel, in Equation 2 of Attachment A, of its Reply Brief on Exceptions, characterizes Verizon's traffic-sensitive switching cost (TSSC) estimate as

$$TSSC = \frac{COST}{BDMOU \times 251}$$

However, it would be helpful to re-characterize the left-hand side of the equation as traffic sensitive switching cost per annual business day minute of use (MOU).

$$\frac{TSSC}{ANNUALBDMOU} = \frac{COST}{BDMOU \times 251}$$

Verizon, page 20 of its Brief on Exceptions, indicated that the traffic sensitive switching cost element should be applicable to all billable MOUs. The following equation summarizes the total annual billable MOUs per year [business day (BD) MOUs plus weekend/holiday day (WHD) MOUs].

$$ANNUALMOU = ANNUALBDMOU + ANNUALWHDMOU$$

where

$$ANNUALBDMOU = BDMOU \times 251$$

and

$$ANNUALWHMOU = WHDMOU \times 114$$

In order to produce a unit cost that, when applied to all billable MOUs, produces revenues equaling the total traffic-sensitive investment cost, the annual business day MOUs in the denominator of the second equation above must be multiplied by the ratio of total annual MOUs to annual business day MOUs.

$$\frac{TSSC}{ANNUALBDMO\ U} \times \frac{1}{\frac{ANNUALMOU}{ANNUALBDMO\ U}} = \frac{TSSC}{ANNUALMOU}$$

Since

$$\frac{ANNUALMOU}{ANNUALBDMO\ U} > 1$$

the unit cost per MOU must be lower than Verizon's methodology indicates.

$$\frac{ANNUALMOU}{ANNUALBDMO\ U} = \frac{(BDMOU \times 251) + (WHDMOU \times 114)}{BDMOU \times 251}$$

VERIZON NEW YORK INC.
Summary of Commission Adjustments
To Verizon's Recommended Decision Compliant Rate Filing

Note - The adjustments listed below include the revisions needed to reflect the modifications to the Recommended Decision discussed in the text of the opinion as well as correction of technical errors found during Staff's review of Verizon's Recommended Decision compliance filing. The latter are not discussed in the text of the opinion.

SWITCHING

1. Allocate 66% of end office (EO) switch material costs to non-traffic sensitive (NTS) switch UNE's and 34% to traffic sensitive (TS) switch UNE's.

INVESTMENT LOADING FACTORS

1. Reduce the denominator of the land and building factor by $466,893,554 to reflect the subtraction of Remote Terminal equipment investment in Account 2232 (Circuit Equipment CPE) per Verizon's original (2/7/00) workpaper Part H, section 1, page 1, line 15, column d.

2. Increase the Engineer, Furnish and Install (EF&I) factor will be increased from 30% to 40%.[1]

ANNUAL COST FACTORS (ACF)

1. Reduce the general productivity factors for maintenance and non-network related expenses from 3% and 12%, respectively, to 2% and 10%.

2. Adjust the Forward Looking to Current Factor (FLC) from 75% to 65%.

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[1] The EF&I factors for end office and tandem switching should be calculated in the manner proposed by Verizon in its Brief on Exceptions compliance and the material prices adopted by the Commission.

VERIZON NEW YORK INC.
Summary of Commission Adjustments
To Verizon's Recommended Decision Compliant Rate Filing

3. For the poles and conduit Network ACF only, reflect reversal of the Recommended Decision's 30% reduction to the Moves & Rearrangement (M) dollars.

4. Recalculate the Wholesale Marketing, Other Support and Network ACFs so that the denominators include an estimate of Splitter Investment not owned by Verizon.

5. Increase the Common Overhead ACF to reflect a $60 million allowance for Special Pension Enhancement (SPE) payments by including that amount on Verizon's original (2/7/00) workpaper part H, section 3.11, page 4 of 5, line 4.

6. Adjust the Return, Interest and Federal Income Taxes ACF's to reflect the following cost of capital.

	%	Cost	Rate of Return
Debt	35%	7.3%	2.6%
Equity	65%	12.1%	7.9%
Total	100%		10.5%

7. Adjust the depreciation ACFs to reflect the depreciation lives and net salvage values in Verizon's original (2/7/00) filing.

8. Use the forward-looking cost of capital for the cost of capital input into the "support capital cost model".

LOOPS

1. Reverse the adjustments that applied the land and building loading factor to all central office equipment investment. (See Exhibit 333P [Exhibit AH-1 at 1], adjustment 5, sheets OSP-96, OSP-192, OSP-672, OSP-1344, 16CEV, 16 CEMH, 24CEV, 24 CEMH, PCH-1, PCH-2, IT-RR and IT-CPE).

2. Reflect one-half the Recommended Decision's adjustments to normalize the environmental factors used in the link cost calculator.

VERIZON NEW YORK INC.
Summary of Commission Adjustments
To Verizon's Recommended Decision Compliant Rate Filing

3. Reflect one melded loop rate for all loops based on the latest month's UNE-P (IDLC) and UNE-L (UDLC) lease quantities.

4. Reverse application of the 4:1 GR303 concentration ratio to universal interfaces and DS-1 central office terminals.

5. Reverse the 100% conduit fill factor for innerducts applied to conduit containing copper distribution cable.

6. Reduce the power investment factor input into the link cost calculator to reflect the appropriate rate (.018085).

HOUSE AND RISER CABLE

1. Decrease the fill factor from 60% to 55%.

INTEROFFICE TRANSPORT

1. Reflect the Recommended Decision's adjustment to reflect a weighted-average distance of 12 miles between wire centers (versus 33.4 miles) for Common (Shared) Transport. See workpaper part B-2, section 3, pages 1 and 2, line 3.

2. Increase the fill factor for dedicated transport from 80% to 85%.

NON RECURRING CHARGES (NRC)

1. For UNE-P ports only, reverse the Recommended Decision's adjustment to reflect a 2% fallout rate.

2. Reflect the Recommended Decision's adjustment reducing the NRC rate for "ADSL Conditioning - Manual Loop Qualification" and "ADSL Conditioning - Manual Loop Qualification Expedite" by 25%. See Verizon exhibit M, section 1, page 1 of 1.

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Arizona
T-00000A-00-0194 and T-01051B-02-0871
STF 24-011

INTERVENOR: Arizona Corporation Commission Staff

REQUEST NO: 011

This question refers to Qwest's discussion of the Initiation Phase in its response to STF 22-288 issued under Docket No. T-00000A-00-0194. In that response Qwest states that at least thirteen individuals are involved in the Initiation Phase.

a. How many individuals were actually involved in the Initiation Phase of the Arizona cost docket implementation process associated with Decision No. 64922? Please identify these individuals by name and title.

b. Were these individuals involved only with the Arizona rate implementation or with all of the states' rate implementations?

RESPONSE:

A. A core group of twenty individuals were involved in the Initiation Phase for Decision No. 64922. Their names and titles are listed below.

Marie Billett	Product Manager
Maureen Callan	Product Manager
Benjamin Campbell	Product Manager
Karen Chandler-Ferguson	Product Manager
Barbara Cornwell	Lead Process Analyst
Bill Easton	Witness
Pat Finley	Product Manager
Audrey Johnson	Lead Business Development Analyst
Denyce Jennings	Product Manager
Jane Lacy	Product Manager
Robyn Libadia	Product Manager
Wayne McCarthy	Product Manager
Terri Million	Witness
Bob Mohr	Product Manager
Candace Mowers	Product Manager
Cindy Pierson	Docket Manager
Matt Rossi	Product Manager
Deb Smith	Product Manager
Janean VanDusen	Product Manager
Michael Whitt	Product Manager

In addition to the "core" group there was numerous supporting personnel.

B. The individuals listed above work on the implementation of cost dockets for cost dockets in Qwest's 14 states.

Respondent: Cindy Pierson

G

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INTERVENOR: Arizona Corporation Commission Staff

REQUEST NO: 012

This question refers to Qwest's discussion of the Initiation Phase in its response to STF 22-288 issued under Docket No. T-00000A-00-0194. In that response Qwest states that over 23 individuals are involved in the Contract Implementation Phase.

a. How many individuals were actually involved in the Contract Implementation Phase of the Arizona cost docket implementation process associated with Decision No. 64922? Please identify these individuals by name and title.

b. Were these individuals involved only with the Arizona rate implementation or with all of the states' rate implementations?

c. Were any of these individuals also involved in the Initiation Phase? If so, how many? Please identify these individuals by name and title.

RESPONSE:

a. Glenna Hansen-Process Supervisor (CRIS/IABS)
Sharon Sorenson- Contract Implementation (IABS)
Joel Olson-Contract Implementation (IABS)
Desiree Middleton- Contract Implementation (IABS)
Christy Pearce-Contract Implementation (CRIS)
Tammy Meyer-Contract Implementation (CRIS)
Rhonda Hollinger-Contract Implementation (CRIS)
Frances Dee-Contract Implementation (CRIS)
Kenneth Cahoon-Contract Entry (CPS)
John Fish-Contract Entry (CPS)
Todd Huch-Contract Entry (CPS)
Beverly Reinhold-Contract Entry (CPS)
Ian Wilkerson-Contract Entry (CPS)
Cindy Kalakis-Lead Product Process Analyst
Linda Miles- Lead Product Process Analyst
Sami Hooper- Lead Product Process Analyst
Julie Weskamp-Product Process Analyst
Joann West-Product Process Analyst
Barbara Cornwell-Lead Process Analyst
Dianna Rassmussen-Product Process Analyst
Lori Nielsen-Product Process Analyst
Ann Trees-Product Process Analyst
Linda Kae Olson-Product Process Analyst

b. The above mentioned people are involved in all states' rate implementation.

c. Barbara Cornwell-Lead Process Analyst was involved in the Initiation Phase

Respondent: Susan Van Putten/Barb Cornwell, Qwest Managers

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I

INTERVENOR: Arizona Corporation Commission Staff

REQUEST NO: 013

This question refers to Qwest's discussion of the I.T. Rate Implementation Phase in its response to STF 22-288 issued under Docket No. T-00000A-00-0194. In that response Qwest states that at least thirteen individuals are involved in the I.T. Rate Implementation Phase.

a. How many individuals were actually involved in the I.T. Rate Implementation Phase of the Arizona cost docket implementation process associated with Decision No. 64922? Please identify these individuals by name and title.

b. Were these individuals involved only with the Arizona rate implementation or with all of the states' rate implementations?

c. Were any of these individuals also involved in the Initiation Phase or the Contract Implementation Phase? If so, how many? Please identify these individuals by name and title.

RESPONSE:

a. Glenna Hansen- Glenna Hansen-Process Supervisor (CRIS)
Kenneth Cahoon-Contract Entry (CPS)
John Fish-Contract Entry (CPS)
Todd Huch-Contract Entry (CPS)
Beverly Reinhold-Contract Entry (CPS)
Ian Wilkerson-Contract Entry (CPS)
Jesse Pearlman -Process Supervisor (IABS)
Gail Becker - Contract Entry (IABS)
Myke Davidson - Contract Entry (IABS)
Natalie Fraunfelter - Contract Entry (IABS)
Annie Lewis - Contract Entry (IABS)
Nancy Rourke - Contract Entry (IABS)
Cory Turner - Contract Entry (IABS)

b. The above mentioned people are involved in all states' rate implementation.

c. Glenna Hansen-Process Supervisor (CRIS) was involved in the Contract Implementation Phase

Respondent: Susan Van Putten/Barbara Cornwell, Qwest Managers

I

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Arizona
Docket No. T-00000A-00-0194
STF 22-295

INTERVENOR: Arizona Corporation Commission Staff

REQUEST NO: 295

If so, and assuming the Arizona rates in Decision 64922 have not yet been fully implemented, provide a detailed explanation of why other state rates effective after June 12, 2002, have been fully implemented, while rates ordered in Decision 64922 have not.

RESPONSE:

All comprehensive cost docket decisions have been implemented sequentially in the order of their effective dates. Only certain limited voluntary rate reductions were implemented prior to the implementation of the Arizona wholesale rates. A substantially smaller number of rates needed to be modified in these cases. In addition, since these rate changes were made based on reference to rates adopted in Colorado as benchmark rates, it was more efficient to implement these changes on an integrated basis.

Respondent: Barbara Cornwell

J

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Arizona
T-00000A-00-0194 and T-01051B-02-0871
STF 24-009

INTERVENOR: Arizona Corporation Commission Staff

REQUEST NO: 009

This question refers to Qwest's response to STF 22-295 issued under Docket No. T-00000A-00-0194. Qwest states that "certain limited voluntary rate reductions" were more efficient to implement because, "these rate changes were made based on reference to rates adopted in Colorado as benchmark rates..."

a. Please explain in detail what is meant by "benchmark rates."

b. Please explain in detail what is meant by changing rates in reference to benchmark rates.

c. Please explain in detail why it is more efficient to implement rate changes that are based on benchmark rates.

RESPONSE:

a. The FCC utilized a process they termed "Benchmarking" in its evaluation of UNE prices for states that applied for 271 approval. This benchmarking process compared rates from one state to another state's rates. For example, when Oklahoma's rates were being evaluated for TELRIC compliance, the FCC was not satisfied that Oklahoma's UNE rates were completely compliant with TELRIC principles. The FCC then compared Oklahoma's rates for basic UNE elements to those same element rates from Texas, whose UNE rates had already been evaluated and deemed to be TELRIC compliant. When the FCC made the comparison they found that Oklahoma's rates were within a zone of reasonableness when adjusted by the FCC Universal Service Fund (USF) cost model for state cost differences.

Qwest utilized the FCC benchmarking approach proactively in its 271 (nine state) applications. Qwest made the same comparison of rates as the FCC by comparing eight states rates to Colorado rates (which Qwest felt were TELRIC compliant). Where certain rates were higher than the Colorado benchmark, Qwest voluntarily lowered the rate to be the equivalent of the Colorado rate adjusted by the FCC USF cost model state differences. The FCC accepted this approach and has found both the Colorado rates to be TELRIC compliant, and each state's evaluation and adjusted rates to be within the zone of reasonableness of TELRIC.

b. See subpart "a" above.

c. Qwest is able to implement benchmark rates more quickly for a couple of reasons. First, rates changed to reflect benchmarks are few in number. Second, the changes required are less complex -- a table change, for example, as opposed to a structure or input change that is often required of rates resulting from cost docket proceedings.

Respondents: Carolyn Hammack and Barbara Cornwell

EXHIBIT
S-2
admitted

BEFORE THE ARIZONA CORPORATION COMMISSION

MARC SPITZER
CHAIRMAN
JIM IRVIN
COMMISSIONER
WILLIAM A. MUNDELL
COMMISSIONER
JEFF HATCH-MILLER
COMMISSIONER
MIKE GLEASON
COMMISSIONER

ARIZONA CORPORATION COMMISSION, Complainant, v. QWEST CORPORATION, Respondent.	DOCKET NO: T-01051B-02-0871 NOTICE OF FILING REPLY TESTIMONY

Staff of the Arizona Corporation Commission hereby files the Reply Testimony of Matthew J. Rowell, of the Utilities Division, in the above-referenced matter.

RESPECTFULLY SUBMITTED this 3 day of June, 2003.

Maureen A. Scott, Attorney
Gary H. Horton, Attorney
Legal Division
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The original and thirteen (13) copies of the foregoing were filed this 3 day of June, 2003 with:

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Deborah A. Amaral
Assistant to Maureen A. Scott

REPLY

TESTIMONY

OF

MATTHEW ROWELL

ARIZONA CORPORATION COMMISSION
Complainant
V.
QWEST CORPORATION
Respondent

DOCKET NO. T-01051B-02-0871

JUNE 3, 2003

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

MARC SPITZER – Chairman
JIM IRVIN
WILLIAM A. MUNDELL
MIKE GLEASON
JEFF HATCH-MILLER

ARIZONA CORPORATION COMMISSION Complainant,	)	DOCKET NO. T-01051B-02-0871
V.	)	
QWEST CORPORATION Respondent	)	

REPLY

TESTIMONY

OF

MATTHEW ROWELL

CHIEF: TELECOMMUNICATIONS AND ENERGY SECTION

UTILITIES DIVISION

ARIZONA CORPORATION COMMISSION

JUNE 3, 2003

Q. Please state your name and business address for the record.

A. My name is Matthew Rowell. My business address is: Arizona Corporation Commission, 1200 West Washington Street, Phoenix, Arizona 85007.

Q. Are you the same Matthew Rowell who submitted Direct Testimony in this Docket on April 17, 2003?

A. Yes.

Q. What is the purpose of your testimony?

A. The purpose of my testimony is to reply to selected points contained in the Rebuttal Testimony filed on May 15, 2003, by William R. Easton of Qwest Corporation.

Q. On page 9 lines 7 through 20 of his testimony Mr. Easton discusses the need to make wholesale rate changes on a carrier by carrier basis. Please comment on Mr. Easton's points.

A. Mr. Easton states that because interconnection agreements ("ICAs") have been negotiated at various points in time since 1996, contractual provisions and structures concerning rates vary from ICA to ICA. This necessitates a review of each ICA to determine how the Commission's order affects each agreement. Given the current state of Qwest's operations this is true; however I would like to point out two factors that cause Staff to be unsympathetic to Mr. Easton's arguments on this issue. First, the review of the agreements could have started well before the cost docket order was finalized. Qwest was aware of which rates were under consideration in the cost docket well before the docket

was concluded. Thus, before the cost docket was concluded Qwest could have begun reviewing ICAs to determine which ICAs contain rates that may be affected by the cost docket and could have begun to map product names and rate elements from the ICAs into those being considered in the cost docket.

Second, Qwest could have undertaken a process that allows for easier review of its ICAs. For instance, even in the absence of a cost docket Qwest could have mapped the varying product names and rate elements into a common set of product name and rate elements. A database could have been created that indicates which rate elements are contained in which ICAs. Then a data base query could be used instead of a manual review of every contract.

These are just two points that illustrate that the cumbersome nature of Qwest's rate implementation process is not fundamental. It is a result of Qwest's failure (for whatever reason) to develop and implement a process that is less cumbersome.

Q. On Page 11 Line 6 of his testimony Mr. Easton indicates that 126 CLECs were involved in the Arizona Cost Docket Implementation. Do you have any comment on that number?

A. Yes. There are a total of 126 CLECs certificated to do business in Arizona but only 78 of them are certificated to do business on a facilities based basis.[1] The balance of the CLECs

[1] Qwest confidential response to Staff data request 25-1.

are resellers only. No resale rates were changed in the cost docket.[2] Thus, the cost docket order was actually only relevant to 78 of the CLECs.

Q. On page 11 line 18 through page 12 line 7 of his testimony, Mr. Easton lists eight recent cost dockets and states that "Qwest implemented all these comprehensive cost dockets sequentially in the order of their effective dates." Please comment.

A. It is true that the cost dockets Mr. Easton lists on pages 11 and 12 of his testimony were implemented sequentially in the order of their effective dates. These are the same agreements listed in Table 1 of my Direct Testimony at page 9. It is important to note that these are *not* the cost dockets associated with Staff's recommendation that Qwest be held in contempt.[3] The cost dockets that are associated with Staff's contempt claim are those listed in Table 2 of my Direct Testimony.[4]

Q. On page 15 lines 2 through 10 Mr. Easton responds to Staff's belief that Decision No. 64922 required Qwest to implement the rates immediately. Please respond to Mr. Easton's views on this point.

A. Mr. Easton contends that the order required the rates to be "effective" immediately but not "implemented" immediately. Rather than engage in a debate on semantics I will simply restate the point from my Direct Testimony at page 13: "If immediate implementation was practically impossible Qwest should have sought relief from the Commission." Further, if

[2] Qwest response to Staff data request 24-8.

[3] See Direct Testimony of Matthew Rowell at page 15.

[4] Direct Testimony of Matthew Rowell at page 10.

implementation in a reasonable time frame were impractical Qwest should have sought relief from the Commission.

Q. On page 16 and 17 of his testimony Mr. Easton discusses benchmark rates and the implementation of certain voluntary rate reductions in other states ahead of Arizona. Please respond.

A. Staff contended in its Direct Testimony that Qwest's implementation of wholesale rates in nine other states ahead of Arizona constituted contempt of the Commission.[5] Mr. Easton attempts to justify Qwest's actions by stating that, "Since these rate changes were made based on reference to benchmark rates adopted in Colorado, it was more efficient to implement the voluntary changes on an integrated basis." However, Mr. Easton provides no support for this statement. The explanation of benchmark rates on page 17 of his testimony explains why benchmark rates are easier to develop but it offers no insight on why benchmark rates would be easier to implement. The benchmarking process starts with rates approved in one state as TELRIC compliant and then uses the FCC Universal Service Fund Cost Model for state cost differences to determine if rates in other states fall within a "zone of reasonableness." Rates that do not fall into the "zone of reasonableness" are then adjusted such that they do fall into it. This is a much more simple process than the typical contested cost docket case. (Although I suspect the real time savings came from the fact that Qwest was *voluntarily reducing* rates rather than the method they used to determine the new rates.) However, the benchmarking process has nothing at all to do with rate implementation which is the subject of this docket. Whether rates are developed

[5] Direct Testimony of Matthew Rowell Page 15, lines 1-15.

through a traditional cost docket or whether they are developed on a voluntary basis using the benchmarking process, after they are developed they still need to be implemented. Mr. Easton's benchmarking discussion is a red herring. The issue here is rate implementation not rate development.

Q. Please respond to Mr. Easton's statements on page 19 of his rebuttal testimony concerning Staff's recommendation that an independent auditor be hired to evaluate the effectiveness of Qwest's process and systems changes.

A. Mr. Easton argues that an independent auditor is unnecessary because the specifics of the system that Qwest uses to accomplish improvements in its processes should not concern the Commission and that "(t)he Commission's legitimate concern is that Qwest implement the rates in a timely manner." To clarify Staff's position, we agree that the specifics of Qwest's efforts to improve its process are not our concern. We are recommending that an auditor be hired to determine whether the *results* of Qwest's process improvements will result in acceptable cost docket implementation time frames. We are not concerned with how Qwest makes those improvements or what improvements Qwest decides to make. We are concerned that real improvements in the process are made. We believe that an auditor is necessary because without one there will be no way for the Commission to verify that the process improvements were actually made and that they will result in actual improvements in Qwest's rate implementation time frames.

Q. Does this conclude your testimony?

A. Yes, it does.

EXHIBIT A

Arizona
T-00000A-00-0194 and T-01051B-02-0871
STF 24-008

INTERVENOR: Arizona Corporation Commission Staff

REQUEST NO: 008

This question refers to Attachment A of Qwest's response to Staff's 22nd set of Data Requests issued under Docket No. T-00000A-00-0194. Attachment A indicates that resale rates needed to be changed as a result of Phase II of the Arizona Cost Docket. Please indicate which resale rates needed to be changed as a result of Phase II of the Arizona Cost Docket.

RESPONSE:

Qwest objects to this request on the grounds that it is not clear what Staff is referring to, and requests clarification. Notwithstanding this objection, Qwest states that Resale rates did not change in Phase II in Docket No. T-00000A-00-0194.

Respondent: Legal

OPEN MEETING ITEM
NEW APPLICATION

EXHIBIT
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AZ CORP COMMISSION
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MEMORANDUM

TO: THE COMMISSION

FROM: Utilities Division

DATE: November 26, 2002

RE: QWEST CORPORATION – Failure to Implement Wholesale Rate Changes Ordered in Decision No. 64922 (Docket No. T-01051B-02-0871)

Docket No. T-00000A-00-0194 was opened in the year 2000 to address issues arising as a result of the Arizona District Court's decision in U S West v. Jennings, 46 F.Supp.2d 1004 (D. Ariz. 1999) and several Federal Communications Commission ("FCC") decisions affecting Qwest's wholesale pricing to competitors. Phase I of this proceeding was conducted on an expedited basis in order to comply with the FCC's geographical deaveraging requirements set forth in 47 C.F.R. Section 51.507(f). On July 25, 2000, the Arizona Corporation Commission ("Commission") issued an Opinion and Order in this case adopting interim geographically deaveraged Unbundled Network Element ("UNE") rates.

Phase II of this proceeding was designed to address issues raised by subsequent FCC orders and judicial decisions, and to establish permanent geographically deaveraged rates. On December 14, 2000, a Procedural Order was issued which stated that Qwest's existing UNE rates would also be reviewed in Phase II. The Phase II hearing commenced on July 16, 2001, and concluded on July 31, 2001. Initial post-hearing briefs were filed on August 31, 2001. Reply briefs were submitted on September 21, 2001.

On November 8, 2001, a Recommended Opinion and Order was issued. Various parties filed exceptions to the Recommended Opinion and Order, including Qwest. On March 8, 2002, a Supplement to the Recommended Opinion and Order was issued, and exceptions to the Supplement were filed by various parties, including Qwest. On April 11, 2002, the Commission conducted an Open Meeting to deliberate on the Recommended Order. A second Open Meeting was held on this matter on May 30, 2002. On June 12, 2002, the Commission adopted Decision No. 64922. Qwest filed a Notice of Compliance with Decision No. 64922 on June 26, 2002, which contained the price list agreed to by the parties. Qwest filed an Application for Rehearing on July 2, 2002. Qwest filed its revised Exhibit A to its Statement of Generally Available Terms and conditions on August 30, 2002. Qwest appealed the Commission's Opinion and Order (Decision No. 64922) to the Arizona District Court on August 21, 2002. Qwest's appeal is still pending. Qwest did not seek a stay of Decision 64922 with either the Commission or the Arizona District Court.

Qwest has not yet implemented the wholesale rate changes ordered by Decision No. 64922. On October 7, 2002, AT&T docketed with the Commission, a letter to Qwest in which AT&T complained that while the rates and charges adopted in Decision No. 64922 were to be effective immediately or on June 12, 2002, it was still being charged the old wholesale rates that had been superseded by Decision No. 64922.[1]

On October 16, 2002, Qwest responded that the implementation of Arizona wholesale rates was being dealt with as quickly and efficiently as possible and that based on current implementation schedules, it was projected that the Arizona ordered rates would be completed sometime in mid-December, 2002.[2] Qwest also stated that because of multiple orders from multiple dockets in different states, Qwest may not always be able to begin implementation immediately after a particular order is issued because it may be required to deal with other orders with earlier effective dates. It stated that it had numerous cost dockets and voluntary rate reductions associated with 271 filings, all of which were also being implemented this year.

On October 16, 2002, Staff sent data requests to Qwest regarding its delay in implementing the rates approved in Decision 64922.[3] In its responses to Staff's data requests, Qwest further stated that its implementation time for wholesale rate changes is approximately 60 business days, or almost 3 months. Qwest separately indicated to Staff that the average overall implementation time is 93 business days, or approximately 4 ½ months. However, if Qwest's projections are still accurate, it will take Qwest 6 months or longer to implement the new wholesale rates in Arizona.[4]

Because of the way its retail billing systems are structured, Staff believes that Qwest is able to implement retail rate changes in one billing cycle, or 30 business days. Further, Staff's 271 consultants report, after making inquires of BellSouth, Verizon and SBC, that other Bell Operating Companies can implement wholesale rate changes within 30-45 days.

In addition to what appears to be underlying wholesale billing system design and rate change implementation process problems, Staff believes that Qwest appears to have intentionally delayed implementation of Decision No. 64922 until it could complete rate changes in 9 other states for which it had 271 applications pending at the federal level. Qwest did not notify the Commission of the delay in implementation of Decision No. 64922 or seek Commission approval to delay the Decision's implementation. By law, Qwest is not allowed to delay enforcement or implementation of a Commission Order without the Commission's authorization. Staff respectfully requests that the Commission issue:

---

[1] October 7, 2002 Letter from Richard S. Wolters, Senior Attorney, AT&T, to Timothy Berg, Fennemore Craig, P.C. (Exhibit A attached).

[2] October 16, 2002 Letter from Timothy Berg, Fennemore Craig, P.C. to Richard S. Wolters, AT&T (Exhibit B attached).

[3] Staff's October 23, 2002 Data Requests to Qwest are attached as Exhibit C.

[4] Qwest's Responses to Staff's Data Requests are attached as Exhibit D.

(1) An Order to Show Cause directing Qwest to show cause (1) why its failure to implement the rates required by Decision No. 64922 is not unlawful and unreasonable, (2) why its implementation of rates in the 9 other states with pending 271 applications at the FCC ahead of Arizona is not unreasonable, and (3) why its failure to notify the Commission of the delay and seek relief from the Order is not unreasonable.

(2) An Order to Show Cause directing Qwest to show cause (1) why it should not be held in contempt of a Commission Order and assessed fines for failure to implement the rates approved in Decision No. 64922 within a reasonable amount of time; and (2) why it should not be held in contempt of a Commission Order and assessed fines for deliberately delaying implementation of the wholesale rate changes in Arizona until it had implemented the wholesale rate changes in at least 9 other states in which it has 271 applications pending at the FCC.

(3) An Order to Show Cause directing Qwest to show cause why it should not be required to make billing systems and process changes that will enable it to implement wholesale rate changes within 30 business days.

Staff has attached a proposed Order to Show Cause and respectfully requests that Qwest be required to appear before the Arizona Corporation Commission at a time and place designated by the Hearing Division and show cause, if any, as specified in the Complaint and Order to Show Cause, which is attached hereto.

E. G. J.

Ernest G. Johnson
Director
Utilities Division

EGJ:MJR:MAS:GHH

EXHIBIT A

Legal

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AT&T

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Richard S. Wolters
Senior Attorney

Suite 1575
1875 Lawrence Street
Denver, CO 80202
303 298-6741
FAX 303 298-6301

October 7, 2002

Timothy Berg
Fennemore Craig, P.C.
3003 North Central Avenue
Suite 2600
Phoenix, AZ 85012-2913

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LEGAL DIV.
ARIZ. CORPORATION COMMISSION

RE: Phase II Opinion and Order
Docket No. T-00000A-00-0194

Dear Mr. Berg,

On August 30, 2002, Qwest filed an update to Exhibit A in its Statement of Generally Available Terms and Conditions ("SGAT"), apparently to comply with the Arizona Corporation Commission's Decision No. 64922, dated June 12, 2002. AT&T continues to pay the rates superseded by Decision No. 64922, although the Decision states that the rates and charges that were approved shall be effective immediately.

A.R.S. § 40-253 states that "[a]n application for rehearing shall not excuse any person from complying with and obeying any order or decision, or any requirements of any order or decision of the commission theretofore made, or operate in any manner to stay or postpone enforcement thereof except in such cases and upon such terms as the commission by order directs." Qwest's application for rehearing was not granted, and the Commission has not granted a stay of its order. Furthermore, A.R.S. §§40-254 and 40-254.01 state that the Commission's order remain in effect pending the decision of any appeal.

There is no legal basis for Qwest to continue to charge AT&T for rates that have been superseded by the Commission's Decision No. 64922. AT&T's right to receive the rates approved by the Commission is not contingent on opting into the SGAT but is based on the Commission's Decision. AT&T requests a refund for all relevant rates effective June 12, 2002, and requests that Qwest immediately commence billing AT&T pursuant to the Commission's June Decision.

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EXHIBIT A

AT&T wishes to avoid enforcement proceedings; however, the sums are not inconsequential, and AT&T will do so if the matter cannot be resolved amicably.

Sincerely,

Richard S. Wolters

RSW:ls

Cc: Service List, Docket No.
T-00000A-00-0194

EXHIBIT B

Legal

LAW OFFICES

FENNEMORE CRAIG

A PROFESSIONAL CORPORATION

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October 16, 2002

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OCT 21 2002

LEGAL DIV.
ARIZ. CORPORATION COMMISSION

Richard S. Wolters
AT&T Communications of the
Mountain States
1875 Lawrence Street, Suite 1503
Denver, CO 80202

Re: Phase II Opinion and Order
Docket No. T-00000A-00-0194

Dear Mr. Wolters:

I received your October 7, 2002 letter regarding AT&T's rates as set forth in the Arizona Corporation Commission Decision No. 64922 dated June 12, 2002. Qwest agrees with AT&T that the rates set forth in the Decision are effective as of June 12, 2002.

Qwest is currently in the process of implementing Decision No. 64922. Please be assured that Qwest will appropriately credit AT&T, and all other customers, for the billing differences between rates charged from the effective date through such time as Qwest implements fully its new billing and rates, as is the practice for all rate docket implementation efforts.

As I am sure you are aware, Qwest has had numerous cost dockets and voluntary rate reductions associated with 271 filings, all of which are also being implemented this year. The implementation of wholesale rates resulting from a generic cost docket is no small undertaking. Further, because of multiple orders from multiple dockets, Qwest may not always be able to begin implementation immediately after a particular order is issued because it may be required to deal with other orders with earlier effective dates. The implementation of the Arizona wholesale rates is being dealt with as quickly and efficiently as possible. Based on current implementation schedules, Qwest believes that implementation of Arizona ordered rates will be complete sometime in mid-December 2002. Again, upon completion, AT&T will receive a credit for interim rates paid over the ordered amount from the effective date of June 12, 2002.

FENNEMORE CRAIG

While I understand AT&T's desire and Qwest's obligation to realize the new rates as ordered, I hope you will understand Qwest's position and recognize its efforts to process the new billing and rates as soon as practicable. It has come to my attention that AT&T has already approached the Arizona Corporation Commission regarding implementation of these rates prior to receiving a response from Qwest on this matter. As you are aware, billing disputes and rate implementation matters are subject to the escalation procedures contained in the interconnection agreement between Qwest and AT&T, and normally are addressed, at least initially, through that process. *See e.g.*, Qwest/AT&T Interconnection Agreement, Sections 26-27. I do not believe enforcement or other Commission proceedings are warranted since AT&T will be fully refunded for all amounts paid over the Commission ordered rates as stated above.

Please feel free to contact me with questions.

Sincerely,

FENNEMORE CRAIG

Timothy Berg

cc: Maureen Scott

PHX/1348812.2/67817.240

EXHIBIT C

ARIZONA CORPORATION COMMISSION STAFF'S TWENTY-SECOND SET OF DATA REQUESTS TO QWEST CORPORATION DOCKET NO. T-00000A-00-0194

These requests pertain to Qwest Corporation's operations in the State of Arizona, unless otherwise specifically stated. If the information is not available in exactly the form requested, please provide the requested information in the form in which it is available.

In responding to the following data requests, please refer to Mr. Berg's October 16, 2002 letter to Mr. Richard S. Wolters.

LD-288 Please describe in detail all steps necessary on Qwest's part to implement new wholesale rates in Arizona.

LD-289 For each step listed in response to Question LD-288, please indicate the amount of time and the number of personnel involved.

LD-290 Please indicate the organization responsible for implementing Qwest Arizona wholesale billing changes and where it is located. Please indicate whether the same organization and personnel are responsible for implementing Qwest's wholesale billing changes in other states. If so, what states?

LD-291 In reference to the statement "Qwest may not always be able to begin implementation immediately after a particular order is issued because it may be required to deal with other orders with earlier effective dates," please respond to the following questions:

a. Please list all orders referred to in the above statement.

b. Please provide the issue dates of all of the orders listed in response to Question LD-291(a) above.

c. Please provide the effective date of all of the orders listed in response to Question LD-291(a) above if that date differs from the issue date provided in Question LD-291(b).

d. Please indicate if any wholesale rate changes were implemented in any states voluntarily in conjunction with 271 applications now before the FCC or soon to be filed with the FCC. If the answer to this question is "yes", please indicate whether there was a state commission order which memorialized such voluntary changes. If there was no state commission order, please indicate in each case how Qwest determined the effective date of such rate changes.

e. By state, please provide the dates that wholesale rate changes have been implemented by Qwest to-date.

EXHIBIT C

ARIZONA CORPORATION COMMISSION STAFF'S TWENTY-SECOND SET OF DATA REQUESTS TO QWEST CORPORATION DOCKET NO. T-00000A-00-0194

These requests pertain to Qwest Corporation's operations in the State of Arizona, unless otherwise specifically stated. If the information is not available in exactly the form requested, please provide the requested information in the form in which it is available.

f. By state, please provide the dates that wholesale rate changes were first billed to CLECs by Qwest to-date.

g. For each order listed above, please indicate whether all wholesale rates in the particular state were effected by the order or agreement, or whether only certain wholesale rates changed. If only certain rates were affected, please indicate which rates were effected by order, i.e., loop rates, switching rates, resale discounts. Please indicate the number of rates affected for each state.

LD-292 The following questions relate to the statement, "Based on current implementation schedules, Qwest believes that implementation of Arizona ordered rates will be complete sometime in mid-December 2002":

a. Please provide Qwest's "current implementation schedule" for all wholesale rates changes to be implemented in Arizona and any other Qwest states.

b. Please indicate how it was determined by Qwest that the ordered rates in Arizona will not be implemented until mid-December 2002.

LD-293 Please list all states (including Arizona) where wholesale rates changes have been or are being implemented by Qwest in order of the date implemented or to be implemented.

LD-294 Have any wholesale rate reductions, whether as a result of voluntary agreement or commission order effective after June 12, 2002 been fully implemented by Qwest?

LD-295 If so, and assuming the Arizona rates in Decision 64922 have not yet been fully implemented, provide a detailed explanation of why other state rates effective after June 12, 2002, have been fully implemented, while rates ordered in Decision 64922 have not.

LD-296 Please refer to the following statement in responding to the next set of questions: "As you are aware, billing disputes and rate implementation matters are subject to the escalation procedures contained in the interconnection agreement between Qwest and AT&T, and normally are addressed, at least initially, through that process."

a. Please indicate whether Qwest has implemented the new wholesale rates ordered by Decision 64922 for any CLEC in Arizona.

EXHIBIT C

ARIZONA CORPORATION COMMISSION STAFF'S
TWENTY-SECOND SET OF DATA REQUESTS TO QWEST CORPORATION
DOCKET NO. T-00000A-00-0194

These requests pertain to Qwest Corporation's operations in the State of Arizona, unless otherwise specifically stated. If the information is not available in exactly the form requested, please provide the requested information in the form in which it is available.

b. If the answer to question LD-296(a) is yes, please indicate for which CLECs Qwest has implemented the rates in Arizona and the date of implementation. If the answer to question LD-296(a) is yes, why would Qwest implement the rates for some CLECs but not others.

c. Please indicate whether Qwest believes that its compliance with an ACC order is governed by the terms of an interconnection agreement with a specific carrier.

LD-297 Please indicate how long it took US West to fully implement the rates contained in ACC Decision 60635 issued on January 30, 1998.

LD-298 Does Qwest plan to compensate the CLECs for the delay in implementing the new rates? How?

LD-299 When did Qwest first notify the Commission that there would be a delay in implementation of the wholesale rates ordered in Decision 64922.

LD-300 What Commission Order is Qwest relying upon to stay or delay implementation of the wholesale rates ordered in Decision No. 64922.

LD -301 In reference to your statement that "AT&T will receive a credit for interim rates paid over the ordered amount from the effective date of June 12, 2002," upon what authority or Commission order does Qwest rely to declare that the current rates are interim rates.

EXHIBIT D

Arizona
Docket No. T-00000A-00-0194
STF 22-288

INTERVENOR: Arizona Corporation Commission Staff

REQUEST NO: 288

Please describe in detail all steps necessary on Qwest's part to implement new wholesale rates in Arizona.

RESPONSE:

Implementation of a cost docket is an extremely complex undertaking. Qwest's cost docket implementation process consists of three (3) primary phases: the Initiation Phase, the Contract Implementation Phase, and the I.T. Rate Implementation Phase. Once these Phases are completed there is an additional work effort required to determine what, if any, true-up is required pursuant the Commission's Decision or language in CLEC contracts.

The Initiation Phase occurs once the decision of the Commission in the cost docket becomes final. This Phase involves at least 13 individuals representing each of the business entities within Qwest that are charged with implementing the Commission's decision. The entities include representatives from Wholesale Product Management, Business Development and Contract Development & Services. During this Phase, the Commission's order is evaluated and analyzed to determine the scope of work necessary to implement each of the rates. Issues raised by the Decision are assigned for resolution within the appropriate business units, legal interpretation is provided and operational impacts are also addressed in this Phase. The rates are then mapped into existing CLEC contracts and the new rate information is sent on to the departments charged with posting the new rate information on internal websites, determining the application of the rates to each CLEC and preparing the necessary documentation to incorporate the new rates into the various billing systems. Twenty-five business days are normally scheduled for the work required in this Phase. However, that time period may vary depending on the size and scope of the docket to be implemented, the number of CLEC contracts to which the rates need to be applied, and the workload from implementation activities associated with cost dockets from other jurisdictions.

The Contract Implementation Phase involves over 23 individuals - again representing the business units responsible for the tasks necessary to complete this Phase including the Cost Docket Coordinator, the Contract Implementation Team for IABS, the Contract Implementation Team for CRIS, representatives from CPMC (collocation), Product Process representatives and the Program Management Organization. Activities include preparing the documents necessary to build new rate tables, performing quality and accuracy checks of the rate information, data entry associated with inputting the rates into the system, CLEC notification of updated rate sheets associated with their contract, creating documentation necessary for any new rate elements or structure changes, and determining cost of and establishing priority for the systems modifications. Twenty business days are normally scheduled for the work required in this Phase. Again, that time period may vary depending on the size and scope of the docket to be implemented, the number of CLEC contracts to which the rates need to be applied, and the workload from implementation activities associated with cost dockets from

EXHIBIT D

other jurisdictions.

The I.T. Rate Implementation Phase involves at least 13 individuals representing the various billing systems (CRIS, IABS, LEXCIS). These individuals receive all of the documentation from work done in previous phases and are responsible for updating the system tables, making system modifications where necessary to accommodate the rate changes and completing the tasks necessary to have the new rates reflected on the CLEC bills. This Phase is normally scheduled for completion within 15 business days, with variance possible due to complexity or workload demands.

This wholesale rate implementation process is followed in all fourteen Qwest service states.

Respondent: Timothy Dowd

EXHIBIT D

Arizona
Docket No. T-00000A-00-0194
STF 22-289

INTERVENOR: Arizona Corporation Commission Staff

REQUEST NO: 289

For each step listed in response to Question LD-288, please indicate the amount of time and the number of personnel involved.

RESPONSE:

See Qwest's response to LD-288.

Respondent: Timothy Dowd

EXHIBIT D

Arizona
Docket No. T-00000A-00-0194
STF 22-290

INTERVENOR: Arizona Corporation Commission Staff

REQUEST NO: 290

Please indicate the organization responsible for implementing Qwest Arizona wholesale billing changes and where it is located. Please indicate whether the same organization and personnel are responsible for implementing Qwest's wholesale billing changes in other states. If so, what states?

RESPONSE:

See Qwest's response to LD-288.

Respondent: Cindy Pierson

EXHIBIT D

Arizona
Docket No. T-00000A-00-0194
STF 22-291

INTERVENOR: Arizona Corporation Commission Staff

REQUEST NO: 291

In reference to the statement "Qwest may not always be able to begin implementation immediately after a particular order is issued because it may be required to deal with other orders with earlier effective dates," please respond to the following questions:

a. Please list all orders referred to in the above statement.

b. Please provide the issue dates of all of the orders listed in response to Question LD-291(a) above.

c. Please provide the effective date of all of the orders listed in response to Question LD-291(a) above if that date differs from the issue date provided in Question LD-291(b).

d. Please indicate if any wholesale rate changes were implemented in any states voluntarily in conjunction with 271 applications now before the FCC or soon to be filed with the FCC. If the answer to this question is "yes", please indicate whether there was a state commission order which memorialized such voluntary changes. If there was no state commission order, please indicate in each case how Qwest determined the effective date of such rate changes.

e. By state, please provide the dates that wholesale rate changes have been implemented by Qwest to-date.

f. By state, please provide the dates that wholesale rate changes were first billed to CLECs by Qwest to-date.

g. For each order listed above, please indicate whether all wholesale rates in the particular state were effected by the order or agreement, or whether only certain wholesale rates changed. If only certain rates were affected, please indicate which rates were effected by order, i.e., loop rates, switching rates, resale discounts. Please indicate the number of rates affected for each state.

RESPONSE:

Attachment A responds to parts (a)-(c),(e), and (g), and contains a listing of all ordered, issue and effective dates of all orders and rates effected by the Order.

(d). Qwest has filed voluntary rate reductions in conjunction with 271. Please see Attachment B in response to LD-292(a) which contains the states and information on the approval of those rates.

(f). Once the rates are loaded into the billing systems, the next bill the customer receives will reflect the new rates. Exact timing varies, depending on the customers billing period.

EXHIBIT D

Respondent: Cindy Pierson

EXHIBIT D

Commission Staff's 22nd Set of Data Requests

ARIZONA
DOCKET NO. T-00000A-00-0194
STF 22-291
ATTACHMENT A

ate ocket #	Order	Compliance Filing	Compliance Approval	Rate Effective Date	Billing Systems Imple	True-up Complete	Comments
IA RPU-01-06 Resale, Interconnection, Collocation, UNEs, Subloop, Line Sharing, UDIT, Unbundled Dark Fiber, Local Sw., Common Channel Signaling, Misc. Elements, UNE Combination, EEL, D.A., Access to Poles, Ducts, Conduits, & ROW	03/22/02	04/05/02	04/30/02	04/26/02	08/16/02	09/16/02	Order issued approving compliance filing
NE 2516 Resale, Interconnection, Collocation, UNEs, Subloop, Line Sharing, NID, UDIT, Unbundled Dark Fiber, Shared Transport, Local Tandem Sw., Local Sw., Common Channel Signaling, LIDB, 8XX Data Query, ICNAM, Misc. Elements, UNE Combinations, EEL, Unbundled Packet Switching, Access to Poles, Ducts, Conduits & ROW, SS , Bona Fide Request	04/23/02	05/03/02	06/05/02	06/07/02	08/02/02	09/03/02	Order issued approving compliance filing
CO 99A-577T Resale, Interconnection, Collocation, UNEs, Subloop, Line Sharing, NID, UDIT, Unbundled Dark Fiber, Local Tandem Sw., Customized Routing, Common Channel Signaling, LIDB, 8XX Data Query, ICNAM, Misc. Elements, UNE Combinations, EEL, Local Number Portability, Toll & Assistance Opr Srv., Access to Poles, Ducts, Conduit & ROW, OSS, Bona Fide Request	12/21/01	04/26/02	06/06/02	06/05/02	10/08/02	10/31/02	Order issued approving compliance filing
UT 00-049-106 Collocation	04/03/02	5/1/02 5/17/02 8/22/02 8/30/02	5/8/02 10/22/02	07/10/02			10/22/02 approval verbal with a 7/10/02 effective date

EXHIBIT D

Commission Staff's 22nd Set of Data Requests

State Docket #	Order	Compliance Filing	Compliance Approval	Rate Effective Date	Billing Systems Imple.	True-up Complete	Comments
UT 00-049-105 Resale, Interconnection, UNEs, Subloop, Line Sharing, NID, UDIT, Shared Transport, Local Tandem Sw., Local Sw., Customized Routing, Common Channel Signaling, LIDB, 8XX Database Query, ICNAM, Misc. Srv., UNE Combinations, EEL, Access to Poles, Ducts, Conduits & ROW, OSS, Bona Fide Request	06/06/02	06/25/02	07/08/02	07/10/02			Order issued approving compliance filing
AZ Pt II T-0000A-00-0194 Resale, Interconnection, Collocation, UNEs, Subloop, Field Connection Point, Line Sharing, NID, UDIT, Unbundled Dark Fiber, Local Tandem Sw., Local Sw., Common Channel Signaling, 8XX Database Query, ICNAM, Misc. Elements, UNE Platform, EEL, D.A. List, Access to Poles, Ducts, Conduits & ROW, OSS, Bona Fide Request Process	06/12/02	06/26/02	06/26/02	06/12/02			Compliance filing was by agreement of the parties. No order was issued approving the rates due to agreement by the parties
WY 70000-TA-01-700 Resale, Interconnection, Collocation, UNEs, Subloop, Line Sharing, NID, UDIT, Unbundled Dark Fiber, Shared Transport, Local Tandem Sw., Local Sw., Common Channel Signaling, LIDB, 8XX Database Query, ICNAM, Misc. Elements, UNE Combination, EEL, Access to Poles, Ducts, Conduits & ROW, OSS, Bona Fide Request	06/19/02	06/26/02	06/28/02	07/01/02			6/19/021 Order was a Bench order, paper issued 9/23/02

EXHIBIT D

Commission Staff's 22nd Set of Data Requests

State Docket #	Order	Compliance Filing	Compliance Approval	Rate Effective Date	Billing Systems Imple.	True-up Complete	Comments
NM (Interim) 3435 Resale, Interconnection, Collocation, UNEs, Subloop, Line Sharing, NID, UDIT, Unbundled Dark Fiber, Shared Transport, Local Tandem Sw., Local Sw., Customized Routing, Common Channel Signaling, ICNAM, Misc. Charges, UNE Combination, EEL, Unbundled Packet Switching, Access to Poles, Ducts, Conduits & ROW, OSS, Bona Fide Request Process	08/27/02	08/30/02	10/29/02	08/27/02			Went into effect by operation of law
WA Pt B UT-003013 UNEs, Subloop, Line Sharing, UDIT, Unbundled Dark Fiber, Local Tandem Sw., Local Sw., UNE Combinations, EEL, Access to Poles, Ducts,	06/21/02	6/28/02 07/25/02	7/19/02 8/27/02 12/6/02	7/28/02 8/27/02			REC rates approved, NRC compliance filing 12/6/02, but need final order on NRC
OR (REC) M 773 UNEs, NID, Unbundled Dark Fiber, Local Tandem Sw., LIDB, 8XX Database Query	05/28/02	08/23/02					Compliance filing made, waiting for Commission order
MN CI-01-1375 Resale, Interconnection, Collocation, UNEs, Subloop, NID, Unbundled Dark Fiber, Shared Transport, Local Tandem Sw., Local Sw., 8XX Database Query Service, Misc. Charges, UNE Combinations, EEL, Unbundled Packet Switching, Local Number Portability, Access to Poles, Ducts, Conduits & ROW, Bona Fide Request Process	10/02/02						Parties have comments on order, Commission to rule on comments

EXHIBIT D

Arizona
Docket No. T-00000A-00-0194
STF 22-292

INTERVENOR: Arizona Corporation Commission Staff

REQUEST NO: 292

The following questions relate to the statement, "Based on current implementation schedules, Qwest believes that implementation of Arizona ordered rates will be complete sometime in mid-December 2002":

a. Please provide Qwest's "current implementation schedule" for all wholesale rates changes to be implemented in Arizona and any other Qwest states.

b. Please indicate how it was determined by Qwest that the ordered rates in Arizona will not be implemented until mid-December 2002.

RESPONSE:

a. See Confidential Attachment A & Attachment B to this response for the implementation schedule for wholesale rate changes to be implemented.

b. Qwest has been actively working to implement the rates ordered by the Arizona Corporation Commission since the Commission issued Decision No. 64922. Qwest made the compliance filing associated with this docket on June 26, 2002, and then began the detailed implementation process. As noted in other responses to these data requests, the implementation of a cost docket is an extremely complex undertaking that requires a significant amount of detailed work to be accomplished for each CLEC contract. The statement in the letter was meant to provide AT&T with the point in time when that implementation would be completed and the rates, together with associated credits back to the effective date of the Commission's decision, would be reflected on their (and other CLEC) bills. The mid-December date is the earliest date Qwest could implement the rates given factors such as number of rate elements and system changes needed to implement the new rates, number of other states with cost docket decisions and the resources available to accomplish the task.

Respondent: Carolyn Hammack

EXHIBIT D

CONFIDENTIAL

AND

PROPRIETY

INFORMATION ON THIS PAGE

EXHIBIT D

ARIZONA
DOCKET NO. T-00000A-00-0194
STF 22-292(a)
ATTACHMENT B

State Docket #	Type of Case	Benchmark filing	Benchmark Approval	Rate Effective Date	Billing Systems Imple.	True-up Complete	Comments
NE C-2516/PI-49, C-2666, C-2750	271 ROC 1	05/24/02	06/05/02	06/07/02	08/02/02	09/03/02	Order issued approving the filing
ND PU-314-97-193 & PU-314-00-282	271 ROC 1	05/30/02	06/05/02	06/07/02	09/19/02	09/30/02	Order issued approving the filing
NE C-2516/PI-49, C-2666, C-2750	271 ROC 1A	06/05/02	06/05/02	06/07/02	09/19/02	09/30/02	Order issued approving the filing
IA TF-02-202	271 ROC 1	05/16/02	06/07/02	06/05/02	08/16/02	09/16/02	Order issued approving the filing
ID USW-T-00-3	271 ROC 1	05/24/02	06/10/02	06/07/02	09/19/02	09/16/02	Order issued approving the filing
CO 02M-260T	271 ROC 1	06/12/02	06/13/02	06/12/02	09/19/02	09/30/02	Order issued approving the rates
WA UT-003022 & UT-003040	271 ROC 2	06/11/02 07/02/02	07/01/02	07/10/02	08/12/02	10/08/02	Order issued approving the filing
UT 00-049-08	271 ROC 2	07/02/02	07/08/02	07/10/02	10/07/02	10/18/02	Order issued approving the filing
[illegible]00-TA-00-599	271 ROC 2	07/01/02	07/09/02	07/10/02	08/19/02	10/08/02	Record No. 5924 approving the filing
MT D2000.6.80	271 ROC 2	07/03/02	07/09/02	07/10/02	10/07/02	10/18/02	* approved in Work Session, no paper order issued
CO 02M-260T	271 ROC 1A	08/02/02	08/14/02	08/15/02	09/13/02	09/30/02	Orally approved in weekly meeting
WY 70000-TA-00-599	271 ROC 2A	08/29/02	09/27/02	07/10/02			Approved in Record No. 7771
ID USW-T-00-3	271 ROC 1A	08/05/02	10/04/02	06/07/02	09/19/02	09/30/02	*No order was issued, by operation of law, became effective.
IA TF-02-202	271 ROC 1A	08/05/02	10/04/02	06/05/02	09/19/02	09/30/02	*No order was issued, by operation of law, became effective.
ND PU-314-97-193 & PU-314-00-282	271 ROC 1A	08/05/02	08/16/02	06/07/02	09/19/02	09/30/02	Approved in the Commission's 8/16/02 meeting, no order to be issued.
MT D2000.6.80	271 ROC 2A	08/30/02	10/11/02	10/08/02	10/07/02	10/18/02	Order No. 6425a
NM 3269 & 3537	271 ROC 3	08/30/02	10/29/02	10/29/02			*No order was issued, by operation of law, became effective.
UT [illegible]049-08	271 ROC 2A	08/05/02	10/29/02	06/07/02			*No order was issued, by operation of law, became effective.

EXHIBIT D

State Docket #	Type of Case	Benchmark filing	Benchmark Approval	Rate Effective Date	Billing Systems Imple.	True-up Complete	Comments
NE C-2516/PI-49, C-2666, C-2750	271 ROC 1A	08/05/02	10/04/02	06/07/02	09/13/02	09/30/02	Order confirming it went into effect
WA UT-003022 & UT-003040	271 ROC 2A	09/25/02					Waiting for WUTC ruling

EXHIBIT D

Arizona
Docket No. T-00000A-00-0194
STF 22-293

INTERVENOR: Arizona Corporation Commission Staff

REQUEST NO: 293

Please list all states (including Arizona) where wholesale rates changes have been or are being implemented by Qwest in order of the date implemented or to be implemented.

RESPONSE:

Please see Attachment A to LD-291. In addition to responding to the questions in LD-291, it also contains a listing by state, the date implemented or to be implemented.

Respondent: Timothy Dowd

EXHIBIT D

Arizona
Docket No. T-00000A-00-0194
STF 22-294

INTERVENOR: Arizona Corporation Commission Staff

REQUEST NO: 294

Have any wholesale rate reductions, whether as a result of voluntary agreement or commission order effective after June 12, 2002 been fully implemented by Qwest?

RESPONSE:

Voluntary rate reductions after June 12, 2002 have been implemented. See Attachment B to LD-292(a). No Commission Orders after June 12, 2002 have been fully implemented. See Attachment A to LD-291.

Respondent: Cindy Pierson

EXHIBIT D

Arizona
Docket No. T-00000A-00-0194
STF 22-295

INTERVENOR: Arizona Corporation Commission Staff

REQUEST NO: 295

If so, and assuming the Arizona rates in Decision 64922 have not yet been fully implemented, provide a detailed explanation of why other state rates effective after June 12, 2002, have been fully implemented, while rates ordered in Decision 64922 have not.

RESPONSE:

All comprehensive cost docket decisions have been implemented sequentially in the order of their effective dates. Only certain limited voluntary rate reductions were implemented prior to the implementation of the Arizona wholesale rates. A substantially smaller number of rates needed to be modified in these cases. In addition, since these rate changes were made based on reference to rates adopted in Colorado as benchmark rates, it was more efficient to implement these changes on an integrated basis.

Respondent: Barbara Cornwell

EXHIBIT D

Arizona
Docket No. T-00000A-00-0194
STF 22-296

INTERVENOR: Arizona Corporation Commission Staff

REQUEST NO: 296

Please refer to the following statement in responding to the next set of questions: "As you are aware, billing disputes and rate implementation matters are subject to the escalation procedures contained in the interconnection agreement between Qwest and AT&T, and normally are addressed, at least initially, through that process."

a. Please indicate whether Qwest has implemented the new wholesale rates ordered by Decision 64922 for any CLEC in Arizona.

b. If the answer to question LD-296(a) is yes, please indicate for which CLECs Qwest has implemented the rates in Arizona and the date of implementation. If the answer to question LD-296(a) is yes, why would Qwest implement the rates for some CLECs but not others.

c. Please indicate whether Qwest believes that its compliance with an ACC order is governed by the terms of an interconnection agreement with a specific carrier.

RESPONSE:

(a): No. Qwest is in the process of implementing the wholesale rates ordered by Decision No. 64922 for <u>all</u> CLECs in Arizona.

(b): See response to LD-296(a).

(c): Qwest does not believe that any public service corporation's obligation to comply with a Commission order is governed by the terms of an interconnection agreement or any other agreement between carriers. As indicated in the answers to other parts of this set of data requests, Qwest believes that it is complying with Decision No. 64922 by implementing the rates set in that order as soon as practicable and treating those rates as applying since the effective date of the order for true-up purposes. Further, Qwest believes that interconnection agreements between it and various CLECs contain informal dispute resolution methods that are available to the parties as an alternative to formal proceedings before the Commission.

Respondents: Carolyn Hammack and Legal

EXHIBIT D

Arizona
Docket No. T-00000A-00-0194
STF 22-297

INTERVENOR: Arizona Corporation Commission Staff

REQUEST NO: 297

Please indicate how long it took US West to fully implement the rates contained in ACC Decision 60635 issued on January 30, 1998.

RESPONSE:

Decision No. 60635 issued on January 30, 1998 set permanent interconnection, resale and UNE rates, replacing interim rates that had been adopted in individual arbitrations conducted by the Commission pursuant to Section 252 of the Telecommunications Act of 1966 between U S WEST and the CLECs. Decision No. 60635 increased numerous rates above the initial, interim level set by the Commission. For example, the unbundled loop rate was raised from approximately $18.00 to $21.98. The process of implementing the rates set forth in that Decision (except collocation rates) was completed in the First Quarter of 1999 - approximately one year after the Commission issued the Decision. Adjustments or true-ups resulting from implementing the new rates were made at that same time. Due to difficulties in implementing the collocation rates resulting from the Decision, collocation rates were not fully implemented until January 1, 2002. This process was completed through a mechanized SCRUB in IABS. Adjustments or true-ups based on those rates also were not completed until that time. Qwest is unaware of any complaints by CLECs over the process of implementation of the rates set in Decision No. 60635.

Respondent: Barbara Cornwell

EXHIBIT D

Arizona
Docket No. T-00000A-00-0194
STF 22-298

INTERVENOR: Arizona Corporation Commission Staff

REQUEST NO: 298

Does Qwest plan to compensate the CLECs for the delay in implementing the new rates? How?

RESPONSE:

Again, Qwest has not delayed its implementation process for the rates ordered in the Arizona cost docket. The implementation process is complex and, consequently, takes a period of time to complete. While Qwest is working to complete the implementation as quickly as possible, it understands that the length of time that will pass until the CLECs see the associated rate changes on their billing is a concern. Where a rate was reduced by the Commission Decision, Qwest will be issuing credits to the CLECs for the difference between the rate they were charged after the effective date of the Commission's decision and rate ordered by the Commission in the cost docket. Qwest will pay interest (at the rate of 6% simple interest) on that difference. The interest will be in the form of additional bill credits to the CLECs from the effective date of the Order (June 12, 2002).

Respondent: Carolyn Hammack

EXHIBIT D

Arizona
Docket No. T-00000A-00-0194
STF 22-299

INTERVENOR: Arizona Corporation Commission Staff

REQUEST NO: 299

When did Qwest first notify the Commission that there would be a delay in implementation of the wholesale rates ordered in Decision 64922.

RESPONSE:

Qwest did not notify the Commission that there would be a delay in implementation of the wholesale rates ordered in Decision No. 64922 because Qwest did not believe it was delaying the implementation. As noted in previous responses, Qwest has been actively working to implement the Arizona Corporation Commission's decision since Decision 64922 was issued. Qwest made a compliance filing on June 26, 2002 and continues to perform the necessary tasks to complete that implementation. In hindsight, Qwest acknowledges it should have advised the Commission of the implementation timeline. In the future, Qwest will notify the Commission of the implementation timeframe.

Respondent: Carolyn Hammack

EXHIBIT D

Arizona
Docket No. T-00000A-00-0194
STF 22-300

INTERVENOR: Arizona Corporation Commission Staff

REQUEST NO: 300

What Commission Order is Qwest relying upon to stay or delay implementation of the wholesale rates ordered in Decision No. 64922.

RESPONSE:

As stated in our previous response(s), Qwest is taking all necessary action to implement the Commission's Order as expeditiously as possible.

Respondent: Carolyn Hammack

EXHIBIT D

Arizona
Docket No. T-00000A-00-0194
STF 22-301

INTERVENOR: Arizona Corporation Commission Staff

REQUEST NO: 301

In reference to your statement that "AT&T will receive a credit for interim rates paid over the ordered amount from the effective date of June 12, 2002," upon what authority or Commission order does Qwest rely to declare that the current rates are interim rates.

RESPONSE:

Qwest does not view the current rates as interim. Qwest's intent with the sentence referenced was to explain that the CLECs would be receiving credits for the difference between the rates ordered in the Commission's decision and the rates that the CLECs pay during the time period that Qwest is in the process of implementing the Commission's Decision. Qwest's intent was to make clear that the CLECs would receive the full benefit of the rates ordered by the Commission in Decision 64922.

Respondent: Carolyn Hammack

BEFORE THE ARIZONA CORPORATION COMMISSION

WILLIAM A. MUNDELL
Chairman
JIM IRVIN
Commissioner
MARC SPITZER
Commissioner

ARIZONA CORPORATION COMMISSION Complainant, v. QWEST CORPORATION, Respondent,	DOCKET NO. T-01051B-02-0871 DECISION NO. _____ COMPLAINT AND ORDER TO SHOW CAUSE

Open Meeting
December 2, 2002
Phoenix, Arizona

BY THE COMMISSION:

FINDINGS OF FACT

The Arizona Corporation Commission ("Commission" or "ACC") for its Complaint, alleges:

1. Complainant, Commission, is a branch of government of the State of Arizona, existing by virtue of Article XV of the Arizona Constitution. William A. Mundell, Jim Irvin and Marc Spitzer, are its qualified and elected Commissioners.

2. Respondent Qwest Corporation ("Qwest") is a public service corporation providing telecommunications service throughout much of Arizona. Qwest also is an Incumbent Local Exchange Carrier ("ILEC") and Bell Operating Company ("BOC") as defined in the Telecommunications Act of 1996 ("1996 Act"), and as such is subject to the provisions of Sections 251 and 252 of the 1996 Act.

3. Sections 251 and 252 of the 1996 Act established additional requirements and obligations on ILECs designed to allow Competitive Local Exchange Carriers ("CLEC") to use portions or all of the incumbent's network to provide services in competition with the ILEC. These requirements and obligations are set forth in Section 251(c) of the Act and require the

ILEC to provide to competitors interconnection, unbundled network elements ("UNE"), and telecommunications services for resale at wholesale rates on a nondiscriminatory basis.

4. The 1996 Act required the Federal Communications Commission ("FCC") to formulate rules to implement the 1996 Act. The FCC adopted rules, inter alia, implementing Section 251(d) which requires that the prices for interconnection and UNEs be calculated using a forward-looking cost methodology that is based on the ILEC's total element long-run incremental costs.

5. Under Section 252(d) of the 1996 Act, State commissions are to determine just and reasonable rates for interconnection of facilities and equipment for purposes of Subsection (c)(2) of Section 251, and just and reasonable rates for network elements for purposes of Subsection (c)(3); as well as the wholesale rates for telecommunications services available on a resale basis.

6. On January 30, 1998, after a lengthy arbitration proceeding, the Commission issued an Opinion and Order (Decision No. 60635) which established just and reasonable wholesale rates to be charged by Qwest to its competitors for interconnection and unbundled network elements, as well as resale discounts. Decision No. 60635, as well as several of the Commission's original arbitration decisions, were appealed to the Federal District Court for the District of Arizona. In U S West v. Jennings, 46 F.Supp.2d 1004 (D. Ariz. 1999), the Court upheld certain of the Commission's determinations and remanded others back to the Commission for further consideration.

7. Docket No. T-00000A-00-0194 was opened in 2000 to address issues arising as a result of the Arizona District Court's decision and several FCC decisions. Phase I of this proceeding was conducted on an expedited basis in order to comply with the FCC's geographical deaveraging requirements set forth in 47 C.F.R. Section 51.507(f). On July 25, 2000, the Commission issued an Opinion and Order in this case ("Phase I Order" or "Decision No. 62753") adopting interim geographically deaveraged UNE rates.

8. Phase II of this proceeding was designed to address issues raised by subsequent FCC orders and judicial decisions, and to establish permanent geographically deaveraged rates.

On December 14, 2000, a Procedural Order was issued which stated that Qwest's existing UNE rates would also be reviewed in Phase II.

9. The Phase II hearing commenced on July 16, 2001, and concluded on July 31, 2001. Initial post-hearing briefs were filed on August 31, 2001. Reply briefs were submitted on September 21, 2001.

10. On November 8, 2001, a Recommended Opinion and Order was issued. Various parties filed exceptions to the Recommended Opinion and Order, including Qwest. On March 8, 2002, a Supplement to the Recommended Opinion and Order was issued, and exceptions to the Supplement were filed by various parties, including Qwest. On April 11, 2002, the Commission conducted an Open Meeting to deliberate on the Recommended Order. A second Open Meeting was held on this matter on May 30, 2002. On June 12, 2002, the Commission adopted Decision No. 64922. Qwest filed a Notice of Compliance with Decision 64922 on June 26, 2002, which contained the price list agreed to by the parties. Qwest filed an Application for Rehearing on July 2, 2002. Qwest filed its revised Exhibit A to its Statement of Generally Available Terms and Conditions on August 30, 2002.

11. Qwest appealed the Commission's Opinion and Order (Decision No. 64922) to the Arizona District Court on August 21, 2002. Qwest's appeal is still pending with the District Court. Qwest did not seek a stay of the effectiveness of Decision No. 64922 with either the Commission or the District Court for the District of Arizona.

12. Ordering Paragraph 5 of Decision No. 64922 provided that the rates and charges approved in the Order were effective immediately, or on June 12, 2002. Nonetheless, Qwest has not yet implemented the rates and charges approved in Decision No. 64922.

13. The Commission Staff first became aware of Qwest's noncompliance on October 7, 2002, when AT&T filed with the Commission a letter to Qwest inquiring why it was still being charged the old wholesale rates that had been superseded by Decision No. 64922.

14. On October 16, 2002, Qwest responded that the implementation of Arizona wholesale rates was being dealt with as quickly and efficiently as possible and that based on current implementation schedules, the Arizona ordered rates would be completed sometime in

mid-December, 2002. Qwest also stated that because of multiple orders from multiple dockets, Qwest may not always be able to begin implementation immediately after a particular order is issued because it may be required to deal with other orders with earlier effective dates. It stated that it had numerous cost dockets and voluntary rate reductions associated with 271 filings, all of which are also being implemented this year.

15. On October 23, 2002, Staff sent Qwest data requests relating to its noncompliance with Decision No. 64922. On October 25, 2002, Qwest submitted its responses to the Staff's data requests.

16. Qwest stated in its data responses that its overall implementation time for wholesale rate changes is approximately 60 business days, or approximately 3 months. Qwest separately indicated to Staff that its overall average time to implement wholesale rate changes is 93 business days, or approximately 4 ½ months. Yet, Qwest also stated in response to Staff data requests that it would be unable to implement the Arizona wholesale rates approved in Decision No. 64922 until mid-December, 2002, approximately 6 months, or 135 business days, after the effective date of the Commission's Order. It is unknown at this time whether Qwest will achieve its projected implementation date of mid-December, 2002.

17. Qwest's data responses also indicated that its wholesale rate systems and processes are manual, in part and as a result, cumbersome and much different than the processes that Qwest utilizes to implement its retail rate changes.

18. Qwest's Attachment B submitted in response to Staff Data Request 22-292(a) indicates that Qwest also appears to have prioritized its implementation of wholesale rate changes according to whether or not Qwest had a 271 application pending at the federal level for the particular state in question, and not according to the approval date of the rates by the various State commissions in its 14-state region. This, combined with the other factors discussed above, resulted in a significant delay in the implementation of Arizona's new wholesale rates, without Commission knowledge or approval.

CLAIMS
Count I

(Failure to Implement Wholesale Rate Changes Ordered in Decision No. 64922 within a Reasonable Period of Time)

19. Ordering paragraph 5 of Decision No. 64922 provides that "...the rates and charges approved herein shall be effective immediately." Decision No. 64922 was released on June 12, 2002.

20. Qwest has not yet implemented the new wholesale rates adopted in Decision No. 64922.

21. Staff submits that Qwest's failure to implement the wholesale rate changes required by Decision No. 64922 was in part deliberate and violates state law since Qwest acted unilaterally to delay implementation of the Commission's Order without Commission approval.

22. Qwest was required to implement the rates, effective immediately, within a reasonable amount of time. Staff submits that probable cause exists to believe that Qwest caused an unreasonable delay in implementation of the Arizona rates by putting other state rate changes approved after Decision No. 64922 ahead of Arizona. In addition, another contributing factor is that Qwest has structured its systems and processes such that implementation of wholesale rate changes is a cumbersome, manual process requiring more time than is reasonable or necessary.

23. When compared with its own average wholesale rate implementation period, its retail rate implementation period, the implementation periods of wholesale rate changes in the 14-state region as a whole, and when compared to the wholesale rate implementation policies of other BOCs, Qwest's failure to implement the new wholesale rates in Arizona to-date cannot be justified.

24. In its data responses, Qwest stated that it took approximately 60 business days (almost 3 months) to accomplish the three phases involved in implementing wholesale rate changes. Qwest also stated to Staff that its actual average time period for implementing wholesale rate changes is 93 business days (almost 4½ months). Qwest's projected

implementation of the new wholesale rates in Arizona in 6 months (or longer) is unreasonable when compared to these internal Qwest standards.

25. Qwest is able to implement retail rate changes in a much more streamlined fashion than wholesale rate changes. Upon information and belief, it is Staff's understanding that Qwest is able to implement retail rate changes within one billing cycle. By comparison, Qwest's implementation of its wholesale rate changes is a cumbersome, manual process which significantly extends the time involved to implement and bill new rates to CLECs. Qwest has not provided any persuasive justification for the disparate processes used for the implementation of its retail and wholesale rate changes, and Staff believes that Qwest's wholesale process is unreasonable.

26. Qwest's responses to Staff's data requests indicate that Qwest has implemented the rate changes associated with its 9 pending 271 applications at the FCC prior to implementation of the rate changes required by Decision No. 64922, even though some of the new rates approved in these 9 states were approved after Decision No. 64922 became effective.

27. Qwest, by prioritizing recent wholesale rate changes region-wide in accordance with its 271 applications pending at the FCC, acted intentionally and deliberately to further delay implementation of a Commission Order which required Qwest to implement the new wholesale rates in Arizona, effective immediately.

28. Informal inquiries to other Bell Operating Companies by Staff's 271 consultants indicate that other BOCs are able to implement wholesale rate changes within 30 to 45 days. Qwest's implementation period of between 3 to 6 months (or potentially longer than 6 months in this case) is unreasonable.

Count II

(Failure to Notify the commission of Rate Implementation Delay and to Obtain Commission Approval of the Delay in Implementation)

29. A.R.S. Section 40-253 states that "[a]n application for rehearing shall not excuse any person from complying with and obeying any order or decision, or any requirements of any order or decision of the commission theretofore made, or operate in any manner to stay or

postpone enforcement thereof except in such cases and upon such terms as the commission by order directs."

30. While Qwest filed an application for rehearing, its application was not granted and Qwest did not seek a stay of the Commission's Order with either the Commission or the Arizona District Court.

31. In addition, Qwest did not seek relief from the Commission's Order by requesting that the implementation date be delayed or postponed.

32. Staff believes that Qwest, through its actions, acted unilaterally to stay or postpone enforcement of Decision No. 64922, and Qwest did so without informing the Commission or requesting its approval.

Count III

(Unreasonable Wholesale Rate Change Systems Design and Process)

33. Qwest implements its wholesale rate changes on a CLEC by CLEC basis which interjects a significant delay into the process once a rate change is ordered.

34. Qwest utilizes a much different, streamlined process for retail rate changes which allows those rate changes to be put into effect much sooner than its wholesale rate changes. Qwest has indicated in its discussions with Staff, that it is able to implement retail rate changes within one billing cycle. On the wholesale side, however, Qwest's implementation of rate changes on a CLEC by CLEC basis calls into question the issue of why the wholesale and retail billing systems and rate change implementation processes are structured so differently with the result being a much more cumbersome and overall lengthy wholesale rate implementation process. Qwest's wholesale rate change process is unreasonable when compared with its retail rate change process.

35. The inability of Qwest to make wholesale rate changes in a reasonable amount time and to charge accurate rates to CLECs creates an unlevel playing field and results in discriminatory treatment by Qwest relative to how it treats its retail customers. In addition, it results in discrimination between CLECs by giving new CLECs the rates immediately, but

requiring existing CLECs to wait 6 months (or longer) to be charged the new lower wholesale rates. The preceding issues have implications for application for 271 relief as well.

36. Moreover, upon information and belief, it takes much longer for Qwest to implement wholesale rate changes than other BOCs questioned by Staff's 271 consultants, including Verizon, SBC and BellSouth.

37. Given the importance of this issue, Qwest should be required to make changes to its wholesale billing rate change systems and processes to ensure comparability with its retail billing rate change systems and processes. Staff believes that Qwest wholesale systems and processes should be designed to enable the implementation of wholesale rate changes within 30 business days.

RELIEF REQUESTED

Staff requested the following relief:

38. An ORDER TO SHOW CAUSE directing Qwest to show cause (1) why its failure to implement the rates required by Decision No. 64922 is not unlawful and unreasonable, (2) why its implementation of rates in the 9 other states with pending 271 applications at the FCC ahead of Arizona is not unreasonable, and (3) why its failure to notify the Commission of the delay and seek relief from the Order is not unreasonable.

39. An ORDER TO SHOW CAUSE directing Qwest to show cause (1) why it should not be held in contempt of a Commission Order and assessed fines for failure to implement the rates approved in Decision No. 64922 within a reasonable time; and (2) why it should not be held in contempt of a Commission Order and assessed fines for deliberately delaying implementation of the wholesale rate changes in Arizona until it had implemented the wholesale rate changes in at least 9 other states in which it has 271 applications pending at the FCC.

40. An ORDER TO SHOW CAUSE directing Qwest to show cause why it should not be required to implement billing systems and process changes that will enable wholesale rate changes to be implemented with 30 business days.

CONCLUSIONS OF LAW

1. Qwest is a public service corporation within the meaning of Article XV of the Arizona Constitution and is subject to the jurisdiction of the Commission.

2. The Commission has jurisdiction over the subject matter of this Complaint and Order to Show Cause.

3. The Commission has jurisdiction to hear complaints against public service corporations pursuant to A.R.S. Section 40.246. The Commission has jurisdiction to supervise and regulate public service corporations pursuant to Article XV of the Arizona Constitution and Title 40 of the Arizona Revised Statutes.

4. Notice of this proceeding has been given in accordance with law.

5. A.R.S. Section 40-253 states that "[a]n application for rehearing shall not excuse any person from complying with and obeying any order or decision, or any requirements of any order or decision of the commission theretofore made, or operate in any manner to stay or postpone enforcement thereof except in such cases and upon such terms as the commission by order directs."

6. Decision No. 64922 became effective on June 12, 2002. Qwest has not yet implemented the new wholesale rates and charges approved in Decision No. 64922.

7. Qwest did not obtain a stay of Commission Decision No. 64922, nor did Qwest at any time seek or obtain the Commission's approval to delay implementation of Commission Decision No. 64922.

8. Probable cause exists to believe that Qwest intentionally and willfully delayed implementation of a Commission Order so that it could first implement wholesale rate changes in 9 other states with 271 applications pending at the FCC. Qwest's wholesale systems and processes are also set up in such manner which preclude timely implementation of wholesale rate changes.

9. The relief requested by Staff is reasonable. It is lawful and in the public interest to issue Staff's requested Order to Show Cause against the Respondent Qwest Corporation.

ORDER

IT IS THEREFORE ORDERED that Qwest shall appear and show cause at a time and place designated by the Hearing Division (1) why its failure to implement the rates required by Decision No. 64922 is not unreasonable, (2) why its implementation of rates in the other states with pending 271 applications at the FCC ahead of Arizona is not unreasonable, and (3) why its failure to notify the Commission of the delay and seek relief from the Order is not unreasonable.

IT IS FURTHER ORDERED that Qwest shall appear and show cause at a time and place designated by the Hearing Division (1) why it should not be held in contempt of a Commission Order and assessed fines for failure to implement the rates approved in Decision No. 64922 within a reasonable amount of time; and (2) why it should not be held in contempt of a Commission Order and assessed fines for deliberately delaying implementation of the wholesale rate changes in Arizona until it had implemented the wholesale rate changes in at least 9 other states in which it has 271 applications pending at the FCC.

IT IS FURTHER ORDERED that Qwest shall appear and show cause at a time and place designated by the Hearing Division why it should not be required to implement billing systems and process changes that will enable wholesale rate changes to be implemented within 30 days.

IT IS FURTHER ORDERED that within 10 days of the effective date of this order, Qwest shall file an Answer to the Staff's Complaint.

IT IS FURTHER ORDERED that the Hearing Division shall schedule further appropriate proceedings.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION

CHAIRMAN COMMISSIONER COMMISSIONER

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, executive Secretary of the Arizona Corporation Commission, have hereunto, set my hand and caused the official seal of this Commission to be affixed at the Capitol, in the city of Phoenix, this ___ day of _____, 2002.

_____
BRIAN C. McNEIL
Executive Secretary

DISSENT:_____

SERVICE LIST FOR: QWEST CORPORATION
DOCKET NO.: T-01051B-02-0871

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CERTIFICATE OF SERVICE

I hereby certify that the enclosed Staff Memorandum and Proposed Complaint and Order to Show Cause were sent via facsimile and U.S. Mail, First Class, on November 26, 2002, to the parties listed below:

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Deborah A. Amaral

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