

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Gregory Scott	Chair
Edward A. Garvey	Commissioner
Marshall Johnson	Commissioner
LeRoy Koppendrayner	Commissioner
Phyllis A. Reha	Commissioner

In the Matter of the Commission's Review and
Investigation of Certain Unbundled Network
Element Prices of Qwest

ISSUE DATE: March 18, 2002

DOCKET NO. P-442,421,3012/M-01-1916

ORDER URGING CONSOLIDATION OF
THE UNE-P DOCKET WITH THE 271 COST
DOCKET

PROCEDURAL HISTORY

In the Commission's February 13, 2002, NOTICE AND ORDER FOR HEARING the Commission referred to the Office of Administrative Hearings for contested case proceedings the investigation of the prices of UNEs making up the UNE Platform (UNE-P) to examine whether the prices that had been set for those elements were appropriately cost based.

On February 15, 2002, Qwest filed a petition to reconsider all the collocation and nonrecurring rates established in the Generic Cost Docket by including such reconsideration in the current docket. Qwest also requested that the current docket (expanded to include the reconsideration of collocation and nonrecurring rates) be consolidated with Docket No. P421/CI-01-1375 (the 271 cost docket).

This matter came before the Commission on February 26, 2002.

FINDINGS AND CONCLUSIONS

I. Background

Three prior Commission Orders, in separate dockets, are relevant to Qwest's request herein. They are:

The Generic Cost Docket:

On March 15, 2000, the Commission established prices for, among other things, Qwest's unbundled network elements, non-recurring costs for UNE's and collocation rates as well as numerous related matters.¹

The 271 Cost Docket:

On September 11, 2001, the Commission referred to the Office of Administrative Hearings (OAH) for contested case proceedings several issues relevant to Qwest's compliance with Section 271 of the Telecommunications Act of 1996.² Among the issues to be addressed was a review of unbundled network elements (UNE) pricing. The Commission, for internal administrative purposes, assigned new dockets to the parts identified in its September 11th Order. The UNE Pricing part was assigned Docket No. P-421/CI-01-1375, the 271 Cost Docket.

The Current Docket:

In its NOTICE AND ORDER FOR HEARING³ dated February 13, 2002, the Commission referred to the OAH the investigation of the prices of UNEs making up the UNE Platform (UNE-P) - the local loop, switching and transport (the Current Docket). The Commission requested that the Administrative Law Judge resolve the issues within the same general timetable that has been established for the pending 271 proceedings. However, the Commission did not order that this matter be consolidated with any of the pending 271 proceedings, including the 271 Cost Docket.

¹ In the Matter of a Generic Investigation of US West Communications, Inc.'s Cost of Providing Interconnection and Unbundled Network Elements, Docket No. P-442, 5321, 3167, 466, 421/CI-96-1540, ORDER GRANTING RECONSIDERATION, SETTING PRICES AND ORDERING COMPLIANCE FILING (March 15, 2000).

² In the Matter of an Investigation Regarding Qwest's Compliance with Section 271 of the Telecommunications act of 1996 with Respect to the Provision of InterLATA Services Origination in Minnesota, Docket No. P-421/CI-96-1114, NOTICE AND ORDER FOR HEARING (September 11, 2001).

³ In the Matter of AT&T and WorldCom's request for a Commission Investigation of Qwest's Pricing of Certain Unbundled Network Elements, Docket No. P-442,421,3021/M-01-1916, NOTICE AND ORDER FOR HEARING (February 13, 2002).

II. Qwest's Request

Qwest made two requests in its filing and submitted a proposed schedule to accommodate its request. Qwest requested that the Current Docket be expanded to include review of all the collocation and nonrecurring rates associated with unbundled network elements (UNEs) that were established in the Generic Cost Docket. Qwest also asked that the Current Docket (expanded to include collocation and nonrecurring rates) be consolidated with the 271 Cost Docket. Qwest's request contemplated holding one comprehensive hearing beginning in late July.

A. On the Issue of Consolidation of the Current Docket with the 271 Cost Docket

Qwest stated that there was substantial overlap between the issues in both dockets. Several of the cost studies that Qwest (and the CLECs) were sponsoring would be presented in both dockets. In most cases the same Qwest (and CLEC) witnesses would be presenting the studies in both dockets. Qwest argued that it would be inefficient for the Commission and the parties to evaluate these studies and examine the same witnesses twice in separate proceedings.

B. On the Issue of Reconsidering the Collocation and Nonrecurring Rates from the Generic Cost Docket

Qwest argued that the models the Commission considered in the Generic Cost Docket for collocation and nonrecurring UNEs have changed substantially. The Commission's collocation and nonrecurring rates should be based on the current models, not on cost studies with outdated assumptions.

Qwest argued that the Commission is already considering, in the 271 Cost Docket, additional costs and rates for many collocation rate elements as well as additional nonrecurring rates. Qwest argued that if the Commission did not reconsider the collocation rates and nonrecurring rates from the Generic Cost Docket, the end result will be a mish-mash of rates derived from fundamentally different models. Further, it argued that since the 271 Cost Docket is already considering a large number of collocation and recurring rates it is logical to use that opportunity to reevaluate the rates from the Generic Cost Docket.

Qwest acknowledged that adding these issues to the 271 Cost Docket would significantly expand the scope of the proceeding and the time needed to resolve it. For this reason it suggested a schedule that anticipates a hearing on the issues at the end of July. Qwest further argued that completion of state pricing proceedings was not a prerequisite to Qwest pursuing 271 approval in Minnesota.⁴

⁴ Qwest has stated to the Commission that it would not file its 271 application with the FCC before July 1, 2002.

Qwest indicated that its concerns would be met if the Commission approved consolidation, without adding the collocation and nonrecurring rates, if collocation and nonrecurring rates could be revisited at another time in a separate docket.

III. Positions of Other Parties

A. WorldCom and AT&T

WorldCom and AT&T stated that they had no objection in principle to consolidation but expressed concern about the practicality of meeting current deadlines. They argued that the Commission's work must be done in July and that it was critical that there be no delay.

B. Covad

Covad stated its position was similar to that of WorldCom and AT&T. It agreed with consolidation but expressed concern about the addition of more rates to be reviewed.

C. Small CLECs⁵

The small CLECs did not object to re-examining nonrecurring and collocation rates. They did object to re-examining them in the current docket, on grounds that the delay it would cause would jeopardize the Commission's ability to discharge its duties under § 271.

D. Department of Commerce (DOC)

The DOC stated that as long as Qwest stays with its stated July 1, 2002 date for filing of its 271 Application with the FCC, consolidation with the addition of collocation and recurring rates is not workable. Quality of review should not be sacrificed.

The DOC indicated that consolidation of the 271 Cost Docket and the Current Docket, without adding the review of collocation and nonrecurring rates from the Generic Cost Docket, could be done on the 271 timetable.

IV. Commission Action

The Commission recognizes that there are reasons of efficiency to consolidate the Current Docket with the 271 Cost Docket and will so order.

⁵ Ace Telephone Association; Encore Communications; Hutchinson Telecommunications, Inc.; Mainstreet Communications, LLC; NorthStar Access LLC; Otter Tail Telecom, LLC; Tekstar Communications, Inc.; Unitel Communications, U.S. Link, Inc.; and Val-Ed Joint Venture, LLP.

The Commission will not, however, add the issues of collocation and nonrecurring rates to the consolidated docket. The Commission believes that to reconsider all of the collocation and nonrecurring rates it previously established in the Generic Cost Docket would require significant changes to the timetable the Commission set forth to meet the 271 filing schedule announced by Qwest. The Commission continues to recognize the importance of meeting this timetable and will not excessively burden the 271 Cost Docket with a review of collocation and nonrecurring rates already established.

Further, at this time, the Commission does not recognize the urgency to review the collocation and nonrecurring rates previously set in the Generic Cost Docket.

ORDER

1. The Commission urges the Administrative Law Judge to consolidate the UNE-P docket (P-442, 4211, 3012/M-01-1916) with the 271 Cost Docket (P-421/CI-01-1375).
2. The Commission requests that the Office of Administrative Hearings, to the best of its ability, align this consolidated docket with the 271 schedule.
3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

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