

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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

In the Matter of the Commission Review and
Investigation of Qwest's Unbundled Network
Elements UNE Prices

ISSUE DATE: April 4, 2002

DOCKET NO. P-421/CI-01-1375

ORDER ESTABLISHING INTERIM RATES

PROCEDURAL HISTORY

I. ESTABLISHMENT OF THE CURRENT CONSOLIDATED DOCKET

The Generic Cost Docket: Docket No. P-442, 5321, 3167, 466, 421/CI-96-1540

On March 15, 2000, the Commission established prices for, among other things, Qwest's unbundled network elements (UNEs).

The 271 Cost Docket: Docket No. P-421/CI-96-1114

On September 11, 2001, the Commission referred to the Office of Administrative Hearings (OAH) for contested case proceedings several issues relevant to Qwest. Among the issues to be addressed was a review of unbundled network elements (UNE) pricing.

The UNE Pricing Docket: Docket No. P-421/CI-01-1375

Subsequent to the September 11, 2001 Order in Docket No. P-421/CI-96-1114, the Commission, for internal administrative purposes, assigned new docket numbers to the parts identified in its September 11th Order. The UNE pricing part (pricing Qwest's previously unpriced UNEs) was assigned Docket No. P-421/CI-01-1375.

AT&T Complaint Docket: Docket No. P-442, 421, 302/M-01-1916

On February 13, 2002, the Commission referred to the OAH AT&T's complaint regarding the prices of UNEs making up the UNE Platform (UNE-P): the local loop, switching and transport. 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.

**Consolidation of the UNE Pricing Docket (Docket No. P-421/CI-01-1375)
and the AT&T Complaint Docket (Docket No. P-442, 421, 302/M-01-1916)**

On February 26, 2002, the Commission accepted Qwest's recommendation that the UNE Pricing Docket (Docket No. P-421/CI-01-1375) and the AT&T Complaint Docket (Docket No. P-442, 421, 302/M-01-1916) should be consolidated and recommended consolidation to the ALJ hearing both cases.

II. CLEC PETITION FOR INTERIM UNE RATES

On February 21, 2002, the CLEC Coalition filed with the Commission a request for interim rates on Docket No. P-442, 421, 302/M-01-1916. At the request of Qwest, the CLEC Coalition agreed to temporarily withdraw its petition.

On March 1, 2002, the CLEC Coalition filed a revised petition for interim rates for 1) current rates approved in the Generic Cost Docket that are higher than Qwest is requesting in the 1375 Docket and 2) the new rates Qwest proposes where there is no current rate approved by the Commission. The Coalition also requested Certification of its request to the Commission.

On March 11, 2002, the ALJ issued his Fourth UNE Pricing Prehearing Order, denying the Coalition's motion to establish interim rates but certifying the motion to the Commission for its consideration and final order because, he noted, if the order is to have any meaningful review, it must be done before this matter is concluded.

The Commission met to consider this matter on March 21, 2002.

FINDINGS AND CONCLUSIONS

I. THE CLEC COALITION'S REQUEST FOR INTERIM RATES

In its motion, the CLEC Coalition identified two categories of rates that the Commission should declare interim and subject to true-up once final rates are established:

- 1) if Qwest is now recommending lower rates for a service in the 1375 Docket than the Commission approved in the 1540 Docket (the Generic Cost Proceeding), the lower rate should become the interim rate for that service, subject to true-up¹; and

¹ The Coalition clarified that the services meeting that description are the DS-3 services: Direct Trunked Transport, Unbundled Dedicated Interoffice Transport, and EEL Transport.

2) rates for services that the Commission has not previously approved should also be declared interim and subject to true-up.²

Category 1: The Coalition argued that the fact that certain rates previously approved in the Generic Cost Docket (P-412/CI-96-1540) are higher than Qwest is currently requesting in the 1375 Docket demonstrates that these current rates are above cost. The Coalition urged the Commission to order Qwest to charge (on an interim basis subject to true-up) the lower of the Commission approved rate in the 1540 Docket or the rate Qwest proposed in the 1375 Docket.

Category 2: The Coalition argued that all new rates charged by Qwest that have not been approved by the Commission are, by reason of that fact, provisional in nature and should be declared interim rates subject to true-up.

II. RESPONSES TO THE CLECS' REQUEST FOR INTERIM RATES

A. Qwest

Qwest stated that current rates for transport and high capacity loops (the DS3 rates that the CLECs complain about) were developed using the HAI model, as were all of Qwest's current Commission-approved rates. Qwest stated that until the Commission adopts another cost model for determining rates, it would be improper to use the lower rates that the Company has proposed in the 1375 Docket based on a different cost model, the ICM Model. Selective adoption of certain ICM-based rates would be unfair, Qwest argued, because while the DS3 prices would be lower using the ICM Model, the prices for many other UNEs are higher than existing prices for these UNEs. It would be unfair to allow CLECs to pay the lower rates resulting from the ICM Model and not require them to pay the higher rates resulting from that same method.

Moreover, Qwest argued, interim rates are unnecessary because the current docket is on schedule to determine final rates in approximately four months. Adopting interim rates would require Qwest to bill and implement several sets of new rates in less than six months, leading to significant confusion and billing disputes.

B. The Department

The Department supported the CLECs' request, noting that adopting Qwest's proposed rates in the 1375 Docket as interim rates would help make UNEs available to all CLECs and in no case would increase the rates that CLECs are currently paying. Declaring these rates interim (subject to a true-up) would allow CLECs to receive the reduction as of the effective date of the Commission's Order if the final rates are lower than current rates.

² The Coalition clarified that services in this category are set forth in the list of Elements to be Priced, which is attached to the Second UNE Pricing Prehearing Order, dated January 24, 2002.

The Department further argued that for those elements that Qwest is required to provide a cost study, but has not provided a cost study, interim rates should be set at zero until costs are established for those elements.

C. AT&T/WorldCom

The Joint Parties take no position regarding whether the setting of interim rates is either necessary or appropriate.

D. ALJs

The ALJs denied the CLECs' motion for interim rates and certified the motion to the Commission for its consideration and final Order.

In denying the CLECs' motion, the ALJs expressed their hesitation to mix models and rates for certain elements without regard for how those rates may be linked to rates for other elements. The ALJs preferred to wait until it could be determined, based on the evidentiary hearing whether there is an evidentiary basis for recommending rates based on different models.

In addition, the ALJs stated that it would be time-consuming to sort out which rates would be affected³, what rates are really "new", and whether a cost study was necessary or not. The ALJs acknowledged that it would be frustrating for CLECs to await final rates when those rates are clearly going to be lower than they are now, regardless of the model selected. The ALJs concluded, however, that there is an inadequate record at this time to support the CLECs' request.

III. COMMISSION ANALYSIS AND ACTION

The Commission has considered the parties' arguments and the facts established in this case to date. Considering all the circumstances, the Commission finds it most equitable to declare that all Qwest rates under evaluation in current Commission dockets are interim in nature as of the date of this Order, and subject to true-up once new final rates have been established.

A. New Rates Charged by Qwest That Have Not Been Approved by the Commission

The Commission agrees with the CLEC Coalition that rates not approved by the Commission are interim in nature. The Commission will declare them such and subject to true up.

³ At the hearing before the Commission, the CLEC Coalition specified what rates belonged in each category that it wanted the Commission to declare interim.

B. All Other Qwest Rates That are Under Review in Current Commission Dockets

The current record indicates that it is likely that final rates adopted in the pending cases will differ from the current rates. Therefore, the Commission finds it appropriate to declare them (all rates under review in pending cases) interim in nature and subject to true-up so that CLECs that have been overpaying or underpaying will, on that day, be made whole.

In so doing, the Commission declines the CLECs' request that certain rates (the DS3 rates) be lowered from their current levels at this time and set, on an interim basis, at the level proposed for these services by Qwest in current Docket No. P-421/CI-01-1375. The Commission finds it inappropriate to adopt the DS3 rates proposed in the 1375 Docket even on an interim basis. The proposed rates for DS3 services that the CLECs would like adopted are based on a different cost model than the Commission used in setting other current rates that the Commission has approved, including the DS3 rates.

The Commission has had a policy of setting all rates based on a consistent cost model, based on the understanding that there is a logical linkage between rates set on the same cost model, i.e. that a cost model producing lower rates for some services will result in higher rates for others. Qwest has specifically claimed that this is the case with respect to rates based on its ICM and NRCM models. The CLEC Coalition has not disproved such a linkage or that it would be equitable to adopt some rates based on one cost model while having others based on a different cost model.

Proceedings before the ALJ in the 1375 Docket and the 1916 Docket (now consolidated) are specifically developing the record leading to determinations in this area. This work has not been completed to date, however. Based on the current record, then, the Commission (like the ALJ) is unable to determine whether it will reject the HAI in favor of another cost model (or find that a mix of models is justifiable) and what the resulting final rates will be.

In these circumstances, the Commission will not depart from its customary approach and adopt rates for DS3 services based on a cost model that has not been used to establish all rates in question.

ORDER

1. The CLEC Coalition's motion to adopt interim rates is denied in part, granted in part, and expanded in part. Effective on the date of this Order, all Qwest rates currently under review in the following dockets are declared interim and subject to true-up once final rates are established in these dockets: Docket No. P-421/CI-01-1375 (the UNE Pricing Docket) and Docket No. P-442, 421, 302/M-01-1916 (the AT&T Complaint Docket).

2. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

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