

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendraye  
Marshall Johnson  
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Chair  
Commissioner  
Commissioner  
Commissioner  
Commissioner

In the Matter of Qwest Corporation's  
Application for Commission Review of  
TELRIC Rates Pursuant to 47 U.S.C. §251

ISSUE DATE: September 5, 2006

DOCKET NO. P-421/AM-06-713

ORDER REFERRING RATES INQUIRY TO  
OFFICE OF ADMINISTRATIVE HEARINGS

**PROCEDURAL HISTORY**

On May 16, 2006, Qwest filed an application for Commission review of the rates of several hundred of Qwest's Unbundled Network Elements (UNEs). Qwest proposed a reexamination of the rates of some existing UNEs as well as rates for new and redefined UNEs.

On June 28, 2006, Eschelon Telecom (Eschelon) and the Competitive Local Exchange Carrier (CLEC) Coalition filed comments.

On July 20, 2006, the Department of Commerce (the Department) filed comments and Qwest filed replies to the Eschelon and CLEC Coalition June 28, 2006 comments.

The Commission met on August 17, 2006 to consider this matter.

**FINDINGS AND CONCLUSIONS**

**I. Qwest's Request**

Qwest requested that the Commission open a new UNE cost case and refer the review of all UNE rates in its filing to the Office of Administrative Hearings (OAH) for a contested case proceeding. Qwest sought review of several categories of rates:

- **Collocation (recurring and nonrecurring) Rates and Nonrecurring Element Rates.** Qwest stated that parties to a prior UNE cost docket<sup>1</sup> agreed to UNE rates for those elements at that time, and agreed that they would not object to Qwest's request to review these rates in the instant filing. Qwest stated that there has been a considerable improvement in cost models and cost studies to warrant a new review of these rates.

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<sup>1</sup> *In the Matter of Qwest Corporation's Request for Approval of Unbundled Network Elements*, Docket No. P-421/AM-03-1754, hereafter the 1754 Cost Docket.

- **Rates for New UNEs and Restructured UNEs.** Qwest requested approval of rates for a number of new UNEs that have been developed since the time of the 1375 Cost Docket.<sup>2</sup> Included in this category are rates for Operator Support Systems (OSS). Qwest proposed to restructure some UNEs to reflect the increased experience that Qwest and CLECs have gained over time with Qwest's products.
- **DS1 and DS3 High-Capacity Loops and Entrance Facilities.** Although rates for these elements were established in the 1375 Cost Docket<sup>3</sup> Qwest proposed that these rates be reviewed again. Qwest asserted that the DS1 and DS3 rates are the product of faulty cost models.

## II. Eschelon's Comments

Eschelon requested that the Commission exclude the issues of recurring DS1 and DS3 loop and entrance facility costs from this proceeding. Eschelon argued that the inclusion of these elements would unnecessarily expand the scope of the docket and that Qwest's argument that the cost models are faulty is simply an attempt to relitigate an issue that Qwest has lost multiple times.

Eschelon also requested that the Commission not allow Qwest to put its proposed "new" rates into effect on an interim basis. Eschelon stated that the procedure for adding new rates has already been established in the 1375 Cost Docket.

Finally, Eschelon proposed that the Commission establish a series of workshops to clarify and narrow the issues prior to initiating a contested case proceeding. Eschelon stated that a workshop process would facilitate an understanding of the issues in an informal setting and help to target and limit discovery.

## III. CLEC Coalition Comments

The CLEC Coalition agreed with the comments of Eschelon. In particular, the Coalition opposed the inclusion of DS1 and DS3 loop rates in the proceeding and it supported the proposal to initiate a workshop process. The Coalition stated that its members do not have the expertise on staff to move immediately to a contested case proceeding and noted the Coalition can no longer rely on the expertise of AT&T or MCI.

## IV. The Department's Comments

The Department supported including in the scope of this case the new elements and the elements listed in the stipulation in the 03-1754 case, including the nonrecurring and collocation elements.

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<sup>2</sup> See *In the Matter of the Commission Review and Investigation of Qwest's Unbundled Network Elements Prices*, ORDER ACCEPTING FILING AND OPENING NEW DOCKET, Docket No. P-421/CI-01-1375 (March 24, 2003).

<sup>3</sup> The Commission's March 24, 2003 ORDER ACCEPTING FILING AND OPENING NEW DOCKET in Docket No. P-421/CI-01-1375 approved the compliance prices filed in that case. In February 2006, the U.S. 8th Circuit Court of Appeals upheld certain disputed aspects of that Order including the rates for DS1 and DS3 High-Capacity Loops and Entrance Facilities.

The Department stated that the process for pricing new elements should follow the framework set out in 01-1375.

Regarding rates for the DS1 and DS3 loops, the Department agreed with the Coalition and Eschelon that these rates should not be reexamined in this case. The Department stated that the rates for these elements were based on a model adopted by the Administrative Law Judge in the 1375 Cost Docket and had recently been upheld by the federal court. The Department also noted that including these elements would greatly increase the complexity and cost of the case for all parties.

The Department explained that the model used for setting rates for the DS1 and DS3 involved re-pricing all the parts of the loop. As a result, it was so substantially more complex than the models used for setting rates for the other UNEs in this matter that adding them to this docket would disproportionately and unreasonably increase the cost and resources required for this docket. The Department argued strongly that including the DS1 and DS3 loops in this docket, therefore, would be an inefficient expenditure of regulatory resources from the Department and the Commission.

As to whether the new UNE rates should go into effect on an interim basis, the Department stated that Qwest has clear authority from the Commission in the 1375 Cost Docket to begin offering truly new UNEs at interim rates. Consequently, the Department argued that the Commission should neither approve nor disapprove Qwest's plan to begin offering new UNEs. Regarding prices for functionalities previously addressed by the Commission and for elements which the Commission has not allowed Qwest to charge for, however, the Department stated that Qwest will need to obtain Commission approval before imposing rates for those items.

Finally, the Department agreed with Eschelon and the CLEC Coalition that a workshop process is a cost-effective way to understand the issues and it may serve to narrow the scope of the case.

## **V. Commission Analysis and Action**

### **A. Scope of Elements to be Examined in this Docket**

The Commission agrees that the collocation rates and nonrecurring element rates (i.e., the elements addressed in the 1735 Cost Docket) and rates for new and restructured UNEs should be reviewed in this docket.

### **B. DS1 and DS3 Elements Excluded from This Docket**

The Commission also finds, however, based on the Department's explanation, that examining loop rates in the context of this docket would introduce an excessive and disproportionate level of cost and complexity. The Commission therefore will not include examination of the rates for the DS1 and DS3 loops in this docket.

Because the Commission has determined that it will not include reexamination of the DS1 and DS3 rates in this particular docket, it need not and does not reach the further issues of whether it should decline to undertake reexamination of these rates on the further grounds that the DS1 and DS3 rates have been confirmed relatively recently and/or that Qwest's filing does not provide persuasive evidence that such a resource-intensive reexamination is warranted.

### **C. New Element Prices Take Immediate Effect Per Prior Order**

Qwest proposed that its new UNE rates become effective immediately, subject to modification based upon the outcome of the instant investigation, according to a process set forth in the Commission's October 2, 2002, Order in the 1375 Docket.<sup>4</sup>

In that Order, the Commission stated:

When offering a new UNE, Qwest shall file a cost-based price, together with an adequate description of the UNE's application, for Commission review within 60 days of offering. Qwest may charge a negotiated rate immediately if part of an approved interconnection agreement (ICA), provided the ICA is filed for Commission review within 60 days.

The Commission will follow that process, which allows Qwest to introduce UNEs without delay yet assures that the rates will be promptly reviewed by the Commission. In this case, the rates at issue are included in a ICA or amendment that has been filed with the Commission as directed by the Commission's October 2, 2002, Order in the 1375 Docket.

### **D. Workshops in Conjunction With Referral to ALJ for Contested Case**

The Commission believes that workshops will give interested parties a good opportunity to informally review Qwest's cost studies and other models brought forth by the parties for comparison purposes. At the same time, the Commission believes that a contested case proceeding can provide beneficial procedural structure. The Commission concludes that authorizing workshops within the context of a contested case proceeding is the most promising approach for this docket.

Accordingly, the Commission will submit all issues within the approved scope of the investigation to the Office of Administrative Hearings for a contested case proceeding but ask the ALJ to hold a prehearing conference no earlier than October 31, 2006 so that the parties can participate in the informal workshop process initiated by the Commission in this Order.

During the workshop period, parties will determine the number and scheduling of workshops as they see fit. The parties may utilize a third-party workshop facilitator. The parties may wish to request the OAH assign an ALJ as facilitator. By the date of the prehearing conference, the parties will submit a report to the investigating ALJ setting forth the UNEs for which costs must be determined and including a discussion of any disagreement as to whether any UNEs are considered "new" UNEs and whether any UNEs have been appropriately restructured. To provide additional flexibility in the workshop approach, the Executive Secretary will have authority to modify the duration of the workshop process.

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<sup>4</sup> *In the Matter of the Commission Review and Investigation of Qwest's Unbundled Network Elements Prices*, Docket No. P-421/CI-01-1375, and *In the Matter of the Commission's Review and Investigation of Certain Unbundled Network Element Prices of Qwest*, Docket No. P-442, 421, 3012/M-01-1916, ORDER SETTING PRICES AND ESTABLISHING PROCEDURAL SCHEDULE (October 2, 2002).

**ORDER**

1. The Commission hereby initiates an investigation into the rates for the collocation rates and nonrecurring element rates (i.e., the elements addressed in the 1754 Docket) and rates for Qwest's new and restructured UNEs.
2. The Commission hereby initiates a series of workshops allowing the parties to informally review Qwest's cost studies within the contested case structure set forth in the following Order Paragraphs 3 - 7.
3. All issues within the approved scope of the investigation are hereby referred to the Office of Administrative Hearings for a contested case proceeding.
4. The Commission requests that the ALJ assigned to this matter hold a prehearing conference no earlier than October 31, 2006.
5. The parties are authorized to determine the number and scheduling of workshops as they see fit. The parties may utilize a third-party workshop facilitator. The parties may wish to request the OAH assign an ALJ as facilitator.
6. By the date of the prehearing conference, the parties shall submit a report to the investigating ALJ setting forth the UNEs for which costs must be determined and including a discussion of any disagreement as to whether any UNEs are considered "new UNEs" and whether any UNEs have been appropriately restructured.
7. The Executive Secretary is authorized to modify the duration of the workshop process.
8. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar  
Executive Secretary

(S E A L)

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