Decision No. C02-636

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 99A-577T

IN THE MATTER OF U S WEST COMMUNICATIONS, INC.'S STATEMENT OF GENERALLY AVAILABLE TERMS AND CONDITIONS.

DECISION ON APPLICATIONS FOR REHEARING, REARGUMENT, OR RECONSIDERATION

Mailed Date: June 6, 2002
Adopted Date: May 29, 2002

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I. BY THE COMMISSION

Statement

This matter comes before the Commission for consideration of Applications for Rehearing, Reargument, or Reconsideration (RRR) filed by Commission Staff; AT&T Communications of the Mountain States, Inc. and XO Colorado, Inc. (collectively "AT&T"); Covad Communications Company (Covad); and Qwest Corporation. These second applications for RRR were filed on May 7, 2002 and are addressed to Decision No. C02-409 (Mailed Date of April 17, 2002) (Reconsideration Decision). Now being duly advised, we rule as follows.

II. DISCUSSION

This docket concerns the wholesale rates charged by Qwest for interconnection services and unbundled network elements provided to competing local exchange carriers. These rates will be included in Qwest's Statement of Generally Available Terms and Conditions (SGAT) established pursuant to the Telecommunications Act of 1996. After hearing, we issued Decision No. C01-1302 (Mailed Date of December 21, 2001) (Initial Decision). That decision established the prices for a number of Qwest's services. The parties, pursuant to § 40-6-114, C.R.S., filed their initial applications for RRR. In the Reconsideration Decision, we modified a number of the rulings

made in the Initial Decision. Staff, AT&T, Qwest and Covad now request reconsideration of the rulings made in the Reconsideration Decision.

A. Application for RRR by Staff

1. The Reconsideration Decision rejected Staff's request for a specific directive that Qwest impute its wholesale prices into its retail rates. We concluded, in part, that even if Staff's imputation request were within the scope of this docket, the present record does not support imposition of a new imputation directive for all of Qwest's retail services. Staff points out that currently effective Commission rules already require imputation of wholesale prices into retail rates. Staff contends that if the Commission intends to excuse Qwest from complying with those rules, the Commission should specifically acknowledge that fact. In addition, Staff requests that we identify each wholesale service not subject to imputation requirements; that we specify which imputation rules apply to each service and which rules do not; and that we specifically identify the rules now being waived, and the duration of each waiver. According to Staff, any waivers of the imputation rules should be temporary.

2. We deny Staff's requests. Staff is correct that Commission rules regarding imputation exist and have not been waived by this, or any other, Commission order.

3. If Staff believes that certain retail prices should be increased because of imputation rule violations, it should pursue this by initiating a show cause proceeding against Qwest.

B. Application for RRR by AT&T

1. Cable Placement Costs

a. This issue concerns which cable placement costs to use in a forward-looking cost model. "Placement costs" are the costs associated with placing cable, including costs for trenching or boring, and account for the frequency that those placement methods will be used in placing buried cable. Our Initial Decision accepted the cost inputs advocated by AT&T. The Reconsideration Decision partially granted Qwest's application for RRR by modifying the assumed cable placement costs for the five lowest density zones. We concluded that $1.30 per foot for plowing--instead of the $1.44 figure suggested by Qwest--is the proper cost assumption for those zones, because the HAI 5.2a model (HAI) employs cost additive factors when rocky ground is encountered. We found that the $1.44 assumption was the product of $1.30 and an "additive rocky soil factor" that is already reflected in the HAI model.

b. According to AT&T's application for RRR, the Reconsideration Decision inexplicably reverses our prior determination that cable placement costs in rural areas are

significantly less than costs in more densely populated areas. AT&T argues that the record does not support the higher values adopted in the Reconsideration Decision.

c. We deny the application for RRR on this point. The record contains extensive evidence from the parties regarding the appropriate assumptions for cable placement costs. The Commission's determination on this issue is within the range of those advocated by the parties to this case. The value of $1.30 used for installed cost of buried cable plow-per-foot (derived from the Colorado state specific price quotes of $1.44 adjusted for the HAI model's 10%-adder for difficult terrain) comes from the HAI sponsor's own engineer input recommendations for Colorado. *See* page 19 of Qwest's first application for RRR (dated Jan. 30, 2002). The Reconsideration Decision explains the reasons for our specific conclusions. To the extent AT&T argues that the Commission must accept one of the parties' position wholesale, no authority was cited for that proposition.

d. Our chosen input reflects our best judgment of the accurate forward-looking cost for cable placement. This is commonplace in ratemaking proceedings, where the Commission must exercise its discretion and judgment based on evidence in the record. That we did not choose one party's preferred input over the other party's is likewise commonplace in ratemaking proceedings. As Dr. Langland's testimony emphasized, the

parties to this docket each have respective incentives to overstate costs, as with Qwest, or understate costs, as with the CLECs.[1] That the Commission adopted inputs somewhere in the middle is a classic exercise of ratemaking discretion.

2. Plant Mix Costs

a. This issue concerns the relative percentage of network facilities that, for purposes of the cost model, are assumed to be buried, placed in underground conduit, or placed aerially attached to poles. In the Initial Decision, we determined that an appropriate cost model should assume an average of 20% aerial plant. This was a reduction from the 28.9% assumption used in the HAI cost model. In the Reconsideration Decision, we granted Qwest's request to spread the 8.9% reduction of assumed aerial plant between underground and buried investment. We explained this in a series of tables. These tables further clarified that we adopted an assumption of an overall weighted average of 20% aerial plant. AT&T's RRR argues that the Reconsideration Decision fails to explain the modified inputs related to plant mix, especially the weighted

[1] Also, given the nature of ratemaking proceedings, it is a probably reasonable expectation of parties that the Commission will choose inputs somewhere in between the extremes proposed by the parties' respective cost witnesses. Thus, the incentives to inflate or deflate cost assumptions, respectively, derive from a prediction of where "in the middle" the Commission will come out. This ratemaking-as-game-theory approach does not reflect the Commission's manner of reasoning in this case, but it is a popular prejudice (and not-uninformed) about how rate cases work.

average input of 20% aerial plant. AT&T further contends that there is no evidence in the record supporting an increase in the amount of assumed underground cable. It argues that any reductions to the aerial plant input should be offset by increases to buried placement, not to underground placement.

b. We reject these arguments. The issue of relative proportion of outside plant network facilities placed in underground conduit, direct buried, or aerial is not solely limited to Distribution Plant. AT&T's reference to use of 28.9% aerial placement is misleading because different input values were used for Drop Mix, Distribution Mix, Copper Feeder Plant Mix, and for Fiber Feeder Plant Mix. The Commission did not simply "distribute the difference of 8.9% equally between buried and underground placement." The Reconsideration Decision provides the entire input tables for all four classifications of outside plant. These inputs are supported by the record. For example, Qwest's LoopMOD,[2] while it does not use the exact same definition of density zones as the HAI Model, used 43% for underground placement in Density Zone 4 (Low Density), and 86% in Density Zones 3 (Medium Density), Density Zone 2 (High

[2] Our reference to LoopMod in this decision is consistent with our prior determination that its appropriate to rely on LoopMod for limited purposes. *See* Reconsideration Decision (page 26).

Density, and Density Zone 1 (Very High Density) for distribution.

c. The Commission used its judgment in adopting placement plant input values based upon all parties' recommendations in the record. For example, our adopted plant mix inputs are comparable to those suggested by Qwest for equivalent density zones, from 2% for DZ 4, to 8% for DZ 5, 40% for DZ 2, and 86% for DZ 1. Our adopted input values fall within the range of recommendations within the record. Most importantly, the input values reflect our judgment of the forward-looking plant mix for the various types of plant. Again, the fact that we did not adopt wholesale the plant mix assumptions of one party or another is unremarkable.

3. Drop Lengths

a. This issue concerns the proper estimated averaged drop length (***i.e.*** wire length from customer placement location to actual customer interface) to use for HAI model inputs. The Initial Decision approved a 75-foot average drop length. We concluded that this assumption was supportable as a forward-looking drop length figure in light of Qwest's current statewide average drop length, and accounting for the effect of multi-tenant units. In the Reconsideration Decision, we acknowledged the need to more fully set forth our drop length assumptions by density zone. We included a table containing

drop length assumptions for use as inputs into the HAI model. We adopted these drop lengths, and modified our assumptions from the Initial Decision. The drop length weighted average increased to 87.5 feet, because we believed that we underestimated the average drop lengths in the least dense zones.

b. In its application for RRR, AT&T contends that we failed to identify the record evidence supporting the revised drop lengths in the least dense zones that were increased from the Initial Decision. AT&T now requests that the drop lengths be revised to the 75-foot statewide average approved in the Initial Decision.

c. We deny this request. We note that the record supports our conclusions in the Reconsideration Decision. For example, Qwest's LoopMod, while it does not use the same definition of density zones as the HAI Model, used a 300 foot drop length in Density Zone 5 (Very Low Density), a 200 foot length in Density Zone 4 (Low Density), and a 70 foot length in Density Zone 3 (Medium Density). We exercised our discretion, based upon evidence in the record, in approving the drop length assumptions to be used in the cost model. We affirm our

conclusion regarding the appropriate drop lengths for use in the cost models, including those for the most dense drop lengths.[3]

4. Switching Rates

a. In the Initial Decision, we concluded that the switching rates from Docket No. 96S-331T should remain in effect pending further examination in Phase II.[4] AT&T's first RRR Application objected to that determination. Qwest, on March 5, 2002, filed its response to AT&T's RRR Application, suggesting interim compromise rates for local switching (for both the recurring usage based component and the recurring port component). We adopted, on an interim basis and subject to reexamination in Phase II, Qwest's suggested compromise rates in the Reconsideration Decision. The Decision left in effect the 331T tandem switching and Shared Transport rates, pending reexamination in Phase II.

b. AT&T's second RRR Application again requests reconsideration of the switching rates. Primarily, AT&T reiterates the argument that we should adopt the switching rates indicated by the HAI model run, as modified by our input determinations in the Decisions. We deny this request. Our prior determination to leave the 331T switching rates in effect

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[3] In its application for reconsideration, AT&T appears to suggest that drop lengths for the most dense should decrease.

[4] Our original intent to leave the 331T rates in effect was clarified in the Reconsideration Decision (page7).

for the interim was based on the Commission's and the parties' lack of opportunity adequately to examine Qwest's switching cost model in this proceeding. Considering all the evidence offered on this issue, we concluded--and still conclude--that the record as it currently stands is inadequate to make a final determination of the proper switching rates based upon any proffered cost study, including the HAI model.

c. On May 16, 2002, Qwest filed its Response to AT&T's second application for RRR.[5] Qwest proposes: (1) further reductions to recurring rate levels for the local switching usage element and line-port element, and (2) adoption of AT&T/XO's proposed recurring rate levels for tandem-switching, and a recurring rate level slightly lower than AT&T/XO's proposal for shared transport.[6] Specifically, Qwest proposes to reduce its local switching rates to $0.00161 per minute for the usage-sensitive element, plus $1.53 per month for the non-usage-sensitive line port. In addition, Qwest agrees with the AT&T/XO figure for tandem switching ($.00069 per minute), but derives a slightly lower figure of $0.00111 for shared transport. Qwest

[5] Qwest's Motion for Leave to File Response to AT&T/s and XO's Application for Rehearing is granted.

[6] Qwest's proposed switching usage and line port rates are based on adjustment to the HAI model.

suggests these rates be subject to further review in Phase II of this proceeding.

d. We gave the parties an opportunity to respond to Qwest's "voluntary" switching rate proposals. None of the parties submitted such a response. These recent "voluntary" reductions benefit competitive local exchange carriers. Likewise, this Commission has not yet been furnished with a fully litigated record whereby we can make a rate determination of our own. Therefore, we endorse these "voluntary" switching rate reductions, subject to reexamination in Phase II.

C. Application for RRR by Qwest

1. Deaveraged Loop Rates

a. This issue concerns the method for deaveraging unbundled analog and high-capacity loop rates. The Initial Decision and Reconsideration Decision set unbundled loop rates for three rate groups (Attachment B to Reconsideration Decision). We also adopted a statewide grouping of wire centers and related wholesale prices for the purpose of deaveraging. The Initial Decision and RRR Decision point out that the deaveraged loop rates are interim only, and subject to Phase II deaveraging proposals. Because the deaveraging plan did not mesh well with federal and state high cost support mechanisms,

we directed the parties to file in Phase II plans for establishing high cost fund zones within each wire center.

b. In the Decisions, we found the interim deaveraging method consistent with how Colorado high cost support is calculated and distributed to Qwest. High cost support is portable to another eligible provider. Thus, an eligible provider who purchases a UNE from Qwest will be qualified to receive the high cost support for that customer. We determined that our interim deaveraging plan creates proper price signals because the variation in costs between wire centers is significant. Our interim method acknowledges the disparate prices associated with the various wire centers across the state. Because it more closely matches wholesale loop pricing with high cost support, it also eliminates opportunities for regulatory arbitrage that might arise under a more standard rate group deaveraging plan.

c. In its second application for RRR, Qwest contends that its systems are not designed to accommodate deaveraging on both a wire-center and mileage-based basis. In particular, Qwest claims that both wire center-based deaveraging (applicable to DSO capable loops) and distance-based deaveraging (applicable to high capacity loops) cannot be simultaneously implemented within the operations support systems existing today. As such, the adopted deaveraging requirements present

serious practical issues for Qwest. Finally, Qwest contends that the Commission's new wire center based deaveraging proposal is based on the erroneous conclusion that a loop deaveraging plan needs to be consistent with the structure of the Colorado High Cost Support Mechanism (CHCSM). Qwest proposes an alternative deaveraging method that can be implemented on an interim basis for DSO capable and high capacity loops.

d. We grant Qwest’s application for RRR on this point.[7] Although we accept Qwest’s proposal for deaveraging its UNE Analog loop rate into three rate groups for an interim period, we remain concerned with the clear mismatch between the interim price and the TELRIC cost for particular wire centers. For example, the TELRIC monthly cost for the UNE analog loop in Debeque is $170.67; the proposed Rate Group 3 price is $32.74. Thus the wholesale price is set at a level of only 19.17% of TELRIC cost. Such a disparate price signal cannot but invite arbitrage. Further, we remain concerned with Qwest’s interim rate structure and the workings of the CHCSM. Qwest asserts that its billing system cannot accommodate disaggregated wire center specific rates. However, Qwest’s inability to track UNE loop sales causes potentially serious problems with respect to

[7] Qwest's Alternative Motion for Waiver of Wire Center-Based Deaveraging Methodology is moot given our decision on its application for RRR.

CHCSM payments to Qwest. The CHCSM payments to Qwest vary widely among 106 of Qwest's 166 individual wire centers receiving support. Currently, support to Qwest ranges from $0.24 per month per loop to $182.70 per month per loop. If Qwest cannot track UNE loops sold by wire center, we question its ability to provide to the Commission adequate data to allow us to apportion correctly the CHCSM support between Qwest and its wholesale customers.

e. All of these concerns, and others, will have to be examined in Phase II of this proceeding. On an interim basis, however, we will relent and endorse the Qwest rate group proposal. This has the strength of at least being familiar to the carriers. Nonetheless, we anticipate a critical look at deaveraging in the next phase of this proceeding.

2. Correction of Clerical Errors in Attachment A to Reconsideration Decision

a. Attachment A to the Reconsideration Decision sets forth the approved rates for Qwest's SGAT. Qwest's application for RRR correctly points out that Attachment A contains clerical errors with respect to the rates for the Basic Installation, Basic Installation with Performance Testing, and Coordinated Installation Without Cooperative Testing options for DS1's and DS3's. Those rates erroneously include the language "existing service" or "new service." We grant Qwest's request

for clarification. The references to "existing service" and "new service" shall be deleted from Attachment A to the Reconsideration Decision.

b. Similarly, Qwest also points out that the DS1 capable feeder loop rates on Attachment A to the Reconsideration Decision are erroneous. We grant this request for clarification. The DS1 Capable Feeder Loop rates on the first page of Exhibit B to Qwest's application for RRR are the correct rates and shall be included in Qwest's SGAT.

D. Application for RRR by Covad

1. For reasons stated in its Post-Hearing Brief and in its first Application for Reconsideration, Covad again requests that we adopt a $0 rate for the High Frequency Portion of the Loop (HFPL). We deny this request. For the reasons stated in the Initial Decision (pages 107-118) and the Reconsideration Decision (pages 83-88) a rate of $4.89 for HFPL is lawful and appropriate.[8]

2. In its May 16 Response to AT&T/XO's and Covad's Applications for Rehearing, Reargument and Reconsideration, Qwest states that it is willing to reduce its recurring HFPL

[8] We set this rate pending full explication, and pending reconsideration petitions, in *United States Telecom Association v. Federal Communications Commission,* 2002 WL 1040574, -- F.3d – (D.C. Cir. 2002), where it appears from the court's language that the line-sharing order has been vacated. ("Accordingly, the Line Sharing Order must be vacated and remanded.") 2002 WL 1040574 at *14. We nonetheless press on with endorsing this rate, even though it appears there may be no need to do so.

rate to zero on an interim basis (pending reexamination of this issue in Phase II or a future proceeding). Notwithstanding this offer, we affirm our prior determinations setting a positive rate for HFPL. Unlike the situation for switching, the HFPL rate set in the Decisions was not interim. Because the record here was more than adequate to set the HFPL rate, there was--and is--no need to defer a finding on an appropriate price for HFPL. Our Decisions set forth in great detail why a zero rate for HFPL is improper, and we affirm those findings here.

3. We now briefly underscore some of our reasoning from the previous decisions for endorsing the positive, negotiated price. First, the negotiated price reflects a privately negotiated solution to a theoretical issue that has no definitive answer, save identification of the wrong prices.[9] One absolutely wrong theoretical price is the one proffered by Covad, and now Qwest, here. Zero cannot be the right price for a scarce good with a positive demand. To endorse a zero price would lead us astray with the fallacy that all prices must be set at incremental cost. Second, the indeterminacy of the right price leads us to prefer the negotiated solution over whatever vague intuitions we might have about respective demand elasticities for the voice portion compared to the HFPL, and any

[9] It is non-sensical to try and speak of HFPL pricing in terms of being TELRIC-compliant.

Ramsay pricing considerations that might lead you to apportion costs from this joint product.[10]

III. ORDER

A. The Commission Orders That:

1. The Application for Reconsideration, Reargument, or Rehearing filed by Commission Staff on May 7, 2002 is denied.

2. The Application of AT&T Communications of the Mountain States, Inc. and XO Colorado, Inc. for Rehearing, Reargument or Reconsideration filed on May 7, 2002 is denied.

3. The Second Application for Rehearing, Reargument or Reconsideration filed by Covad Communications Company on May 7, 2002 is denied.

4. The Application for Rehearing, Reargument, and Reconsideration filed by Qwest Corporation on May 8, 2002 is granted. Qwest's Alternative Motion for Waiver filed on May 8, 2002 is denied.

5. The Motion for Leave to File Response to AT&T's/XO's and Covad's Applications for Rehearing, Reargument

[10] This intuition would be that the HFPL or broadband use of the loop has a higher demand elasticity than the voice portion. Ramsay considerations, then, would lead one to believe that the lion's share of the loop costs should be recovered from the voice-side of the loop. However, we had no such evidence in this record. Furthermore, in a dynamic market, one could foresee quick demand shifts or the HFPL becoming a substitute for the voice grade portion of the loop. Events such as this would shift the proportions, under Ramsay considerations, of how loop costs are recovered.

and Reconsideration filed by Qwest Corporation on May 16, 2002 is granted.

6. Within 10 days of a final Commission order in this docket, Qwest Corporation shall amend its Statement of Generally Available Terms and Conditions to reflect the rates and conditions of service approved in this docket, including the rates approved in the above discussion. Such filing shall be made on not less than one days notice to the Commission and to the parties to this case.

7. The twenty day period provided for in § 40-6-114, C.R.S., within which to file applications for rehearing, reargument, or reconsideration begins on the first day following the Mailed Date of this decision.

8. This Order is effective immediately upon its Mailed Date.

B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING May 29, 2002.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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Commissioners

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