MICHAEL L. GINSBERG (#4516)
Assistant Attorney General
PATRICIA E. SCHMID (#4908)
Assistant Attorney General
MARK L. SHURTLEFF (#4666)
Attorney General of Utah
Counsel for the DIVISION OF PUBLIC UTILITIES
160 E 300 S, 5th Floor
P.O. Box 140857
Salt Lake City, UT 84114-0857
Telephone (801) 366-0380

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

IN THE MATTER OF THE PETITION OF QWESTCOPORATION FOR ARBITRATION OF AN INTERCONNECTION AGREEMENT WITH UNION TELEPHONE COMPANY d/b/a UNION CELLULAR UNDER SECTION 252 OF THE FEDERAL COMMUNICATIONS ACT	POSITION STATEMENT OF THE DIVISION OF PUBLIC UTILITIES DOCKET NO. 04-049-145

The following constitutes the Position Statement of the Division of Public Utilities (DPU) in this docket.

INTRODUCTION

The DPU submits this Position Statement only on Issue 6 of the Joint Disputed Issues Matrix. The question before the Commission is: Has Union Cellular met its burden of proof to demonstrate that Qwest should be required to pay asymmetric transport and termination rates to Union Cellular for carrying Qwest's originating local

traffic that is terminated in Union Cellular's local cellular network.[1] The DPU takes the position that Union Cellular has failed to demonstrate through its cost model that a deviation from reciprocal compensation is justifiable. Specifically, Union Cellular has failed to show:

- that the model developed by Union Cellular is transparent and verifiable;
- that its cost model is TELRIC compliant; and
- that the additional costs to transport and terminate Qwest traffic are traffic sensitive.

As a result of Union Cellular's failure to present a model in enough detail to meet TELRIC standards and to show that the additional costs to Union Cellular are traffic sensitive, the DPU recommends that the Interconnection Agreement contain reciprocal compensation terms rather then asymmetric pricing terms.

UNION CELLULAR FAILS TO MEET THE LEGAL STANDARDS TO JUSTIFY ASYMMETRIC PRICING

As far as the DPU is aware all Interconnection Agreements in this state use reciprocal compensation arrangements for the transport and termination of telecommunications traffic. Section 251(b) (5) of the 1996 Telecommunications Act[2] imposes on all LECs the "duty to establish reciprocal compensation arrangements for the transport and termination of telecommunications." Reciprocal compensation is just and reasonable under Section 252(d)(2)(A) if it (1) provides for the mutual transport and termination on each carrier's network facilities of calls that originate on the network facilities of another carrier and (ii) determines such costs on the basis of a reasonable approximation of the additional costs of terminating such calls.

[1] DPU Ex. 2.1 shows that the proposed rates of Union could be as much as a 10 fold increase over current Qwest rates that currently form the basis of reciprocal compensation.
[2] 47 USC 251(b) (5), hereinafter "Federal Act."

The DPU asserts that the federal rules implementing reciprocal compensation create a presumption that the reciprocal compensation rates that two carriers can charge each other are symmetric. The rate developed by the ILEC Qwest that is intended to recover its TELRIC costs is the appropriate rate to be charged unless Union Cellular is able to meet its burden of proof to show that a non-symmetric rate is warranted.

The applicable FCC rule is 47 CFR § 51.711. In relevant part, the rule provides:

> (a) Rates for transport and termination of telecommunications traffic shall be symmetrical, except as provided in paragraph [] (b) … of this section.
>
> (1) For purposes of this subpart [*i.e.*, reciprocal compensation], symmetrical rates that a carrier other than an incumbent LEC assesses upon an incumbent LEC for transport and termination of telecommunications traffic equal to those that the incumbent LEC assesses upon the other carrier for the same services.
>
> * * *
>
> (b) A state commission may establish asymmetrical rates for transport and termination of telecommunications traffic *only if* the carrier other than the incumbent LEC … proves the state commission[,] on the basis of a cost study using the forward-looking economic cost based pricing methodology described in [47 CFR] § 51.505 through 51.511, that the forwarding-looking costs for a network efficiently configured and operated by the carrier other than the incumbent LEC … exceed the costs incurred by the incumbent LEC … and, consequently, that such a higher rate is justified.

(Emphasis supplied.)

As used in 47 CFR § 51.711, transport

> is the transmission and any necessary tandem switching of *telecommunications traffic subject to section 251(b)(5) of the Act* from the interconnection point between the two carriers to the terminating carrier's end office switch that directly serves the called party, or *equivalent facility* provided by a carrier other than an incumbent LEC[.]

47 CRF § 51.701(c) (emphasis supplied). As used in 47 CFR § 51.711, termination refers to call termination and

> is the switching of *telecommunications traffic* at the terminating carrier's end office switch, or *equivalent facility*, and delivery of such traffic to the called party's premises.

47 CRF § 51.701(d) (emphasis supplied).

For wireless providers, the FCC has concluded that

> determination of the additional costs of terminating traffic over a wireless network element does *not* involve an inquiry into whether the wireless network element is "equivalent" to a recoverable wireline element.

In the Matter of Cost-Based Terminating Compensation for CMRS Providers, Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers, Implementation of the Local Compensation Provisions of the Telecommunications Act of 1996, Calling Party Pays Service Offering in the Commercial Mobile Radio Services, Order, CC Dockets No. 95-185 and No. 96-98, WT Docket No. 97-207, FCC 03-215, 18 FCC Rcd. 18441 (rel. Sept. 3, 2003) (*CMRS Compensation Order*), at ¶ 10 (subsequent history omitted) (emphasis supplied).

Rather, with respect to transport and termination of traffic by a CMRS carrier,

> a cost-based approach – one that looks at *whether the particular wireless network components are cost sensitive to increasing call traffic* – should be used to identify compensable wireless network components. Thus, *if a CMRS carrier can demonstrate* that the costs associated with spectrum, cell sites, backhaul links, base state controllers and mobile switching centers vary, to some degree, with the level of traffic that is carried on the wireless network, a CMRS carrier can submit a cost study to justify its claim to asymmetrical reciprocal compensation that includes additional traffic sensitive costs associated with those network elements.

Id. (internal citations omitted) (emphasis supplied).

The Colorado Commission recently rejected Union Cellular's request for asymmetric pricing. The reasons for the rejection are equally applicable here. The Colorado Commission made the following findings that are applicable here:

Pursuant to 47 CFR § 51.711, to meet its burden of proof with respect to the asymmetrical rates which it seeks, Union Cellular must justify its proposed rates by a cost study which used the TELRIC method described in 47 CFR §§ 51.505 through 51.511. Union Cellular must establish that the forward-looking costs for a network efficiently configured and operated by it exceed the forward-looking costs incurred by Qwest. To be satisfactory, the cost study must yield a "reasonable approximation of the additional cost of terminating" calls which originate on the network facilities of the interconnected carrier (here Qwest). Section 252(d) (2) (A) of Title 47 U.S.C. TELRIC is the forward-looking cost over the long run of the total quantity of the facilities and functions that are directly attributable to, or reasonably identifiable as incremental to, [the relevant] element, calculated taking as a given the incumbent LEC's provision of other elements. 47 CFR § 51.505(b).

The inputs and assumptions used to determine TELRIC are: (a) the most efficient telecommunications technology now available; (b) the lowest cost network configuration, assuming the locations of the existing wire centers/switches; (c) the forward-looking cost of capital; (d) the economic depreciation rates; and (e) the reasonable allocation of forward-looking common costs.[3] *Id.* at §§ 51.505(b) and (c). In addition, TELRIC applies to elements (including interconnection) used to provide local telecommunications service; thus, a carrier's costs to provide interstate service and to provide non-jurisdictional services are removed. *See* generally 47 CRF Parts 36 and 69 (FCC rules pertaining to separations and cost allocation). Finally, TELRIC excludes (a) embedded costs, (b) retail costs, (c) opportunity costs, and (d) revenues used to subsidize other services. 47 CFR § 51.505(d).

We have examined Union Cellular's cost study and its proposed asymmetrical rates for transport and call termination in light of these principles.

We find that Union Cellular's cost study does not yield a "reasonable approximation of the additional cost of terminating" calls which originate on the network facilities of the interconnection carrier.[4]

We find that Union Cellular's cost study is deficient in at least the following areas: (a) it does not distinguish between voice and data services; (b) it assumes, without analysis, that Union Cellular's entire wireless network is traffic-sensitive (that is, cost sensitive to increasing call

[3] Forward-looking common costs are those economic costs which are incurred efficiently for the purpose of providing a group of services or elements and which cannot be attributed directly to an individual service or element.

[4] Colorado Public Utilities decision in the Union Qwest Arbitration Decision Number C07-0833 Paragraphs 166-168 and 172-175.

traffic); and (c) neither the cost study nor Union Cellular provides critical detail and analysis required by law.

We find that Union Cellular has not met its burden of proof. We agree with Qwest that the Union Cellular's proposed changes should not be made.

The Utah Commission has provided its insight into what is meant by TELRIC in its 2002 decision in the TELRIC cost Docket No. 01-049-85.[5] In that Order, the Commission made the follow observations on TELRIC:

> We view the TELRIC methodology as providing a proxy cost estimate for elements of a forward-looking monopoly provider's theoretical lease-cost, most-efficient, forward-looking network designed to provide for current demand. The model is not a representation, nor a blueprint, of an actual network. Rather, it is an estimate of what minimum costs any single efficient forward-looking provider would incur to serve current demand. A TELRIC model is not a substitute for an engineer. It is an estimated cost-proxy model. The question is whether the cost estimate is sufficient to compensate at least-cost, most-efficient, forward-looking provider of network elements.
>
> TELRIC asks what is the lowest cost estimate for a declining cost provider to self-provision a given element, assuming optimal size and design. That amount will be the minimum forward-looking, least-cost, most-efficient long-run average cost. Then the TELRIC methodology requires that the Commission set the price for the element at that level in recognition that if competitive markets were present, prices in the marketplace would be driven to this amount.

The DPU believes that even though Union Cellular will argue that more data has been submitted into the Utah case than was available in Colorado, in reality the cost model essentially has either similar or the same deficits that existed when Union Cellular presented its model to Colorado: The model is still not TELRIC compliant; the model still assumes its entire network is traffic sensitive; the model still does not separate the

[5] This is the Order where the Commission adopted the HAI model to develop TELRIC rates and is where the current terminating and transport rates of Qwest were developed which are the bases of the current reciprocal compensation arrangement.

costs of data and voice traffic; and the model still does not provide enough detail to break out the system that is shared with other services.

UNION CELLULAR'S MODEL IS NOT TRANSPARENT AND VERIFIABLE

The most significant shortcoming of Union Cellular's proposed model is its lack of granularity with regard to the break down of costs into component parts.[6] For the model to be transparent and verifiable, it must be arranged in such a way that the Commission and other interested parties can look at each category of incremental investment to determine if the hypothetical costs are appropriately calculated with algorithms that are agreed upon by all parties concerned. Many of the flaws in Union Cellular's model cannot be corrected by adjusting input parameters and the only way to correct Union Cellular's result would be to restructure the model and develop a new record.

That being said, the economic algorithms contained in Union Cellular's proposed model can be reviewed, but the way the model uses embedded costs does not calculate an efficient, forward looking hypothetical network. The model has been developed in such a way that all cell site equipment is lumped together so that a separate analysis or separation by traffic sensitive component is not possible. Union Cellular's assumption that the whole network is traffic sensitive is still embedded in the model. Even with the introduction of two traffic sensitive factors (user adjustable inputs) for switch and cell sites,[7] the proposed model still cannot separate traffic sensitive investments from those that are non-traffic sensitive. Without knowledge of what *investment* is traffic sensitive, how can one determine what percentage to apply in the user adjustable inputs for traffic

[6] Rebuttal Testimony of Paul M. Anderson, Docket No. 04-49-145, page 29, lines 554-556.
[7] Transcript Of Proceedings, Docket No. 04-049-145, November 6, 2007, p. 68, lns. 17-19.

sensitivity? The switch components are presented the same way and are not broken down by processor, BSC, HLR/VLR, ports, etc. but are presented instead as one lump sum. The appropriate way to model the network is to break down the costs by component so that non-traffic sensitive equipment can be separated from traffic sensitive equipment.

Furthermore, another issue is that the model is applying present worth factors inappropriately to minutes of use. Minutes do not decrease in value over time.[8] In Union Cellular's proposed model, one minute now would shrink to fifteen seconds over 14.5 years. The time value of money only applies to money, not to minutes of use.

Union Cellular's proposed model also fails to separate equipment and facilities by economic life.[9] A correct model would handle the network components separately in computing depreciation before combining and applying present worth factors.

UNION CELLULAR'S COST MODEL IS NOT TELRIC COMPLIANT

Embedded Costs

The Union Cellular model is non-compliant with TELRIC principles as it uses embedded costs that exist on its books of accounts to estimate pricing for all the components of the cellular network. The use of embedded costs is in direct violation of TELRIC principles[10] and the use of embedded costs was confirmed by Mr. Hendricks' testimony at the November 6th hearing during cross examination.[11] Mr. Hendricks believes that the FCC in its *First Report and Order* does not interpret embedded costs to be current expenditures that he defines as forward-looking. Granted, the GSM switch is a forward-looking technology, but it is still embedded and on Union Cellular's books of

[8] Rebuttal Testimony of Paul M. Anderson, Docket No. 04-49-145, page 27, lines 503-504.
[9] Rebuttal Testimony of Paul M. Anderson, Docket No. 04-49-145, page 28, lines 538-540.
[10] FCC 47 CFR, Sec. 51.505 (d)(1).
[11] Transcript Of Proceedings, Docket No. 04-049-145, November 6, 2007, p. 87, lns. 1-25.

accounts. The price of the embedded switch is not current since it was purchased in 2003. Likewise, the 68 embedded cell sites used to determine the costs of all cell sites in the study were built between 2003 and 2005. In a true TELRIC hypothetical model, other than central offices,[12] the number and placement of facilities are not pre-determined, thus all of the proposed locations and costs are subject to change.

Current Demand

Union Cellular's proposed model does not present demand as traditionally required by TELRIC principles in land line studies. It uses what appears to be current demand and two years growth to determine network costs rather than using current demand as proscribed by the Utah Commission[13] with a percentage growth as determined through the use of a fill factor as required in TELRIC pricing to achieve reasonably foreseeable demand.[14]

Structure and Facility Sharing

Union Cellular did not account for structure and facilities sharing with other companies in its pricing. Union Cellular shares structure space and facilities at its cell sites with 28 other companies.[15] Mr. Hendricks states that "Union Cellular receives relatively very little revenue from other carriers for access (to) Union Cellular's network…"[16] It is not the revenue received, as stated by Mr. Hendricks, that is relevant in a TELRIC cost study; it is the prorated cost of tower or equipment space that would

[12] FCC 47 CFR, Sec. 51.505 (b)(1).
[13] Report and Order, In the Matter of the Determination of the Cost of the Unbundled Loop of Qwest Corporation, Docket No. 01-049-85, Utah PSC (May 5, 2003), p. 3.
[14] Local Competition First Report and Order, CC Docket No. 96-98 and CC Docket No. 95-185.
[15] Post Surrebuttal Testimony of Jason P. Hendricks, October 26, 2007, Exhibit 18.
[16] Id.at p. 22.

otherwise be available to Union Cellular. This cost should be eliminated to modify the study costs.

Other Data Services

Union Cellular has not shown that the switch and transport costs contained in its proposed cost model do not include equipment that is also specifically used for the provisioning of other tariff and retail offerings that are unrelated to interconnection. Revenues from data services that Union Cellular provides in its wireless network can be significant but are not relevant in the cost study. It is the cost of the equipment required to provide these services that should be eliminated from the cost study. Union Cellular has not allocated costs for equipment used for data services and removed them from the cost study. This must be done for the cost study to be considered TELRIC.

Transport Rates

Union Cellular has modeled its proposed transport rate separately from its proposed termination rates. The overlying problem with the proposed transport rate is that it appears that Union Cellular has modeled its transport microwave radio costs based on what seems to be the retail prices of equivalent T-1s, as opposed to using local or tandem switch cost data, signaling data or network data. Mr. Hendricks argues that his cost per T-1 is conservative,[17] but that is not the point. Similar to termination rates, TELRIC transport rates must be developed using a hypothetical network cost study taking into account what an efficient network configuration would look like utilizing the most efficient telecommunications technology currently available[18] rather than applying embedded T-1 costs.

[17] Id. at p. 24.
[18] 47 CFR 51.505 (b)(1).

All of the above TELRIC issues are covered in the FCC Code of Federal Regulations and Union Cellular has admitted in part to its deviation from those regulations, and has excused its behavior by stating Union Cellular receives relatively very little revenue from sharing, by considering data related costs minimal or by considering the preferred approach to developing transport costs time-consuming and costly to develop.[19] Union Cellular's statement ignores the fact that embedded costs are defined as being on a company's books of accounts, a direct violation of TELRIC rules.

THE ADDITIONAL COSTS TO TRANSPORT AND TERMINATE QWEST'S TRAFFIC ARE NOT ALL TRAFFIC SENSITIVE

Based on its investigation, the DPU believes that Union Cellular inappropriately included costs for equipment and facilities that are clearly non-traffic sensitive (NTS). Specifically, Union Cellular included costs for towers and antennas, buildings and power equipment and processor components in the GSM switch, base station controllers and data base registers that are non-traffic sensitive.

Union Cellular claims that its GSM cellular switch and all of its cell sites are traffic sensitive. As a result of taking this position Union Cellular does not break down its switching or cell site equipment into components for separation into what can be considered traffic sensitive and what can be considered non-traffic sensitive. The DPU analyzed the components of a cellular network to determine what components are sensitive to additional traffic. From its detailed analysis, the DPU concludes that cellular radios, backhaul termination equipment, transport termination equipment and switch ports are traffic sensitive. The DPU conversely determined that switch processors, cell towers, radio antennas and cables, land and buildings at the cell sites and the power

[19] Post Surrebuttal Testimony of Jason P. Hendricks, October 26, 2007, pp. 23-24.

equipment including emergency back up generators are all non-traffic sensitive components.[20]

Union Cellular argues that some of the non-traffic sensitive components, such as cell towers, land and building space, and power, non-traffic sensitive support assets and claims that these "support assets" should be considered as traffic sensitive as the components they support. Mr. Hendricks states that the HAI 5.2a model includes land, buildings, and power investment in the development of per-minute switching rates for reciprocal compensation.[21] In verifying Mr. Hendricks' claim that non-traffic sensitive support assets are used to determine traffic sensitive interconnection rates the DPU looked at a current version of the HAI 5.2a that is proscribed by the Utah Public Service Commission. During a sensitivity analysis of this model, the DPU removed the land and building investments from the End Office Switching tab. When the spreadsheet was recalculated it showed no effect on the local interconnection rates found in the Cost detail tab. The DPU is aware that the HAI 5.2a model does use land and building investments to determine unbundled network element costs (UNE) and it *may* be a factor in the minutes of use interconnection rates. However, it couldn't be demonstrated in the development of interconnection rates with the current HAI 5.2a model used by the Utah Commission. The DPU, therefore, stands by its conclusion that Union Cellular's proposed model does not meet the traffic sensitive additional costs requirement. Even if one accepts that support facilities for the traffic sensitive portion of the network can be included, it does not follow that 100% of the network becomes traffic sensitive.

[20] Rebuttal Testimony of Paul M. Anderson, Docket No. 04-49-145, IV TRAFFIC SENSITIVITY, page 15, lines 276-293.
[21] Id. at p. 4.

CONCLUSION

The DPU does not believe that Union Cellular has met its burden of proof to show that asymmetric transport and termination charges are warranted. There are numerous flaws in the model that need to be corrected before it can be considered to represent a TELRIC cost model using only traffic sensitive additional costs. As brought out in the Sprint vs. Verizon case[22], Union Cellular has the burden of proof to indicate which components is traffic sensitive:

> As the party with the burden of proof, Sprint was obligated to show the allocation of costs between traffic-sensitive and non-traffic-sensitive components. It took the view that all costs are traffic-sensitive. Verizon has gone forward with a presentation that calls that result into question, at least prima facie, and Sprint has failed to rebut it. Accordingly, Sprint has, again, not carried its burden of proving asymmetric reciprocal compensation to be warranted.[23]

The DPU believes that some traffic sensitive additional costs exist, (as shown in Table 1, Rebuttal Testimony), but cannot separate those costs into traffic sensitive factor percentages (for user adjustable inputs) to determine their significance for calculating termination and transport rates that are much different than rates already in effect.

Similar to the situation in the New York PSC and Colorado PUC decisions,[24] Union Cellular has failed to meet its burden of proof by demonstrating in its cost modeling effort that asymmetrical reciprocal compensation is justified. Therefore the

[22] New York Public Service Commission, Case 01-C-0767, August 23, 2002.
[23] New York Public Service Commission, Case 01-C-0767, August 23, 2002.
[24] New York Public Service Commission, Case 01-C-0767, August 23, 2002, Conclusion on page 20, Colorado Public Utilities Commission, Docket No. 04B-491T, paragraph 174, page 56.

DPU recommends that the interconnection agreement between Qwest and Union Cellular contain only symmetrical compensation, rather than asymmetrical compensation.

RESPECTFULLY SUBMITTED, this _____ day of December, 2007.

_____
Michael L. Ginsberg
Patricia E. Schmid
Attorneys for the Division
of Public Utilities

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing POSITION STATEMENT OF THE DIVISION OF PUBLIC UTILITIES was sent by electronic mail and mailed by U.S. Mail, postage prepaid, to the following on December ____, 2007:

Bruce S. Asay
Associated Legal Group, LLC
1807 Capitol Avenue, Suite 203
Cheyenne, WY 82001
basay@associatedlegal.com

Stephen F. Mecham
Callister Nebeker & McCullough
10 East South Temple, Suite 900
Salt Lake City, UT 84133
sfmecham@cnmlaw.com

Thomas Dethlefs
Qwest Services Corporation
1801 California Street
10th Floor
Denver, CO 80202
thomas.dethlefs@qwest.com

Gregory B. Monson
Stoel Rives LLP
201 South Main Street
Suite 1100
Salt Lake City, UT 84111
gbmonson@stoel.com

_____