methodology adopted by the FCC in performing its own analysis of forward-looking costs."[220] AT&T explained that, whereas "[t]he Qwest model . . . designs outside plant by first assuming that all physical structures are currently in places they are today and then choosing placement activities that would be required to place the cable in and around obstacles," the AT&T model, like the SM itself, assumes cable would be buried "whenever possible before structures such as roads and landscaping are already in place."[221] "The FCC," AT&T concluded, "agrees with this approach."[222] Of course, AT&T champions this TELRIC error because it has the effect of ignoring the constraints that *any* efficient carrier would incur in building its own facilities in developed areas *today* — and thus deprives CLECs of any incentive to make such investments.[223] Through such distortion, AT&T achieved an arbitrary reduction of more than $2.00 total in the statewide average loop rate, or nearly 15%.[224]

Placement costs and sharing percentages are but two examples of inputs that the states have misapplied in reliance on analogous assumptions found in the SM. Two more are briefly mentioned here: network routing assumptions and fill factors.

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[220] AT&T AZ Br. at 1.

[221] *Id.* at 13.

[222] *Id.*

[223] The Colorado commission recently accepted the same "aggressive" approach to these inputs as well even though it acknowledged the merit of Qwest's position. *See* Ruling on RRR Applications, *US West's Statement of Generally Applicable Terms and Conditions*, Docket No. 99A-577T, at 31 (Apr. 17, 2002) ("Qwest may have some grounds in arguing such an assumption is fanciful in terms of what real forward-looking costs will be. Nevertheless, the TELRIC assumptions of the HAI model and of other states' TELRIC prices seem to accept these aggressive assumptions, about both sharing and existing infrastructure.") (citation omitted).

[224] Adopting the CLECs' structure sharing assumptions in Arizona reduces monthly recurring loop rates by more than $1, as does adopting the CLECs' assumptions about cable placement costs. *See* Qwest AZ Exceptions Br., Ex. D.

2. Network Routing Shortcuts.

Some states, again relying on the SM or on CLEC-sponsored cost models, compound their other input errors by assuming away real-world obstacles that increase the replacement costs of existing network facilities. One of the key steps in determining total loop investment is a calculation of the amount of "distribution plant" needed to reach individual customers. A distribution facility is the final portion of the loop closest to the customer: the so-called "last mile to the home" (although such facilities may of course be longer or shorter than a mile). Like the outer branches on a tree, they are the most geographically dispersed of the loop facilities, and their deployment requires enormous investment. The degree of that investment depends on several key factors, one of which is the extent to which various obstructions in the real world get in the way of otherwise efficient network distribution paths.

Certain cost models understate distribution plant investment by partially or completely ignoring such obstructions — or even the location of roads and other rights of way where cable can be placed. That is particularly true of the CLEC-sponsored HAI model, used in the great majority of Qwest states, as well as in a number of other states.[225] This problem was recently

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[225] *See, e.g., Arizona Phase II Order* at 10; Slip Opinion, *In re U S West Communications, Inc.*, Docket No. RPU-96-9 (Iowa Utils. Bd. Apr. 23, 1998) (adopting HAI's predecessor, the Hatfield model); Slip Opinion, *In re Universal Service Support*, Docket No. P-999/M-97-909 (Minn. Pub. Utils. Comm'n 1999) (adopting HAI model despite analysis showing that the model failed to account for enough cable to connect numerous customer locations); Slip Opinion, *Re Implementation of the Texas High Cost Universal Service Plan*, PUC Docket No. 18515 (Tex. Pub. Utils. Comm'n 2000) (adopting the HAI model based on the assumption that the treatment of unidentified customers would offset the model's tendency to underbuild the network); Order, *Petition to Establish a Proceeding to Review the Statement of Generally Available Terms and Conditions Offered by Bell Atlantic in Accordance with Sections 251, 252 and 271 of the Telecommunications Act of 1996*, Case No. 96-1516-T-PC, at 61 (W. Va. Pub. Serv. Comm'n May 16, 1997) (adopting an outdated version of the Hatfield model "even though there are later, perhaps more accurate, versions of the model"). *But see Re Bell Atlantic*, DE 97-171, Order No. 23738, 210 P.U.R.4th 363 (N.H. Pub. Utils. Comm'n 2001) (rejecting the HAI model because it "ignor[es] the actual methods by which any carrier would produce a network" and "underbuilds the network").

taken to its absurd conclusion in Arizona, where the proponents of the HAI model have successfully introduced an alternative routing algorithm that produces substantially less cable than even the original HAI model did.[226] This alternative algorithm attempts to estimate the distances required to connect customer locations as if they were dots on a blank page. It is not a method that any telecommunications engineer would ever use to design a distribution network. In the real world, customers are not dots on a blank page, and distribution networks must be designed around rivers, buildings, yards, highways, protected lands, and other natural and man-made obstructions. By adopting this alternative algorithm, the Arizona commission has assumed those obstructions away, artificially lowering urban distribution distances by as much as two-thirds, and thereby reducing statewide average loop rates by approximately $1.00.[227] But non-facilities-based CLECs have succeeded in persuading at least one state regulator that the FCC's use of a similarly-named algorithm within the universal service cost model somehow supports the use of their own algorithm in a completely different model for the quite different purpose of estimating UNE costs.[228]

3. Fill Factors

A "fill factor" is a cost study input reflecting the percentage of a facility's capacity that, on average, is utilized when the facility is efficiently deployed within the network. The higher a facility's fill factor is, the less spare capacity is deemed to be in place over a given time period.

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[226] *See Arizona Phase II Order* at 21-22.

[227] Qwest AZ Exceptions Br., Ex. D; *see also* Order, *U S WEST Communications, Inc.'s Statement of Generally Available Terms and Conditions*, Docket No. 99A-577T, at 42 (Colo. Pub. Utils. Comm'n Nov. 13, 2001) ("*Colorado SGAT Order*") (rejecting the HAI's MST function on the grounds that "TELRIC does not require ignoring other real world limitations or sources of network placement costs such as buildings, rivers, lakes, etc.").

[228] *See Arizona Phase II Order* at 21-22.

That, in turn, results in lower UNE rates for any *given* increment of capacity, because the costs of spare capacity allocated to each working unit are lower. Fill factors are a critical input for a broad variety of network elements ranging from switching to loop distribution facilities to high-capacity circuits such as dedicated transport and DS1 or DS3 loops.

Routinely citing the SM for support, the CLECs have proposed unrealistically high fill factors for all such elements,[229] sometimes with considerable success. For example, the HAI model assumes a default of 98% fill factor for switching,[230] even though that would include only enough spare capacity to accommodate the need for "administrative fill" (*i.e.*, enough excess capacity to operate the switch day-to-day) and none to accommodate the new lines that an efficient carrier would need to meet the inevitable growth in demand. Similarly, the CLECs have routinely proposed fill factors of 85% or higher for all high-capacity loops and transport facilities.[231] No matter what the facility, these aggressive fill factor assumptions are flawed for the same basic reason: contrary to the CLECs' unstated assumption, it is often quite *inefficient* for a carrier to maintain such small levels of spare capacity.

229/ *See, e.g.*, Surrebuttal Testimony of Brian F. Pitkin On Behalf of AT&T Communications of Virginia, Inc. and WorldCom, Inc., *Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Expedited Preemption of the Jurisdiction of the Va. State Corp. Comm'n Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration*, CC Docket No. 00-218 et al., at 84 (filed Sept. 21, 2001) (citing the *Inputs Order* in defense of proposed fill factors that are even higher than the SM's fill factors).

230/ HAI Consulting, Inc., *HAI Model Release 5.0 Inputs Portfolio* 75 (Jan. 27, 1998) <http://www.hainc.com/hminputs.pdf>. This exceeds even the SM's very high 94% fill factor for switching. *Inputs Order*, 14 FCC Rcd at 20296 ¶ 330; *see also* Tenth Supplemental Order, *In re Determining Costs for Universal Service*, Docket No. UT-980311(a) (Wash. Utils. & Transp. Comm'n Nov. 20, 1998) (rejecting AT&T's proposal to use HAI default fill factor of 98%).

231/ *See generally* HAI Consulting, Inc., *supra* note 230, at 89 (default transport terminal fill factor of 90%).

Fill factors can be conceptualized as a product of the total demand for an element divided by the total physical capacity of the facilities providing the element. One key reason why fill factors cannot realistically approach 100% is that capacity is "lumpy": the equipment available on the market increases in capacity only in large increments. Ground transportation provides a simple illustration of this point. Suppose that a trucking company must choose between vans and trucks as the vehicles for carrying cargo across the country. One truck has ten times the cargo capacity of a van, but the truck costs almost three times as much to operate. An economically efficient firm would substitute a truck for vans once the total cargo meets or exceeds the capacity of three vans, because the truck is less costly to send across the country than three vans. Note, however, that the total "fill" or utilization of the truck at that point is 33%. If the operator's primary objective were simply to achieve a utilization level of 85%, he would continue to use vans until he had enough cargo (*i.e.*, 9 vans). But that would be economically irrational. At a capacity of 8 vans, the operator would be spending nearly three times the amount it would cost if he had simply used the truck and "wasted" some capacity.

The telecommunications world is no different. High capacity loops, for example, typically come in one of two sizes: DS1s or DS3s. A DS1 circuit is the equivalent of 24 DS0s, and a DS3 is the equivalent of 28 DS1s or 672 DS0s. Because of the efficiencies associated with manufacturing and deploying equipment in standardized capacity increments, no one manufactures, for this market, the electronics needed for individual circuits with capacities falling *between* a DS1 and a DS3. An end user (or CLEC) that requires a high capacity loop therefore cannot typically purchase a single circuit with a capacity that exactly matches his particular needs, especially if the end user requires more capacity than a DS1 but less than a DS3. Instead, if an end user has a need for five DS1s, he purchases five DS1s. But because a

DS3 is less than 28 times as expensive as a DS1 (even though it has 28 times the capacity), it becomes more cost effective to purchase one DS3 loop with capacity needs equivalent only to 10 DS1s, even though the resulting fill factor for that element would be low: roughly 40%. A similar conclusion applies to interoffice dedicated transport circuits, as well: a single OC48 is less expensive than seven OC3s, even though the OC48 has 16 times the capacity of an OC3.

Likewise, efficient network engineering and design practices produce significant amounts of spare capacity in the facilities used to provide narrowband (*i.e.*, POTS) service. For example, spare copper cables allow a carrier to restore service much more quickly and inexpensively in the event of outages, and reduce maintenance costs by avoiding the need constantly to repair cables as they become defective. Sufficient spare capacity also permits carriers to meet the constantly shifting demand for additional lines and incremental demand growth without having to install new cables for every order. This is particularly true in Qwest's in-region service area, because the overwhelming majority of loop plant (between 70% and 80%) is buried and requires Qwest to dig new trenches whenever it must install additional cable. Thus, Qwest's practice is to deploy sufficient distribution capacity at the time of initial installation so that it can fill orders for additional lines without having to dig new trenches each time. Even after engineers have taken these and other factors into account to determine the desired levels of spare capacity to deploy on each route, they typically must select a larger copper cable size that is readily available and cost-effective to deploy.[232/]

[232/] Efficient engineering practices also include significant levels of spare capacity in DLC equipment. DLC equipment is designed so that some of the necessary electronics can be deployed cost-effectively in units with small capacity increments (typically called "plug-ins" or "channel units"). However, the shelf units into which plug-ins are installed and the RTs themselves (collectively referred to as "common electronics") are manufactured in much larger, "lumpier" capacity increments. Thus, DLC common electronics often must be deployed in

The upshot is that, with any given level of demand, the facilities arrangement that *minimizes costs* often bears no resemblance to the facilities arrangement that *produces the highest fill factor*. Indeed, maximizing fill factors would often produce profoundly inefficient results, such as sending eight vans across the country instead of one truck, or deploying 20 DS1s to an end user rather than one DS3. There are many circumstances in which a lower fill on a larger facility will result in lower costs, per unit and in total, and a higher fill on smaller facilities. The Commission appears to have recognized this point in certain limited settings, emphasizing that "Synthesis Model fill factors . . . *should not be used* for setting rates."[233] The Commission should be even more explicit than this, however, and explain why high fill factors, whether or not reflected in the SM, would often represent grossly *inefficient* business practices.

4. Non-Recurring Charges.

In states throughout the country, AT&T has advocated a supposedly "forward looking" non-recurring cost model that imposes a nominal charge (less than $5.00) for loop provisioning activities, such as "coordinated loop cutovers" ("hot cuts"), that require the extensive use of

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capacity increments that are significantly higher than the capacity strictly needed to serve current demand.

[233] Memorandum Opinion and Order, *Application by Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services, Inc., for Authorization To Provide In-Region, InterLATA Services in Vermont*, CC Docket No. 02-7, FCC 02-118, ¶ 36 (rel. Apr. 17, 2002) ("*Vermont 271 Order*") (emphasis added).

skilled labor at union wages.[234] AT&T's advocacy on this point has met with surprising success in several forums, and it warrants special attention here.[235]

An ordinary "hot cut" (even without the field testing discussed below) requires flesh-and-blood ILEC personnel to perform various tasks, including processing the order, going to the central office distribution frame, identifying the relevant facilities, disconnecting the appropriate line from the distribution frame leading to the ILEC switch, and running jumper cables to the CLEC's collocation space, where the line is ultimately connected to the CLEC's switch. Hot cuts further require ILEC and CLEC technicians to closely coordinate their efforts — *i.e.*, to synchronize an efficient loop cutover for a line already in use to ensure that the customer experiences only a momentary interruption in service. At least in Qwest's territory, AT&T would impose the same trivial charge not just for all of those activities, but also for all of those activities plus a specified battery of extra field tests ("hot cuts with testing") that CLECs may also order from Qwest's SGAT above and beyond the tests ordinarily used to ensure the successful performance of a hot cut. To conduct those extra tests, the ILEC would have to perform activities in addition to all of the above, often including dispatching technicians to visit the feeder-distribution interface and/or the customer premises to locate the proper connection points for the loop, verifying that the loop is attached to the correct number in the central office,

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[234] For example, AT&T argued in New Hampshire that 98.5% of Bell Atlantic's non-recurring costs were avoidable based on the assumption that GR-303 technology could support 100% automated loop provisioning. *See* Order, *In re Bell Atlantic*, DE 97-171, 210 P.U.R.4th 363 (N.H. Pub. Utils. Comm'n July 6, 2001).

[235] *See, e.g.*, Slip Opinion, *In re US West Communications, Inc.*, Docket No. P-442, 5321, 3167, 466, 421/CI-96-1540 (Minn. Pub. Utils. Comm'n Mar. 15, 2000) (adopting non-recurring charges of $2.38 for installation and $1.95 for disconnect for all loops, even if hot cut required); Verizon Pennsylvania Inc., PA PUC No. 216 (Verizon tariff) § 3, 5th rev. sheet 6 (May 11, 2001) (non-recurring charges of $7.42 for installation and $1.34 for disconnect, even if hot cut required).

placing a device on the line to check for shorts, verifying dB losses, and then waiting for confirmation from CLEC personnel that the loop actually works for its intended use.

With or without field testing, hot cuts are time-consuming, expensive activities for ILECs to undertake, and that is why the New York commission recently set the forward-looking cost of a hot cut at $185.[236] Charging less than $5.00 for these activities could begin to make sense (if at all) only if these various services required no human labor: *i.e.*, only if it is inherently inefficient, given "currently available technology,"[237] for central offices to be configured in a way that requires the use of skilled labor to disconnect lines from one carrier's switching facilities and reconnect them to another carrier's facilities. It is not.

In discounting the need for human involvement, AT&T appears to be positing a futuristic world in which (1) each ILEC has deployed massive amounts of GR-303 fiber throughout the network (because it is the only technology even theoretically capable of this automated function), and (2) each CLEC purchases dedicated DS1 links between each feeder-distribution interface serving any of its customers and the ILEC's central office (because otherwise there would be no way to flip a switch and connect any one of those customers to the CLEC collocation space without manual intervention).[238] AT&T's approach violates TELRIC on two levels. First, there

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[236] Verizon New York, Inc., PSC NY No. 10 Communications (Verizon Tariff) (hot cut charge consisting of the Service Order Charge, Provisioning Charge, and the Service Connection Central Office Wiring Charge). Verizon has nonetheless agreed to offer CLECs in New York a $150 "promotional" discount off that $185 hot cut rate for a limited time, apparently as part of a global understanding with the New York commission about a variety of retail and wholesale issues. *Id.*

[237] 47 C.F.R. § 51.505(b)(1).

[238] *See* Verizon Non-Recurring Cost Panel Surrebuttal Testimony, *Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration*, CC Docket No. 00-218, at 17-21 (filed Sept. 21, 2001).

is not even a serious claim that the multi-carrier GR-303-based technology AT&T postulates is "currently available," because the industry has reached no consensus on the necessary standards and no resolution of the accompanying security concerns.[239] Moreover, even if such technology *were* currently available, a CLEC could not make use of it unless it purchased the dedicated feeder capacity discussed above. But AT&T altogether excludes consideration of the costs of such capacity at the same time that it seeks to avail itself of the non-recurring cost savings that would critically depend on the purchase of that very capacity.

There are essentially two reasons why AT&T has nonetheless achieved some degree of success in promoting this absurd cost model. *First*, AT&T often succeeds in conflating the "flow-through" rate for *order processing* with the percentage of cases in which the *provisioning* of a hot cut will require human labor. But these are two separate inquiries. Even if the 98% flow-through rate that the AT&T non-recurring-cost model prescribes for automated order processing were reasonable — which it is not — the actual provisioning of a hot cut involves a number of additional tasks that require human involvement 100% of the time. *Second*, AT&T has also succeeded in confusing *forward-looking* costs with *future* costs, although the two concepts could not be more different. TELRIC bases forward-looking costs on the most efficient technology that is "currently available," not on technology that might exist someday in the future (if at all).[240] One would never know from AT&T's advocacy, however, that these two concepts — "forward-looking" and "future" — are distinct. For example, AT&T's cost expert

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[239] For example, Telcordia's GR-303 work program documentation for the year 2001 continues to reflect the fact that "*new requirements* are needed to support alternative distribution technologies . . . as well as services and applications (*e.g.*, . . .*local loop unbundling*)." Telcordia Technologies, *GR-303 Integrated Access Platforms - 2001 Work Program Information* <http://www.telcordia.com/resources/genericreq/gr303/program.html>.

[240] 47 C.F.R. § 51.505(b)(1).

emphasized in Arizona that an efficient carrier's present capabilities using today's technology are, in effect, irrelevant because "*right now is not a forward-looking time.*"[241] Similarly, in accepting that advocacy in principle, the Arizona commission recently accepted the AT&T non-recurring cost model on the ground that it "recognizes the efficiencies that *will occur* in a forward-looking network."[242]

To capture the full absurdity of AT&T's position on non-recurring costs, moreover, one must examine the full context of this cost witness's testimony. He answered "right now is not a forward-looking time" to explain why, in his view, Qwest should receive *no compensation at all* for the human resource burden Qwest must bear in processing the 24% of orders that CLECs choose today to submit by fax rather than through Qwest's automated systems. To drive the point home, he acknowledged: "That is a real cost that they're [ILECs] incurring today on behalf of CLECs, but *in the future*, that cost should not be there if *we* [CLECs] have an appropriate GUI system installed."[243] Of course, it would be the height of arbitrariness to penalize an *ILEC* for the inefficiencies of *CLECs* on the theory that someday *in the future* CLECs will be less inefficient. That such advocacy has found sympathetic ears at some state commissions is a disquieting reminder of the need for this Commission to give some basic guidance on how TELRIC should — and should not — be applied. No regulator who is serious about facilities-based competition could find otherwise.

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[241] Hearing, *Investigation into Qwest Corp.'s Compliance with Certain Wholesale Pricing Requirements for Unbundled Network Elements and Resale Discounts*, Docket No. T-00000-00-0194, Phase II, Cost Docket, at 1566 (July 30, 2002) (emphasis added).

[242] *Arizona Phase II Order* at 33 (emphasis added).

[243] Hearing, *Investigation into Qwest Corp.'s Compliance with Certain Wholesale Pricing Requirements for Unbundled Network Elements and Resale Discounts*, Docket No. T-00000-00-0194, Phase II, Cost Docket, at 1566-67 (July 30, 2002) (emphasis added).

C. The Commission Should Explicitly Disavow the Applicability of Specific SM Inputs in the UNE Rate-Setting Context.

The discussion above, at least with respect to recurring costs, illustrates the extent to which TELRIC disputes in the states often relate back to questionable input decisions in the SM. Indeed, with respect to all four of the recurring cost inputs discussed above — placement costs, structure sharing, network routing, and fill factors — the SM deviates from the Commission's own explanation of TELRIC in the *Local Competition Order*. That is not surprising, because the SM model was never designed to set rates for UNEs.

The Commission has already acknowledged the SM's deviations from TELRIC in other settings. For example, shortly after it adopted the SM, the Commission had to acknowledge in section 271 litigation that, contrary to a misconception reflected in the *Inputs Order* (at ¶¶ 315-317), an accurate representation of switching costs would take into account not just the discounted per-line costs of new switches, but the higher per-line costs of subsequent growth additions.[244] More recently, the Commission rejected AT&T's argument that the SM's use of 94% fill factor for switching draws into question the much lower (and more realistic) fill factors adopted by several states. With unusual and long overdue directness, the Commission admonished that "Synthesis Model fill factors . . . *should not be used* for setting rates."[245]

Qwest seeks a more comprehensive and definitive acknowledgement by the Commission of the several other respects — most of them relating to the loop — in which the use of certain SM inputs would be entirely inappropriate in the UNE rate-setting context. This would not

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[244] *See AT&T Corp. v. FCC*, 220 F.3d 607, 618 (D.C. Cir. 2000) ("[G]rowth additions to existing switches cost more than new switches only because vendors offer substantial new switch discounts in order to make telephone companies dependent on the vendors' technology to update the switches."); *see also id.* at 619 (noting that FCC had "cautioned parties from making claims in other proceedings based upon the input values" of the SM) (internal quotation marks omitted).

[245] *Vermont 271 Order* ¶ 36 (emphasis added).

necessarily require the Commission to alter the SM itself, although it has indicated a general willingness to do so.[246] As the Commission has observed, any given error in its universal service cost model may well have a relatively attenuated effect on the output of that model, the limited purpose of which is to identify *relative* cost differences among the states so that the Commission can allocate federal universal service funds.[247] In contrast, the same error, used within a different model designed to set *absolute* rate levels for individual UNEs, may have enormous consequences.

The Commission has not made this problem go away simply by warning carriers and state commissions, at a very high level of generality, to stop relying on the decisions of the *Inputs Order* for purposes of UNE rate determinations.[248] TELRIC is the Commission's methodology, and the state commissions will inevitably look to the Commission's own application of that methodology as persuasive precedent, if not a cover to justify what they are unable themselves to reconcile with TELRIC.

Qwest and other ILECs have met with limited success in trying to persuade state commissions that in setting UNE rates they should not rely on the decisions reflected in the SM

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[246] *Inputs Order*, 14 FCC Rcd at 20170 ¶ 28 ("We also recognize . . . that the model must evolve as technology and other conditions change. We therefore have committed to . . . study how the model should be used in the future (*e.g.*, how often inputs data should be updated) and how the model itself should change to reflect the changing circumstances.").

[247] *See* Br. for Respondents FCC and United States, *GTE Serv. Corp. et al. v. FCC*, No. 99-1244, at 27 (filed Oct. 4, 2000) (fact that "the FCC uses TELRIC not only to determine the amount of LECs' costs that will be subsidized, but also to determine that average national costs against which the 135% benchmark is set . . . attenuat[es] the impact of the cost methodology on the amount of federal subsidies"), *cert. dismissed,* 531 U.S. 975 (2000); *see generally* Ninth Report and Order, *Federal-State Joint Board on Universal Service*, 14 FCC Rcd 20432 (1999), *rev'd sub nom. Qwest Corp. v. FCC*, 258 F.3d 1191 (10th Cir. 2001).

[248] *See, e.g.*, Memorandum Opinion and Order, *Application by Bell Atlantic New York for Authorization Under Section 271 of the Telecommunications Act To Provide In-Region, InterLATA Service in the State of New York*, 15 FCC Rcd 3953, 4985 ¶ 245 (1999).

and *Inputs Order*, despite the FCC's admonition that those decisions are not "necessarily" applicable to setting UNE rates. The states will continue to accept the CLECs' efforts to turn TELRIC into a time machine until the Commission itself identifies the *specific* respects in which use of SM assumptions would distort the cost inquiry in the UNE rate-setting context. The Commission should promptly itemize the particular respects in which it would be substantively inaccurate to rely on SM inputs in setting UNE rates.[249] Alternatively, the Commission should simply prohibit reliance, in UNE rate proceedings, on the Commission's use of the specific SM inputs discussed here. This would leave the states free to consider the parties' arguments based on the Commission's guidance in the *Local Competition Order* and other orders addressing TELRIC in the context of UNE rates.

V. CONCLUSION

The unequivocal evidence in the record establishes that CLECs increasingly rely on self-provisioned and other non-ILEC to provide service and that intermodal competition continues to develop rapidly, particularly for advanced services. This evidence, coupled with the guidance provided by the D.C. Circuit in *USTA*, requires that the Commission reduce ILEC unbundling obligations by removing switching and, in markets that meet the Commission's pricing flexibility test, dedicated transport. Moreover, the Commission should reject CLEC proposals to *increase* unbundling, especially for facilities used to provide advanced services. Finally, in light of this Commission's and the D.C. Circuit's recognition of the integral link between UNE pricing and the list of elements to be unbundled, the Commission should provide guidance so as

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[249] To date, the Commission's principal disavowals of SM inputs have come in response to CLEC challenges to Bell company section 271 applications. Of course, Bell companies do not often use section 271 proceedings as forums for challenging state UNE rates as *too low*, and that is one reason why the Commission has lacked any comprehensive opportunity to confirm the inappropriateness of the loop-related SM assumptions discussed above. That fact underscores the need for the Commission to undertake the more systematic inquiry urged here.

to prevent further misinterpretation and misapplication of the TELRIC standard and thereby permit increased development of facilities-based competition.

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July 17, 2002

CERTIFICATE OF SERVICE

I, David Kreeger, do hereby certify that on this 17th day of July, 2002, I caused true and correct copies of the foregoing Reply Comments of Qwest Communications International, Inc., to be served by first class mail, postage prepaid, or by method indicated, upon the following parties:

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