BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Pricing Proceeding for Interconnection, Unbundled Elements Transport and Termination, and Resale	)	DOCKET NO. UT-960369
In the Matter of the Pricing Proceeding for Interconnection, Unbundled Elements Transport and Termination, and Resale for U S WEST COMMUNICATIONS, INC.	)	DOCKET NO. UT-960370
In the Matter of the Pricing Proceeding for Interconnection, Unbundled Elements Transport and Termination, and Resale for GTE NORTHWEST INCORPORATED	)	DOCKET NO. UT-960371 NEXTLINK/ELI/AT&T/TCG/MCI RESPONSE TO PETITIONS FOR CLARIFICATION OF 17TH SUPPLEMENTAL ORDER

As authorized in the Commission's Notice of Opportunity to File Objections to Hearing Schedule, NEXTLINK Washington, Inc., Electric Lightwave, Inc., AT&T Communications of the Pacific Northwest, Inc., TCG Seattle, and MCI Telecommunications Corporation (collectively "Joint Parties"), provide the following response to petitions for clarification of the Seventeenth Supplemental Order filed by Commission Staff, U S WEST Communications, Inc. ("U S WEST"), and GTE Northwest Incorporated ("GTE"). Except as discussed below, the Commission should not clarify or reconsider the Seventeenth Supplemental Order.

DISCUSSION

A. The Commission Should Reaffirm That the Interim Rates In Existing Interconnection Agreements Remain in Effect Pending a Final Commission Order in This Proceeding.

Paragraph 539 of the Seventeenth Supplemental Order provides that "the current interim rates for interconnection and UNEs which were approved by the Commission in agreements filed pursuant to the arbitration and negotiation provisions of the Act shall remain in effect pending the outcome of Phase III of this proceeding." Unfortunately, paragraph 527 of the order states that "U S WEST and GTE shall charge statewide average unbundled loop prices of $18.16 and $23.94, respectively, pending a Commission decision on geographic deaveraged prices in Phase III of this proceeding." The Joint Parties agree with U S WEST and GTE that these provisions, without further explanation, are contradictory, but the Joint Parties disagree with the incumbents' proposal immediately to implement the prices determined in the Seventeenth Supplemental Order. That request is flatly inconsistent with the Commission's prior decisions and would immediately embroil the Commission and the parties in piecemeal judicial review of the previous orders entered in this proceeding.

The Commission's orders approving interconnection agreements uniformly provide, "The economic terms contained in the Agreement are interim, subject to modification or replacement by the Commission's *Final* Order in the generic cost and price proceeding, Docket No. UT 960369, et al., and by FCC orders in CC Docket No. 99-68." *E.g.*, *In re ELI-GTE Arbitration*, Docket No. UT-980370, Order Approving Negotiated and Arbitrated Interconnection Agreement ¶ 74 (May 12, 1999) (emphasis added). The Commission expressly entitled the Seventeenth

Supplemental Order, "*Interim* Order Determining Prices." (Emphasis added.) Maintaining current interim rates pending a final order in this docket thus is fully consistent with the Commission's prior orders approving interconnection agreements, while U S WEST's and GTE's proposal to replace the current interim rates with prices determined in the latest interim order directly conflicts with the arbitration orders and established Commission practice.

U S WEST's and GTE's proposal also raises concerns with triggering judicial review of Commission determinations. The Telecommunications Act of 1996 ("Act") provides, "In any case in which a State commission makes a determination under this section, any party aggrieved by such determination may bring an action in an appropriate Federal district court to determine whether the agreement or statement meets the requirement of section 251 and this section." 47 U.S.C. § 252(e)(6). Any replacement of current interim rates would require modification of existing interconnection agreements and would represent a Commission determination under the Act, triggering Federal court jurisdiction. All orders and proceedings used to determine the new interim rates thus would be subject to judicial review, leading at a minimum to proceedings in federal district court to review Phase I and Phase II while the Commission undertakes Phase III. The Commission should not strain its own and party resources with such multiple competing proceedings.

U S WEST further contends with respect to unbundled loop rates that "[n]o harm could come from implementing the Commission-determined correct rate pending a decision on deaveraging." U S WEST Petition at 6. In addition to the inefficient use of resources, the harm

is that the vast majority, if not all, unbundled loops CLECs obtain are located in the most densely populated and lowest cost areas of the state. Requiring CLECs to pay statewide averaged prices for loops that will be priced significantly lower with the advent of geographic deaveraging would artificially inflate CLECs' costs and severely retard the development of effective local exchange competition. The evidence already presented in this proceeding demonstrates that the current interim rates exceed cost estimates for loops in the areas with the greatest population density. Contrary to U S WEST's and GTE's assertions, therefore, no harm would result from maintaining current interim loop rates, but replacing those rates with the statewide averaged price determined in the Seventeenth Supplemental Order would result in substantial harm.

Commission staff concurs that loop rates should not be adjusted until geographic deaveraging has been addressed but nevertheless contends that other UNE rates should be implemented immediately once the Commission identifies those UNEs and concludes that they will not be geographically deaveraged at this time. Staff's proposal is more narrow than the ILECs' proposed "clarification," but it requires the same break from Commission practice and raises the same threats of piecemeal judicial review. The Commission, therefore, should refuse to "clarify" the Seventeenth Supplemental Order to require that existing interconnection agreements be modified to include any prices determined in that order.

The Commission, however, should clarify the Seventeenth Supplemental Order to eliminate any confusion. The Joint Parties propose that the Commission amend paragraph 527 to provide that U S WEST and GTE shall charge geographically deaveraged rates developed from

statewide averaged prices once the Commission establishes those rates in the final order. The Joint Parties also agree with Commission Staff that the Commission should expressly identify the unbundled network elements for which U S WEST and GTE must submit proposed statewide averaged prices in a compliance filing consistent with the Seventeenth Supplemental Order. Geographic deaveraging of those prices, however, should be considered in Phase III, not predetermined now as Staff suggests.

B. The Seventeenth Supplemental Order Requires Development of a Flat-Rated Capacity Charge Only as an Available Alternative Form of Reciprocal Compensation.

Commission Staff also requests that the Commission clarify the effect of the compliance filing for a flat-rated capacity charge as set forth in paragraph 423, contending "it is not clear what will become of the flat-rated capacity charges once the compliance filing is approved." Staff Petition at 2. The Joint Parties believe that the Seventeenth Supplemental Order clearly provides that the Commission will adopt a reciprocal compensation mechanism proposed by one of the Parties absent public policy concerns, but that a rate should be established for a capacity-based charge in the event that carriers negotiate, or one party to an arbitration proposes, such a reciprocal compensation mechanism. While no clarification of this issue appears to be necessary, the Joint Parties do not object to the Commission making such a clarification.

C. The Commission Should Clarify Compliance Filing and Response Dates.

Commission staff and GTE both seek clarification of the dates by which the compliance filings required by the Seventeenth Supplemental Order must be made. The Joint Parties agree

that specific dates should be set for these filings, to the extent such dates have not already been specified in the Order, and further urge the Commission to establish dates by which parties may object to, or otherwise comment on, those filings. More fundamentally, the Commission should clarify the procedure for examination of the compliance filings. For example, the Commission should determine whether the development of capacity-based reciprocal compensation and nonrecurring charges for unbundled network elements will be part of the compliance filings or determined as part of Phase III. These procedural issues, however, may be better addressed at the prehearing conference, rather than as part of any supplemental order on clarification.

D. The Commission Should Not Reconsider Its Decision on Rate Design for Nonrecurring Charges.

U S WEST requests that the Commission reconsider its decision on rate design for nonrecurring charges based on nothing more than argument and facts that have been, or could have been, presented in Phase II. U S WEST previously submitted its policy arguments in favor of a single nonrecurring charge that includes both installation and disconnect, and the Commission rejected those arguments. U S WEST also had ample opportunity to present evidence to support its representations of alleged additional costs. U S WEST Petition at 3. Having failed to do so, U S WEST cannot now assert those representations as fact without any evidentiary support.[1] U S WEST offers no newly discovered evidence, erroneous interpretation

[1] If U S WEST is genuinely concerned about systems modifications allegedly required to prevent charging CLECs twice for disconnecting a single facility, U S WEST could eliminate such costs by issuing a refund of disconnect charges for all orders installed prior to the date on which U S WEST implements the rate design required by the Seventeenth Supplemental Order.

of the record or applicable law, or subsequent change in legal precedent that would justify reconsideration. Accordingly the Commission should deny U S WEST's request.

E. The Commission Should Not Reconsider Its Decision on Interim Rates for Collocation Provided by U S WEST.

U S WEST further requests that the Commission reconsider its decision establishing interim collocation prices for U S WEST equal to GTE's tariffed rates, claiming that "U S WEST has not had an opportunity to evaluate or even comment on GTE's collocation prices." U S WEST Petition at 4. U S WEST had more than ample opportunity to comment on the extent to which GTE's collocation prices reflect U S WEST's costs. At least two witnesses provided prefiled testimony examining -- and in some cases directly comparing -- the collocation costs and rates charged by U S WEST and GTE. Exs. 689 (NEXTLINK Knowles) & 501 (TCG/ELI/NEXTLINK Turner). U S WEST ignored this testimony in its responsive prefiled testimony and during the hearings. U S WEST's failure to address this issue, therefore, is attributable to its own litigation strategy, not any lack of opportunity.

F. The Commission Correctly Rejected GTE's Grooming Cost Estimates.

Finally, GTE claims that the Commission erroneously concluded that GTE had not filed timely cost studies for its costs to groom unbundled loops from integrated digital loop carrier ("IDLC") facilities, citing testimony filed in Phase II. As Page Montgomery testified, GTE was required to submit any such cost studies in Phase I, and nothing in the Commission's Eighth Supplemental Order authorized GTE to submit additional "cost of unbundling" studies in Phase II. Ex. C 644 at 38-39 (TCG Montgomery). The Commission, therefore, properly concluded that

the Phase II unbundling cost study on which GTE relies was not timely filed and cannot be considered.

GTE, however, contends that it filed its unbundling cost study pursuant to paragraphs 40 and 41 of the Eighth Supplemental Order. Those paragraphs do not authorize the filing of additional cost studies. Rather, the Commission stated in paragraph 40, "In this Order, we do not rule on all issues related to the *recovery* of transition costs. Instead, we have reserved our findings on certain topics until this matter is more fully explored during Phase II of this proceeding." (Emphasis added.) With specified exceptions, Phase II was established to explore how costs should be recovered, not to requantify costs -- such as grooming costs -- the Commission determined in Phase I. *See* Eighth Supp. Order ¶¶ 156-64 (quantifying grooming costs). Nor was the evidence GTE submitted unrebutted, as GTE claims. In addition to observing that GTE's evidence was untimely, Mr. Montgomery presented substantial evidence that GTE failed to prove its loop cost estimates do not already include grooming costs and that GTE's cost estimates are fatally flawed. Ex. C 644 at 38-43. Accordingly, the Commission should refuse to reconsider its decision rejecting GTE's cost estimates for grooming unbundled loops.

CONCLUSION

With the exceptions discussed above, the Commission should deny the requests for clarification and reconsideration of the Seventeenth Supplemental Order.

DATED this 21st day of September, 1999.

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