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 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 EIGHTEENTH SUPPLEMENTAL ORDER ON REQUESTS FOR CLARIFICATION

BACKGROUND

On August 30, 1999, the Commission entered the *17th Supplemental Order: Interim Order Determining Prices; Notice of Prehearing Conference* (17TH ORDER). The Commission named prices for the unbundled loop and certain other UNEs in that Order, and required certain compliance tariff filings for UNEs consistent with the Order. The Commission deferred other UNE pricing decisions to Phase III due to the failure of the cost information to adequately support a determination of prices or other inadequacies in the evidence submitted in support of proffered price levels.

GTE Northwest Incorporated (GTE) and U S WEST Communications, Inc. (U S WEST), on September 9, 1999, and Commission Staff (Staff), on September 13, 1999, filed requests for clarification of the 17TH ORDER. GTE, U S WEST, NEXTLINK/ELI/AT&T/TCG/MCI, and Covad Communications Company responded to those requests on September 21, 1999; Covad also asked the Commission to clarify when it would address its line sharing or "spectrum unbundling" proposal.

MEMORANDUM

I. Requests for Clarification of the 17TH ORDER

The following parties requested Commission clarification of the indicated issues. Below in this Order the issues are identified by the numerical reference in the

following lists.

GTE

1. Timing of the implementation of new unbundled loop and other UNE prices

2. Recovery of loop unbundling ("grooming") costs through NRCs

3. Requirement that GTE adopt U S WEST's "rate structure" for separate NRCs for installation and disconnection

4. Recovery of the cost of the network interface device (NID)

5. Schedule of various compliance filings required by the Order
(This issue was addressed and resolved by the procedural schedule adopted at the Prehearing Conference for Phase III.)

U S WEST

1. Separate non-recurring charges (NRCs) for installation and disconnection of service for a CLEC's end-use customer

2. Level of interim collocation rates

3. Timing of the implementation of new unbundled loop and other UNE prices

Commission Staff

1. Which unbundled network elements (UNEs) will be deaveraged in Phase III
(This issue was addressed and will be resolved by in the Prehearing Conference Order on Phase III.)

2. Effect of the compliance filing for a "flat-rated" capacity charge

3. Schedule for filing cost studies required by the Order
(This issue was addressed and resolved by the procedural schedule adopted at the Prehearing Conference for Phase III.)

Covad

Schedule for addressing the request for line sharing or "spectrum unbundling"

II. Issues

A. Implementation of Phase II Rates (GTE #1/U S WEST#3)

1. Parties' Positions

U S WEST and GTE ask the Commission to clarify when they may begin charging the unbundled loop rates identified at paragraph 527 of the 17TH ORDER. At ordering paragraph 527, the Commission stated:

> U S WEST and GTE shall charge statewide average unbundled loop prices of $18.16 and $23.94, respectively, pending a Commission decision on geographically deaveraged prices in Phase III of this proceeding. When an interconnecting local exchange company orders a bundled loop and port from U S WEST, the statewide average price of the loop shall be $17.59.

U S WEST and GTE argue that the unbundled loop prices established by the Commission in the 17TH ORDER are effective immediately, and may be charged in lieu of the interim prices for an unbundled loop which were established by the Commission in the agreements resulting from the various arbitration proceedings conducted by the Commission. Further, both U S WEST and GTE essentially contend that irrespective of paragraph 527, the Commission should permit the prices established in this paragraph to become effective immediately.

> At ordering paragraph 539, the Commission stated:
>
> The Commission has determined that deaveraged prices for interconnection and unbundled network elements (UNEs) should be established. Therefore, 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.

U S WEST states that paragraph 539 is "seemingly contradictory":

> Thus, there is one paragraph which (correctly) indicates that U S WEST may charge the new loop price pending the

> outcome of Phase III, and another paragraph which seems to indicate that U S WEST may charge only the $11.33 or $13.37 arbitrated loop rate pending the outcome of Phase III.

GTE maintains that "[t]he plain language of these paragraphs cannot be reconciled." Both companies ask the Commission to "clarify" the contradiction by allowing them to put the unbundled loop rates into effect immediately, statewide, pending the outcome of Phase III.

GTE argues that "[n]owhere in its recent Order does the Commission offer any rationale or legal basis for this perpetuation of the arbitration rates[.] Further delay in implementation of the Phase II prices might have been acceptable if the Commission had provided for a true-up mechanism sufficient to recapture the revenue lost during this now-extended 'interim' phase."

U S WEST argues that "[t]here is nothing about the $18.16 loop rate that is not final, and there is no reason not to implement it[.] U S WEST does not believe that the Commission would deliberately leave in place prices it knows to be incorrect after almost three years of investigation, and continue under prices that have been disproved and shown to be incorrect, especially because there is no true-up to prevent the irrevocable harm that this would cause."

NEXTLINK/ELI/AT&T/TCG/MCI (Joint Parties) contend that the unbundled loop rates established in Phase II should not become effective until Phase III is completed. They maintain that statewide average prices are interim, not permanent prices. The Joint Parties argue that the rates established in their arbitration agreements are controlling until the Commission approves permanent, deaveraged UNE loop prices.

Staff notes that "[v]irtually all of the discussion of de-averaging in the 17th Supplemental Order relates to the loop[.] Therefore, the Commission may wish to focus the efforts of the parties in Phase III on the de-averaging of loop prices and take up the question of de-averaged prices for other elements at a later date. At that point, the Commission would undoubtedly have established some principles by which de-averaging should occur. Under this approach, the average prices already determined could be used immediately to replace the interim prices in each interconnection agreement."

Covad takes the position that the Commission "has not concluded the work needed to finally determine the rights and obligations of the parties." However, if the Commission either grants the clarification requested by U S WEST and GTE or interprets the 17TH ORDER as permitting these companies to charge the unbundled

loop rate before this proceeding is concluded, “then the Commission will have interpreted or made its 17th Supplemental Order a final order for purposes of judicial review under the APA.”

Covad asserts that while the APA does not have a "precise definition" of what constitutes a "final order" for purposes of triggering the judicial review process, "[i]t is clear, however, that it is the effect of an order, not the designation or title of the order that determines whether the order is reviewable." (Emphasis in original.) Citation omitted. Therefore, Covad reasons that if the Commission denies the request to immediately implement Phase II prices until the conclusion of Phase III, the "interim order" label given the 17TH ORDER will be consistent with its effect – "it will not be a final order."

2. Commission Discussion and Decision

The Commission regrets the unintentional tension between Order paragraphs 527 and 539. In the 17TH ORDER, when read as a whole, the Commission was clear and unambiguous in its intent to undertake to deaverage UNE prices before replacing the rates contained in the Commission-approved agreements resulting from the arbitration process. In addition to the language of the later-occurring paragraph 539 continuing the effectiveness of the pricing terms of the arbitration decisions until the Commission completes Phase III of this proceeding, paragraph 506, in the Conclusions of Law section of the Order, states:

> The current interim loop rates approved by the Commission through interconnection agreements filed pursuant to arbitration proceedings conducted under the Act should remain in effect until the Commission has deaveraged rates in Phase III of the instant proceeding.

Further, the entire *Geographic Deaveraging* section of the 17TH ORDER, paragraphs 477 through 482, makes it clear that the Commission has grappled with the issue of deaveraging since Phase I (¶479). The Commission also describes the Federal Communications Commission's (FCC) struggle with the subject of geographic deaveraging and its impact on state public utility commissions (¶¶477-478). Finally, this section of the Order culminates with a statement clearly evincing our intention not only to deaverage UNE prices, but to continue the current rates in the interim (¶482).

The Commission finds no basis in the GTE and U S WEST requests for clarification to change its earlier ruling and order the immediate implementation of the Phase II prices for UNE. The current interim prices for UNEs will remain in effect until the Commission has completed the Phase III process of deaveraging the prices determined in Phase II.

B. Recovery of Loop Unbundling (Grooming) Costs through NRCs (GTE#2)

1. Parties Positions

Digital line carrier is used on long loops between the carrier serving area interface and the central office. With no unbundling, these loops enter the switch on an integrated (still concentrated) basis and are separated into individual loop information within the switch. When a CLEC leases loops without leasing switching, it is necessary to split individual lines from concentrated lines prior to entering the switch. Otherwise, the unbundled loops will use switching capacity and, therefore, cause additional switching costs. 8TH ORDER at ¶156.

In Phase I there was testimony about the cost of splitting out the unbundled loops. 8TH ORDER at ¶¶156-164. GTE chose not to address the cost of grooming in its cost case presentation.

In the 8TH ORDER the Commission included the cost of grooming in the U S WEST TELRIC (total element long-run incremental cost) loop cost estimates. 8TH ORDER at ¶164. We did not include this cost in the GTE loop cost estimates because GTE had presented no evidence on the topic.

In Phase II GTE submitted testimony on the cost of providing grooming. In the 17TH ORDER we dismissed consideration of GTE's cost study on the grounds that costs were the focus of Phase I and should have been timely filed there. 17TH ORDER at ¶243.

In its request for clarification, GTE claims that it "submitted its loop unbundling costs and cost recovery proposal in compliance with paragraphs 40 and 41 of the Eighth Order, which recognized that the costs of unbundling are recoverable `transition' costs to be considered in Phase II, and directed the parties to submit testimony."

Joint Parties respond that paragraphs 40 and 41 did not authorize the filing of the additional cost studies. Paragraphs 40 and 41 of the 8TH ORDER provide:

> 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. Nevertheless,

> we do find certain areas in which ILECS are entitled to compensation for their transition costs. For example, when a local exchange company must incur costs to separate unbundled loops from retail loops through the use of AD4 channel banks, the cost of this grooming should be included in the TELRIC of a loop.
>
> 41. The Commission will consider the recovery of transition costs in Phase II of this proceeding. Second Supplemental Order, Docket No. UT-970010 (November 7, 1997), at 9. In Phase II, parties are ordered to provide testimony on both the level of transition costs and the appropriate cost recovery mechanism. We request also that the parties address the reasonableness of the proposed customer transfer cost studies. Citation omitted. We have postponed our evaluation of the customer transfer cost studies for manual intervention rate, which will be considered simultaneously with our evaluation of nonrecurring expenses related to the transition to competition through resale.

Joint Parties state that "Phase II was established to explore how costs should be recovered, not to re-quantify costs -- such as grooming costs -- the Commission determined in Phase I." Response at 8, citing 8TH ORDER at ¶¶156-64.

2. Commission Discussion and Decision

The Commission denies GTE's request that the Commission reverse its decision in Phase II not to entertain GTE's grooming cost study. The cost of grooming was considered in Phase I, as GTE was well aware. Substantial testimony was devoted to this issue, and at no time did GTE request the opportunity either to file supplemental testimony on this issue or to submit a late-filed Phase I cost study. Neither did GTE request leave of the Commission to file a grooming cost study in Phase II. The Commission reaffirms its decision at paragraph 243 of the 17TH ORDER to reject GTE's request to enter into the record a late-filed cost study.

In a related area, the Commission notes the parties' contemplation at the prehearing conference that the deaveraging phase, Phase III, would consider entirely new cost model runs, with updated models. That is not consistent with the Commission's intentions.

From the beginning this proceeding was designed as a multi-phased unit to produce a result at the end of the proceeding that is based on the evidence of record in earlier phases. While the Commission did not sufficiently contemplate the precise period of time involved and the parties' desire to explore the evidence in significant detail, it is nonetheless true here as in some regulatory rate cases that the Commission, in order to get a consistent and comprehensive view, must at times rely on evidence that could be updated. That approach is necessary to achieve closure -- in lengthy cases it is nearly always possible at any given time to update the factual record.

Parties will have the opportunity to pursue updated information in the future; for this Phase of the instant proceeding, however, the Commission contemplates using evidence already of record -- to the extent that it is usable -- to complete this proceeding.

C. Separate Non-Recurring Charges for Installation and Disconnection (GTE #3/U S WEST #1)

1. Parties' Positions

U S WEST requests reconsideration of the Commission's decision, at paragraph 471 of the 17TH ORDER, that U S WEST and GTE must submit separate nonrecurring charges for installation and for disconnection. U S WEST Petition for Clarification at 2.

In the 17TH ORDER the Commission determined that separate charges are appropriate because reducing the up-front costs of establishing service will reduce a barrier to entry, and because the ILECs have a commercial relationship with CLECs that is different in nature from that which they have with their retail customers. ORDER at ¶471.

U S WEST asks the Commission to reconsider this decision on two grounds. First, U S WEST states that a single nonrecurring charge, which includes costs for installation and disconnection, is the industry norm. Second, "the requirement of two separate charges will impose potentially significant additional costs on U S WEST, which will need to be factored in to the new disconnection charge." Petition at 2.

Further, U S WEST states that there are implementation problems that arise from the initiation of a separate disconnection charge. First, the enhancement to its systems (the Service Order Processor and the Billing systems) could not be done

until some time next year due to Y2K issues. In addition, the nonrecurring charges for orders that were installed prior to entry of the 17TH ORDER included the cost for both the installation and disconnection of the service. To prevent another disconnection charge from being applied, the companies will need to verify the establishment date of the service and compare it to the date of the 17TH ORDER -- today, this verification would have to be done manually. Petition at 3.

GTE concurs with U S WEST that the Commission should allow U S WEST and GTE to continue to recover installation and disconnect costs in a single nonrecurring charge. GTE states that by recovering the costs through one charge, administrative effort is reduced and the rate structure is consistent with the way GTE recovers the costs of disconnects in its retail and access non-recurring charges. GTE's Response at 4.

Joint Parties argue against the Commission reconsidering its decision on rate design for nonrecurring charges. First, with regard to the argument that one charge is the industry norm, U S WEST previously submitted its policy arguments in favor of a single nonrecurring charge and the Commission rejected those arguments. Joint Parties' Response at 6.

Joint Parties also state that U S WEST had ample opportunity to present evidence during Phase II in support of its representations of alleged additional costs. Having failed to do so, Joint Parties assert U S WEST cannot now make such representations as fact without any evidentiary support. Response at 6.

2. Commission Discussion and Decision

U S WEST and GTE have previously presented their arguments that both installation and disconnection nonrecurring costs should be recovered at the time of installation. For example, in its Phase II brief, at page 33, U S WEST stated that this form of cost recovery was the industry norm. U S WEST did not state that bundled connection and disconnection charges are the norm for unbundled network elements. For example, the Public Service Commission of Mississippi, in Docket No. 97-AD-544, determined that "it is not appropriate for BellSouth to recover, at the time service is established with a CLEC, costs associated with disconnecting a service." Like this Commission, the Mississippi PSC required that the cost of disconnection be recovered when the cost is incurred. August 25, 1998, *Slip op.* at 12.

U S WEST failed to address this cost issue during Phase II. Noticeably absent from its arguments is any citation to the record to substantiate its claim that it would be unduly costly to establish a separate charge for disconnection. Furthermore,

the Commission did recognize at paragraph 471 of the 17TH ORDER that the ILECs are entitled to include in their revised cost study two billing charges -- one for the connection and a second for the disconnection. Therefore, the Commission has established a mechanism that enables both U S WEST and GTE to recover their reasonably incurred billing costs. Neither GTE nor U S WEST has provided any sound reason why this approach would fail to provide adequate compensation.

Finally, with regard to the operational issues raised by U S WEST, we note that, in light of the scheduling decisions made during the Phase III prehearing conference on September 23, 1999, we do not anticipate implementation being a major problem. If the new billing system cannot be implemented in a timely manner, U S WEST and GTE should be required to provide timely notice to the Commission. Both companies should be able to build into their billing systems a "look-up" function that insures that customers are not charged twice for a disconnection -- first through the old rate structure of a bundled connection and disconnection charge, and a second time through the new disconnection fee.

D. Recovery of the Cost of the Network Interface Device (GTE #4)

1. Parties Positions

In paragraph 454 of the 17TH ORDER the Commission stated that it shares Staff's concern that GTE's work time activity estimates are unreasonable and adopted Staff's recommendations that had been summarized at paragraph 447 of that ORDER.

GTE states that it believes the reference to paragraph 447 in paragraph 454 was inadvertent, and the Commission meant to refer instead to paragraph 445. GTE seeks clarification to this effect.

2. Commission Discussion and Decision

The Commission clarifies the 17TH ORDER to read as follows:

> 454. The Commission shares Staff's concern that GTE's work time activity estimates are unreasonable and inflated and could prevent competitive market entry. We therefore adopt Staff's suggestion, made at paragraph 445 above, that the task time adjustments applied to U S WEST at paragraphs 468, 469, and 473 of the 8TH ORDER ought to be applied to GTE as well. We adopt these times for GTE because we have concluded that an efficient firm should be able to achieve the installation times adopted in our 8TH ORDER. Accordingly, GTE is ordered to make

a compliance filing adjusting its non-recurring cost study to conform with paragraphs 468, 469, and 473 of the 8TH ORDER. These adjustments should be made in a manner consistent with Staff witness Roth's study, as explained in response to Bench Request No. 128. GTE is also directed, in its compliance filing, to make the following adjustments as outlined in Response to Bench Request No. 128:

1. Reduce the time estimates for "Due Date Assignment" and "Provide LSC to CLECs" by 50 percent;

2. Utilize Staff's proposed time adjustments in Exhibit JYR-5 relating to INP, as detailed in Section B of Bench Request No. 128; and

3. Utilize Staff's proposed changes as detailed in Section C of Bench Request No. 128.

E. Level of Interim Collocation Rates (U S WEST #2)

1. Parties' Positions

U S WEST requests that the Commission reconsider its requirement, at paragraph 530 of the 17TH ORDER, that U S WEST's interim collocation prices shall equal GTE's prices. U S WEST states that it does not believe that GTE's prices are necessarily reflective of U S WEST's costs, and that U S WEST did not have an opportunity to evaluate or even comment on GTE's collocation prices. U S WEST states that no party proposed during the hearing that it be required to use GTE's prices and therefore it did not comment on the proposal at hearing or on brief.

Joint Parties respond that "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." Joint Parties note that two witnesses provided testimony in which they compared GTE's and U S WEST's costs and rates, and claim that "U S WEST ignored this testimony in its responsive prefiled testimony and during the hearings." Joint Petition at 7.

2. Commission Discussion and Decision

The purpose of this proceeding is to establish fair, just, and reasonable rates for UNEs. Because U S WEST failed to demonstrate that its proposed rates for collocation were reasonable, we set U S WEST's interim prices equal to GTE's interim prices. The Commission will not implement the Phase II prices until we enter a Commission decision on deaveraging; therefore U S WEST need not adopt GTE's collocation tariff on an interim basis. Rather, the rates adopted in the arbitration

proceedings will remain in effect until we make a final determination regarding collocation prices. As we describe below, this will be done in a new docket.

F. Effect of the Compliance Filing for a "Flat-Rated" Capacity Charge (Staff #2)

1. Parties' Positions

At paragraph 423 of the 17TH ORDER the Commission directed Staff to work with other interested parties to develop a compliance capacity charge filing for the pricing of transport and termination. At paragraph 424 of that ORDER the Commission did not accept Staff's proposal that the capacity charge be mandated whenever parties are unable jointly to reach an agreement on the pricing structure. In its petition for clarification, Staff asks for clarification regarding how the compliance filing will be used by the Commission. Petition at 2.

Joint Parties respond that the 17TH 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." Joint Parties state that they believe that no clarification is required on this matter. Response at 5.

2. Commission Discussion and Decision

The Commission reaffirms that it will adopt a reciprocal compensation mechanism proposed by one of the parties in an arbitration absent public policy concerns. We Order the Staff to work with other interested parties, as we did at paragraph 423 of the 17th Supplemental Order, to file compliance capacity charge rates for GTE and US WEST. These rates shall be used in the event that carriers negotiate, or one party to an arbitration proposes, such a reciprocal compensation mechanism, or if the Commission finds that public policy concerns require the use of this pricing structure.

G. Schedule for Addressing the Request for Line Sharing or "Spectrum Unbundling" (Covad)

1. Parties' Positions

At hearing in Phase II, Covad asked the Commission to require ILECs to establish pricing for the unbundled high frequency spectrum of the loop. Spectrum unbundling, as requested by Covad, would mean that U S WEST and GTE would have

to make available to Covad the high frequency portion of the spectrum of a loop that carries the DSL signal while still allowing analog plain old telephone service to operate on the same loop simultaneously. Covad Brief at 37-49.

The 17TH ORDER made no direct reference to Covad's spectrum unbundling request. In the 17TH ORDER's *Notice of Prehearing Conference*, the Commission stated:

> Other Matters: All unresolved cost and pricing issues deferred by the Commission in the instant order will be considered in Phase III.

Covad asks the Commission to clarify whether and when it will address its spectrum unbundling proposal in Phase III. Covad Response at 7.

Covad notes that the FCC has a separate docket that is specifically addressing whether it will identify spectrum unbundling as a UNE. Covad expects the FCC to issue a decision in that docket later this year. Id. at 8, citing First Report and Order and Further Notice of Proposed Rulemaking, In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability, Docket CC 98-147 (FCC March 31, 1999).

In its proposed rulemaking, the FCC tentatively concluded that line sharing, or spectrum unbundling, is technically feasible, and sought comment on the operational, pricing, and policy ramifications to determine whether or not to mandate line sharing. First Report and Order and Further Notice of Proposed Rulemaking, In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability, Docket CC 98-147 (FCC March 31, 1999) at par. 8, 97.

Covad also points out that under the Act, the Commission has the discretion to identify UNEs in addition to those identified by the FCC. Covad Response at 8.

2. Commission Discussion and Decision

The Commission finds that it is premature at this point to address spectrum unbundling. Because the FCC is still considering the technical, operational, pricing, and policy ramifications of requiring spectrum sharing, it would be inappropriate for the Commission to address this issue in Phase III. While we recognize that we have the authority to require spectrum unbundling, before this issue receives further consideration by this Commission, we will await the FCC's analysis of line sharing. Therefore, the matter of spectrum unbundling should not be further addressed by the

parties until the Commission has sufficient information to proceed with consideration of this issue. After the FCC's findings are issued in Docket CC 98-147, Covad, or other parties, may request that the Commission take up the matter.

III. Conclusion

The Commission thanks the parties for bringing matters to its attention that require clarification. The instant Order responds to the issues raised by the parties and clarifies the 17TH ORDER.

DATED at Olympia, Washington, and effective this day of November, 1999.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

RICHARD HEMSTAD, Commissioner

WILLIAM R. GILLIS, Commissioner