

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Pricing Proceeding for)	DOCKET NO. UT-960369
Interconnection, Unbundled Element,)	
Transport and Termination, and Resale)	
.....)	
In the Matter of the Pricing Proceeding for)	DOCKET NO. UT-960370
Interconnection, Unbundled Elements,)	
Transport and Termination, and Resale for)	
)	
U S WEST COMMUNICATIONS, INC.)	
)	
.....)	
In the Matter of the Pricing Proceeding for)	DOCKET NO. UT-960371
Interconnection, Unbundled Elements,)	
Transport and Termination, and Resale for)	
)	NINETEENTH SUPPLEMENTAL
)	ORDER
GTE NORTHWEST INCORPORATED)	
)	PREHEARING CONFERENCE
.....)	ORDER

BACKGROUND

Procedural Summary: The Seventeenth Supplemental Order (17TH ORDER) in these consolidated matters, entered August 30, 1999, included a *Notice of Prehearing Conference* for the purpose of considering matters related to Phase III of this proceeding. The Commission convened the prehearing conference at Olympia, Washington, on September 23, 1999, pursuant to the Notice. Administrative Law Judge C. Robert Wallis presided at the prehearing conference and enters the instant Order describing agreements and determinations resulting from the prehearing conference and subsequent determinations by the Commission with regard to the scope and timing of Phase III matters. This Order follows in time and reflects the Commission's decisions in the Eighteenth Supplemental Order (18TH ORDER) on requests for clarification of the 17TH ORDER.

Appearances: The following parties participated in the prehearing conference: U S WEST Communications, Inc., by Lisa A. Anderl, attorney, Seattle; petitioner for intervention Rhythms Links, Inc., by Angela Wu, attorney, Seattle; Covad Communications, Inc., and MCI Communications Corporation by Brooks Harlow, attorney, Seattle; TRACER, by Arthur A. Butler, attorney, Seattle; NEXTLINK

Washington, Inc., Electric Lightwave, Inc., and petitioners for intervention Advanced Telecom Group, North Pointe Communications, Inc., and New Edge Networks, Inc., by Gregory J. Kopta, attorney, Seattle; Public Counsel, by Simon ffitch, Assistant Attorney General; Commission Staff, by Ann Rendahl, Assistant Attorney General; GTE Northwest Incorporated, by Lewis Powell and Christopher S. Huther, attorneys, Washington, D.C.; Washington Independent Telephone Association, Inc., by Richard A. Finnigan, attorney, Olympia; Sprint Communications Company LLP, by Eric Heath, attorney, Las Vegas, Nevada; and AT&T of the Pacific Northwest, Inc., by Michel Singer, attorney, Denver, Colorado.

MEMORANDUM

I. Matters Addressed

A. Clarification of the 17th ORDER. The Commission has responded to issues raised in the requests for clarification of the 17TH ORDER and the responses to those requests.

B. Petitions for Intervention. The Commission received four petitions for intervention, all from competitive local exchange companies -- Rhythms Links, Inc., by Angela Wu, and Advanced Telecom Group, Inc., North Pointe Communications, Inc., and New Edge Networks, Inc., by Gregory Kopta. Each of these petitioners represented that it would not broaden the issues in the proceeding, that it would take the record and the constraints on the proceeding as they are found at the time of intervention, and that it would coordinate with other parties to the extent their interests are aligned to avoid duplication of presentations, discovery, and cross-examination of witnesses.

U S WEST expressed concern that petitioners' admission as interveners could broaden the issues and that duplication is increasingly possible as the number of parties increases. TRACER spoke strongly of the need for participation by such parties, supported by MCI. Commission Staff and Public Counsel offered no objection to the petitions for intervention. Leave was granted for one week for the parties to file additional statements for or against the requests for intervener status. No party commented on the interventions in post-conference memoranda.

On balance, the Commission agrees with TRACER that the participation of the petitioners has the potential to enhance the proceeding. The Commission grants the requests for intervention of North Pointe Communications, Inc., and New Edge Networks, Inc., and Rhythms Links, Inc. The Commission also agrees with U S WEST that it is especially important in a complex proceeding for late intervening parties to take the record as they find it and to avoid broadening the issues. We explicitly condition the grants of intervention on these parties' acceptance of the record and on

their commitment to cooperate with other parties in the scope of their participation in this proceeding. The interveners will have the same opportunity to address future matters as all other parties.

One of the petitioners, Advanced Telecom Group, Inc., has recently merged with Shared Communications Services, Inc., who is already a party to this proceeding. To the extent that the two have identical interests and will have identical positions, the duplication of interventions is unnecessary and potentially wasteful. The petition is denied. If the petitioner and the current party have separate business identities and independent positions, petitioner may provide an explanation of the situation and the need for separate interventions, and after responses from the parties the Commission may reconsider its decision.

C. Pending Phase II Issues. With the consent of the parties, clarifications of parties' positions on pending requests for clarification of the Phase II proceeding were heard. Matters addressed include the effect of interim rates, deaveraging prices of unbundled network elements (UNEs) in addition to the loop, and a Commission Staff issue involving a capacity charge. The essence of the comments is of record, and the comments were considered by the Commission in its 18TH ORDER.

D. Calendar. The schedules for all process matters in this proceeding, including both Phase II clarification and implementation and Phase III tasks were considered. The dates established at the prehearing conference for Phase II compliance are accepted and are set out below. It is understood that schedule changes to meet developing circumstances, notably impending decisions by the Federal Communications Commission (FCC), may be requested. Parties should advise the Commission immediately in writing, simultaneously copying all other parties if such a circumstance arises and state the requested change, with supporting rationale.

The Commission clarified in the 18TH ORDER that the 17TH ORDER did not authorize interim rates. The Commission also stated its contemplation that Phase III of this inquiry would be limited, and that it would build upon the record established to date in this proceeding. The Commission does not contemplate receiving evidence as to new cost models. The parties, in written communications with the Commission, have acknowledged that there is no inherent flaw or other impediment in the cost models utilized in this proceeding that would preclude their use for the purpose of deaveraging prices in Phase III. Phase III will be limited in scope to deaveraging prices for UNEs and interconnection -- parties will base their presentations on the cost determinations previously made by the Commission. Phase III will therefore have neither the scope nor the volume of complex evidence that the parties anticipated when developing the proposed schedule for Phase III. The procedural schedule established at the prehearing conference for Phase III is therefore not acceptable and must be revisited.

We discuss below the need for compliance with the FCC's decision on deaveraging which demands a measured but determined schedule. We believe that the limitations resulting from the 18TH ORDER address both the concerns stated by GTE in its October 1 letter to the Commission and the concerns raised by U S WEST in its November 9, 1999 letter to the Commission.

The 18TH ORDER directs that collocation costs and prices be deferred to a different docket. The parties expect that the FCC will soon enter an order that will affect which UNEs must be provided by incumbent local exchange companies. Within those boundaries, the Commission contemplates that Phase III will be limited to deaveraging prices of UNEs and interconnection.

This Order therefore sets a prehearing conference for the purpose of setting an amended procedural schedule in Phase III. The Commission understands that the prices established in this proceeding will inevitably, sooner or later, be updated.

E. Phase II Compliance Filings. The 17TH ORDER directed certain parties to make explicit filings with the Commission. Some of these matters are clearly "compliance filings" as defined in WAC 480-09-340; others are clearly meant to inform the matters to be considered in Phase III. Other matters, however, have aspects of both characterizations. The parties developed a consensus about proper treatment of these matters at the prehearing conference. Parties will have the opportunity to examine and respond to all filings, on the following schedules. ***Note: because of the time frames involved, parties must serve other parties to achieve delivery no later than the date filed with the Commission, unless the receiving party waives such delivery in advance.***

II. Schedule of Filings

A. Phase II Compliance Filings.

Parties will file information on the following matters (and provide copies to other parties) by November 15, 1999. The parties determined that resolving any issues relating to these matters will be useful whether or not they are given interim effect before entry of a Commission final order establishing rates.

1. Collocation building modification/HVAC charges (¶304, 17TH ORDER)
2. Interim nonrecurring charges for order processing (¶¶436,453-455, 17TH ORDER)
3. Separate nonrecurring prices for connection and disconnection (¶¶471, 17TH ORDER.)

4. Shared transport (§407, 17TH ORDER)
5. Customer transfer charge (§465, 17TH ORDER)
6. Flat-rate transport termination issue (§423, 17TH ORDER)
7. Common costs (§§208-209, 17TH ORDER)

The deaveraging of UNE and interconnection prices will be addressed in Phase III.

Phase II Compliance Filing Schedule	
November 15, 1999	Parties' initial filings
December 15, 1999	Comments on all initial filings
January 11, 2000	Responses to comments; revised filings, if any

In the event that the Commission deems it appropriate to hear oral argument on the compliance filings, or determines that sworn testimony is necessary, it will consider hearing such matters in conjunction with the Phase III hearings to the extent that doing so is feasible within the constraints we establish for completing Phase III.

B. Phase III Evidentiary Filing and Hearing Schedule

The parties agreed to a filing and hearing schedule in Phase III deliberations of deaveraged rates. In conjunction with this discussion, the parties expressed a preference against using cost model information of record in this proceeding and the Universal Service proceeding, Docket No. UT-980311(a), contending that the models have evolved since those inquiries. Parties therefore asked to present new cost information and suggested that ten days of hearing should be scheduled.

As noted above, the Commission clearly contemplates in its 18TH ORDER that Phase III will proceed upon the cost models and the evidence already of record. Doing so permits an accelerated schedule to implement deaveraged prices in a more timely manner, allows the Commission to come to closure of this proceeding, and does not foreclose the development of new prices in a future proceeding. The scope of Phase III deaveraging will include consideration of UNEs and interconnection.

The FCC in a recent order lifted its stay of rule 51.507(f) regarding deaveraging of rates stating:

120. * * * Consequently, the stay that has been in effect since May 7, 1999, shall be lifted on May 1, 2000. By that date, states are required to establish different rates for

interconnection and UNEs in at least three geographic areas pursuant to section 51.507(f) of the Commission's rules. In the Matter of Federal-State Joint Board, Ninth Report & Order and Eighteenth Order on Reconsideration, CC Docket No. 96-45, FCC 99-306 (Adopted October 21, 1999, Released November 2, 1999).

The Commission takes seriously its responsibility to comply with the FCC's requirements on deaveraging of UNE prices. Therefore, the development of a new Phase III procedural schedule is needed.

In order to facilitate timely completion of Phase III and entry of a Commission final order in this proceeding, the Commission will open a new proceeding to address cost and pricing issues for UNEs for which new or modified cost studies are required and which therefore cannot be resolved within the schedule we propose below. This new proceeding will address, as relevant, cost studies and pricing of operations support systems, collocation, capacity charge for transport and termination, and any other UNEs which are ordered by the FCC.

NOTICE IS GIVEN That the Commission will convene a Prehearing Conference in this matter at 9:30 a.m., Friday, November 19, 1999, in Room 206 of the Commission's office in Olympia. In furtherance of the discussion of a procedural schedule for deaveraging prices in Phase III, the Commission proposes the following schedule. Parties may participate in this hearing via the Commission's conference bridge at 360-664-3846. Because a limited number of ports are available, please contact Nancy Moen in advance of the hearing at 360-664-1140 to reserve a port.

Phase III Evidentiary Filing and Hearing Schedule	
<u>Date</u>	<u>Item</u>
December 15, 1999	Deadline for filing direct testimony and exhibits on deaveraging of selected UNEs and interconnection
January 11 , 2000	Responsive direct testimony and exhibits
January 31, 2000	Rebuttal and cross-rebuttal testimony and exhibits
February 28, 2000	Evidentiary hearing begins
March 24, 2000	Post-hearing Briefs

C. Effect of FCC's UNE Order

The FCC released on November 5, 1999, its *Third Report and Order and Fourth Further Notice of Proposed Rulemaking* in CC Docket No. 96-98. The parties at the September 23rd Prehearing Conference acknowledged that this Order might affect some aspects of deaveraging prices in Phase III. The Commission will hear from the parties at the November 19th Prehearing Conference we schedule above whether and how the FCC's Order might affect Phase III.

III. Administrative Matters

Questions regarding this notice should be addressed to the presiding administrative law judge, Terrence Stapleton, at 360-664-1141.

NOTICE TO PARTIES: Any objections to the provisions of this Prehearing Conference Order must be filed **no later than 5:00 p.m., Wednesday, November 17, 1999**, pursuant to WAC 480-09-460(2). In the absence of such objections, this Prehearing Conference Order shall control further proceedings in this matter, subject to Commission review. The Commission finds, pursuant to WAC 480-09-135, that good cause exists to shorten the time for objections as reflected in the above deadline.

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

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

C. ROBERT WALLIS
Administrative Law Judge