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BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Pricing Proceeding for)	PHASE II
Interconnection, Unbundled Elements, Transport)	
and Termination, and Resale)	DOCKET NOS. UT-960369, UT-960370,
.....)	UT-960371
In the Matter of the Pricing Proceeding for)	
Interconnection, Unbundled Elements, Transport)	
and Termination, and Resale for U S WEST)	
COMMUNICATIONS, INC.)	
.....)	
In the Matter of the Pricing Proceeding for)	
Interconnection, Unbundled Elements, Transport)	
and Termination, and Resale for GTE)	
NORTHWEST INCORPORATED)	
_____)	

MOTION OF GTE NORTHWEST INCORPORATED AND U S WEST COMMUNICATIONS TO STRIKE REFERENCES TO THE HAI 5.0A MODEL FROM THE TESTIMONY AND EXHIBITS OF THOMAS L. SPINKS

GTE Northwest Incorporated (“GTE”) and U S WEST Communications (“U S WEST”), by counsel, pursuant to WAC 480-09-750, and hereby submit this motion to strike references to the HAI 5.0a model from the testimony and exhibits of Staff Witness Thomas L. Spinks. In support thereof, GTE and U S WEST state as follows:

- 1. In his Direct Testimony filed December 15, 1999, Mr. Spinks presents a

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deaveraging proposal based on costs developed by the Hatfield Model 5.0a (“HAI 5.0a”). Spinks Direct at 5; Staff Response to GTE’s Data Request No. 5. Mr. Spinks continues to rely on HAI 5.0a in analysis contained in his Responsive Testimony and supporting exhibits filed January 18, 2000. Spinks Responsive Testimony at 2, 4; Exhibit TLS-4 - Exhibit TLS-7. However, HAI 5.0a was not filed in UT-960369 *et al.*, and consequently is not a part of the record in this proceeding. AT&T introduced the Hatfield Model 3.1 (“HM 3.1”) into the record in this proceeding. HAI 5.0a was filed in Docket No. UT-980311(a) addressing universal service.

2. At the September 23, 1999 pre-hearing conference, the parties held an off-the-record discussion as to whether the Phase III deaveraging proceeding would rely on cost studies of record in this proceeding, or new cost model runs with updated cost models. Administrative Law Judge Robert Wallis specifically asked the parties whether Phase III should consider cost models filed in Docket No. UT-980311(a) addressing universal service.¹

3. In the 18th SUPPLEMENTAL ORDER, the Commission ruled that it would consider only the cost models on record in this proceeding:

...[T]he Commission notes the parties’ contemplation at the pre-hearing 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

¹ GTE notes that it strenuously objected to this suggestion at the pre-hearing conference.

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2 evidence already of record – to the extent that it is usable – to complete this
3 proceeding.

4 18th SUPPLEMENTAL ORDER at 7 - 8 (emphasis added).

5 4. In the 19th SUPPLEMENTAL ORDER, the Commission reiterated its intention to
6 limit Phase III to consideration of the models of record in Phase I:

7 The Commission also stated [in the 18th SUPPLEMENTAL ORDER] that Phase III of
8 this inquiry would be limited, and that *it would build upon the record established to*
9 *date in this proceeding*. The Commission does not contemplate receiving evidence as
10 to new cost models. The parties, in written communications with the Commission,
11 have acknowledged that there is no inherent flaw or other impediment in the cost
12 models utilized in this proceeding that would preclude their use for the purpose of
13 deaveraging prices in Phase III. Phase III will be limited in scope to deaveraging prices
14 for UNEs and interconnection – *parties will base their presentations on the costs*
15 *determinations previously made by the Commission*.

16 19th SUPPLEMENTAL ORDER at 3 (emphasis added).

17 5. The Commission specifically ruled that it would not consider cost information used
18 in Docket UT-980311(a):

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

19th SUPPLEMENTAL ORDER at 5. Based in part on this
determination, the Commission revised the hearing schedule.

6. With respect to the issue of deaveraging loop costs, HAI
5.0a is an entirely new model. HAI 5.0a purports to rely on
detailed geocoded information for customer locations, while HM 3.1

GTE AND U S WEST'S JOINT MOTION

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2 relies on census block group information. This new method of
3 modeling customer location goes to the very heart of modeling
4 local exchange plant, the costs of which are to be deaveraged in
5 this proceeding. By using a new model not in the record of this
6 proceeding, Staff ignores the Commission's directions in the 18th
7 and 19th SUPPLEMENTAL ORDERS.²

8 7. Despite AT&T's claim that HAI 5.0a is an improvement over HM 3.1, GTE and
9 U S WEST strongly believe that HAI 5.0a is flawed and unsuited for use in deaveraging loop
10 costs. To provide GTE and U S WEST sufficient opportunity to demonstrate HAI 5.0a's
11 unsuitability, the Commission would have to extend this proceeding significantly beyond the
12 FCC's May 1, 2000 deaveraging deadline, to which the Commission has already expressed a
13 strong desire to adhere. See 20th SUPPLEMENTAL ORDER. Moreover, even with an extended
14 schedule, GTE and U S WEST would be prevented from presenting evidence concerning their own
15 new, updated cost models.

16 8. In Phase I of this proceeding, the Commission declined to accept cost analysis
17 premised on HAI 5.0a because it "relied on testimony submitted in a different docket and for a
18 version of the Hatfield Model that was not considered in this proceeding." 10th SUPPLEMENTAL
19 ORDER at ¶¶ 9 - 11. The Commission should not change course in Phase III by permitting Staff
20 to ignore the record already established in this proceeding.

21 9. Moreover, the Washington Administrative Rules make clear that the record in a
22 contested case is limited to evidence introduced in *that proceeding*. In a contested case, the

23 ² Neither GTE nor US WEST object to Staff's use of information obtained through the data request
24 process.

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Commission must confine its decisions to the evidence in the proceeding and will not consider references in briefs or other documents to material that is not on the record or otherwise proper to consider. *Rose Monroe v. Puget Sound Power & Light Co.*, Docket No. U-85-70, Order Affirming Proposed Order (WUTC, October 1986). *See also* WAC 480-09-745(4). It is improper to take official notice of testimony in a prior case when offered for the truth of the testimony. *Washington STS Ltd. v. U S WEST Communications, Inc.*, Docket No. UT-921213, 2nd SUPPLEMENTAL ORDER (WUTC, June 1993) (referencing RCW 34.05.452 and WAC 480-09-750). In short, evidence of record in UT-980311(a) is not part of the record in UT-960369, *et al.* unless specifically introduced as evidence in the latter docket.

WHEREFORE, for the foregoing reasons, GTE and U S WEST respectfully request that the Commission strike from the record all portions of Thomas L. Spinks' Direct and Response Testimony and Supporting Exhibits relying on the HAI 5.0a model.³ Likewise, GTE and U S WEST respectfully request that the Commission strike from the record portions of the Rebuttal testimony of NEXTLINK witnesses Rex Knowles and William Page Montgomery, and AT&T Witness Douglas Denney to the extent that they address Staff's use of HAI 5.0a.

Respectfully submitted, this 25th day of January, 2000.

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³ Spinks Direct Testimony at 1, 3, 5 - 6; Exhibit TLS-2; Exhibit TLS-3; Spinks Responsive Testimony at 2, 4; Exhibit TLS-4 - Exhibit TLS-7.

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