BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Pricing Proceeding for Interconnection, Unbundled Elements, Transport and Termination, and Resale ..... 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	**PHASE III** DOCKET NOS. UT-960369, UT-960370, UT-960371 **BRIEF OF U S WEST COMMUNICATIONS, INC.**

I. INTRODUCTION

Four years after the Telecommunications Act of 1996 (the "Act") was passed, it is clear that the Act has effected a sea-change in the telecommunications market. Increased competition has meant increased choices for some consumers, along with the potential for increased confusion. Competition has emerged in a spotty fashion, however, with new entrants focusing upon the lucrative business accounts clustered in the most densely populated areas of the state.

This is natural, since phone rates have been averaged on a statewide basis since the

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network was originally built. Low-cost, urban customers have thus been subsidizing high-cost rural customers by paying rates that are higher than the actual costs to serve them. Thus, new entrants realize substantial margins by serving low cost customers in urban areas and pricing below the tariffed rates of the incumbent carrier.

U S WEST believes that the Commission had these two concerns – potential customer confusion and rate arbitrage – in mind when it initially decided to tie the deaveraging of UNE prices with the deaveraging of retail rates and the implementation of universal service. It appears that the goal was to minimize customer confusion by implementing new rate structures in one step, rather than piecemeal. It further appears that the Commission acknowledged the potential for rate arbitrage by implementing UNE price deaveraging at the same time as retail rate deaveraging.

Unfortunately, circumstances have overtaken the implementation of a unified approach to deaveraging, and the Commission has determined to implement UNE price deaveraging independent of retail rate deaveraging and implementation of universal service. U S WEST regrets that timelines dictated by the FCC order have forced this outcome, because U S WEST believes that it will inevitably result in increased customer confusion and arbitrage. Consequently, U S WEST fully intends to make a corresponding retail rate deaveraging filing in the near future. Nevertheless, U S WEST respects the Commission's desire to implement UNE deaveraging quickly and will cooperate with the Commission in doing so.

Despite the fact that the Commission has changed its earlier plan for the coordinated timing of UNE and retail deaveraging, U S WEST still believes that the Commission must do its utmost to limit consumer confusion and arbitrage. Thus, in ordering UNE deaveraging, the

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Commission must recognize that deaveraging of wholesale rates drives the deaveraging of retail rates. In other words, where cheaper wholesale rates prevail, cheaper retail rates prevail.

Thus, an overly elaborate and complex scheme for UNE deaveraging will result in a similar scheme for retail deaveraging. This will result in massive customer confusion, with similarly located customers – perhaps geographically contiguous – paying markedly different rates depending upon the wire center from which they are served.

Accordingly, U S WEST has submitted a deaveraging proposal which relies heavily upon a community-of-interest standard, which adequately deaverages prices based upon an analysis of costs. Under U S WEST's proposal, loop prices were deaveraged based upon relative costs while preserving, to the greatest extent possible, the community-of-interest standard which makes a rate design intelligible to a customer. U S WEST's approach is simple: service areas were differentiated by MSAs, the relative costs to serve each of MSA were determined, and prices were deaveraged according to the relative costs incurred to serve each MSA.

The other deaveraging proposals put forth in this docket fail to either minimize customer confusion or arbitrage or both. For example, Staff's initial proposal called for 63 effective zones for U S WEST, and even the revised proposal calls for 12 zones. Plainly, such an unwieldy scheme does not bode well for either implementation or administration. AT&T's proposal would violate the community-of-concern factor which would make any retail rate deaveraging unintelligible to customers. That is, AT&T's proposal would mandate adjacent customers to be subject to different rates based upon no other criteria than the fact that the customers are served by different wire centers and, therefore, are subject to different costs.

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The other proposals put forth by other parties are less well-developed and suffer from other flaws.[1]

When all of the relevant factors are considered, U S WEST's proposal for UNE deaveraging is plainly the best and should be adopted by the Commission.

II. POLICY CONSIDERATIONS

There are a number of considerations which the Commission must bear in mind in implementing UNE deaveraging. While this list is not exhaustive, it captures the primary factors which most directly bear upon UNE deaveraging. Other factors will be discussed, infra, as appropriate.

A. UNBUNDLED LOOPS SHOULD BE THE ONLY UNE DEAVERAGED

Based upon the FCC's Order,[2] the Commission should geographically deaverage UNEs only to the extent that such a deaveraging reflects geographic cost differences. Unbundled loops should be deaveraged because the costs vary between geographic areas based on loop distances (i.e., between the customer and the central office) and the density of the serving area. In contrast, the costs for many other unbundled network elements, such as unbundled switching, do not vary in a significant cost-causing manner between geographical areas. If geography is not a cost driver, there is no basis for meaningful geographic deaveraging. In addition, the costs for other elements, such as unbundled transport, are already deaveraged in a geographic manner based on distance. Thus, U S WEST believes that geographic deaveraging should be limited to the unbundled loop UNE.

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[1] U S WEST has no comment upon GTE's proposal for deaveraging and will not address it in this brief.

[2] In the Matter of the Federal-State Board on Universal Service, CC Docket 96-45, Ninth Report and Order and Eighteenth Order on Reconsideration, FCC 99-306 (released November 2, 1999).

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DEAVERAGING MUST BE ACCOMPLISHED IN A TRANSPARENT, EASILY UNDERSTOOD MANNER.

As we noted in our introduction, deaveraging of UNEs creates the opportunity for arbitrage, unless and until retail rates are deaveraged as well. This scenario is set forth succinctly in the direct testimony of Mr. Thompson:

> As the Commission is aware, the Telecom Act provided three ways for new entrants seeking to compete in the provision of local exchange services: total service resale, purchase of UNEs from the incumbent, and facilities-based entry. Under AT&T's deaveraging proposal, monthly loop rates in Seattle would be $14.42 and monthly loop rates in Othello would be $54.51. It is far more likely that AT&T is more interested in the UNE rate in Seattle than the UNE rate in Othello. This is true because AT&T can provide service in Othello, if it chose that option, by purchasing the total service at a discount from the geographically averaged retail rate (footnote omitted) and avoiding the $54.51 charge. This arbitrage opportunity has been discussed previously, but its importance cannot be overstated.

(Ex. 61-T at 9). Thus, in order to eliminate this potential for arbitrage, retail rates must be deaveraged pari passu with UNE rates.

If UNE rates are deaveraged in a complex, difficult to understand manner, then retail rates will follow suit. This will lead to customer confusion and, further, to administratively burdensome systems. Accordingly, the Commission must adopt a procedure for UNE deaveraging that is transparent and easily understood. Such a plan would deaverage UNE prices coincident with communities-of-interest. As Mr. Thompson testified, there are a number of reasons which recommend this approach:

> Consumers in adjacent areas will have similar rates. Rates will not vary dramatically along arbitrary wire center boundaries. It has always been the policy of commissions to use communities of interest as one criteria for establishing retail rates. This

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> approach stems from the need to have an understandable rate structure which customers can accept. Rates that vary dramatically along adjacent wire center boundaries will not promote consumer confidence. Neighbors in identical neighborhoods could have significantly different rates based solely on where the wire center boundaries were set. Community of interest has always been a reasonable means of promoting customer acceptance of rates. AT&T has provided no evidence which supports abandoning this principle now.

(Ex. 61-T at 9).

Thus, U S WEST believes it is paramount that the Commission implement UNE deaveraging in a manner which is easily transferable to a retail deaveraging scheme and which is understandable to customers.

C. THE COMMISSION SHOULD NOT IMPLEMENT AN OVERLY EXPENSIVE PLAN FOR UNE DEAVERAGING

Another factor the Commission must consider in implementing UNE deaveraging is cost. If costs are too high, competition and/or consumers will suffer. That is, costs will ultimately be borne by the customer in higher rates for UNEs.

The more complex a deaveraging plan is, the more expensive it is to implement. For example, U S WEST estimates it would cost anywhere from $7.5 million to $12.5 million to implement Staff's original plan. (Ex. 111-T at 8-9). The Commission must ascertain that the costs caused by implementing geographic deaveraging come with sufficient benefit to carriers and consumers.

D. THE PLAN ADOPTED BY THE COMMISSION MUST BE ADMINISTRATIVELY FEASIBLE

In addition to the costs incurred in implementing a deaveraging proposal, the Commission must also consider the relative burdens of administering the system once it is

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implemented. The more elaborate the process, the greater the chance for error. (Ex. 111-T at 7). Moreover, an elaborate process also involves more human intervention, with consequent slowdowns in flow-through. (Id. at 7-8). Accordingly, as a deaveraging rule of thumb, U S WEST suggests that simpler is better.

E. DEAVERAGING NEEDS TO BE DONE ON A COST-RELATED BASIS.

Another important factor for the Commission to consider is the explicit language that the FCC used in ordering deaveraging of UNEs. Specifically, the Commission ordered deaveraging pursuant to "cost-related" zone plans. (Ex. 64-T at 2). Specifically, FCC Rule 51.507(f) states:

> (f) State commissions shall establish different rates for elements in at least three defined geographic areas within the state to reflect geographic cost differences.
>
> (1) To establish geographically-deaveraged rates, state commissions may use existing density-related zone pricing plans described in § 69.123 of this chapter, or other such cost-related zone plans established pursuant to state law. (Emphasis added.)

Thus, from the plain language of the FCC rule, any plan that deaverages on a "cost-related" basis passes muster. The key question for the Commission is to determine which of the "cost-related" plans fits the various criteria to be considered by the Commission. As is demonstrated below, U S WEST's proposal is the cost-related approach which most clearly satisfies the relevant criteria. Furthermore, the Commission should not be swayed by claims that because U S WEST's plan averages some higher and lower cost wire centers in order to achieve "community of interest" pricing, it is somehow not cost-based. All of the proposals do a great deal of averaging and the community of interest benefits more than outweigh a

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marginally greater amount of averaging.

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III. U S WEST'S PROPOSAL

As discussed, U S WEST has focused upon community-of-interest factors in formulating its plan for UNE deaveraging. As U S WEST has noted, there is a strong connection of wholesale rates to retail rates, and U S WEST's proposal contains several advantages for wholesale and retail rates. (Ex. 61-T at 2). U S WEST's method is easy to understand and communicate to customers. (Id. at 17-20). It treats customers within similar geographic areas consistently. (Id.) And, perhaps most importantly, U S WEST's method is easily applied to customers for billing purposes, which prevents harmful arbitrage.

A. SUMMARY OF PROPOSAL – INCLUDING A DESCRIPTION OF ALL ELEMENTS IN AND BEYOND THE TABLE

U S WEST proposes only deaveraging the price of unbundled loops. Under U S WEST's proposal, loop prices will be deaveraged pursuant to the following table:

Deaveraged Unbundled Loop Rates:
Statewide Average: $18.16

Zone 1	$16.66	(Seattle, Tacoma, Vancouver, Spokane)
Zone 2	$17.77	(Bremerton, Bellingham, Yakima, Olympia)
Zone 3	$27.98	(All other areas)

A more comprehensive review of the methodology underlying development of this table, as well as concise responses to criticisms leveled against the methodology, is set forth in Section III. C., infra.

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B. CORRECTIONS NECESSARY AS A RESULT OF THE HEARING – CHANGES FROM HEARING POSITION

None.

C. STATEMENT OF U S WEST'S PROPOSAL

1. The Three Geographic Zones

Using a community-of-interest approach, U S WEST has deaveraged its unbundled loops into three groups of wire centers: (1) large communities; (2) medium sized communities; and (3) all other communities. (Ex. 61-T at 9). The groupings were based upon the Metropolitan Statistical Areas (MSAs) used by the Bureau of the Census. (Id. at 11). There is precedent for using MSAs for issues related to UNEs and Interconnection. (Id.) MSAs have been used by the FCC to identify areas for the initial deployment of permanent number portability and to identify areas for potential removal of the requirement to provide unbundled network switching. (Id.)

Based upon MSAs, U S WEST divided its service territory into three zones, based upon relative size:

Zone 1: Seattle, Tacoma, Vancouver, and Spokane

Zone 2: Bremerton, Bellingham, Yakima, and Olympia

Zone 3: All other communities.

(Id. at 17).

2. The Methodology

The statewide average data was segregated into separate files according to the three zones. (Ex. 61-T at 1-18). Three separate runs of RLCAP were made, one for each zone.

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(Id.) Information of the investment cost was determined for each zone separately by RLCAP.[3] (Id.) The loop investment was summed to achieve three levels of investment cost, one for each zone. (Id.) Each zone investment was them compared to the statewide investment data that was used in the Commission ordered rate. (Id.) A percentage was determined by dividing each zone investment by the statewide average investment. These percentages were multiplied by the statewide average unbundled loop price of $18.16 to determine the deaveraged price for each zone. (Id.)

These calculations lead to the following results:

Investments and Relative Statewide Percentages:

Statewide Average: $803.08

Zone 1	$740.15	92.2% of statewide average
Zone 2	$775.79	96.6% of statewide average
Zone 3	$1,230.36	153.2% of statewide average

[3] U S WEST used RLCAP 4.0 to determine these investments, rather than RLCAP 3.5, which was originally filed in this docket. U S WEST believes it is justified in using this more advanced model, for three reasons. First, investment from RLCAP 4.0 was used in Phase II of this docket to establish the 4-wire loop cost. (See, generally, U S WEST's Response to Bench Request No. 2, Ex. 72). Accordingly, there is precedent for use of RLCAP 4.0. Second, RLCAP 4.0 is not offered in an attempt to re-argue loop prices set in earlier phases of this docket; rather, it is used to distribute relative costs among zones to deaverage the prices set in earlier dockets. Third, no party objected to U S WEST's RLCAP 4.0 data; thus, U S WEST is justified in believing that there is no objection to its use. Finally, U S WEST did provide investment information from 3.5, which produced similar results as follows: Zone 1 - $16.01, Zone 2 - $18.11, Zone 3 - $26.61. (Ex. 72).

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Deaveraged Unbundled Loop Cost/Rates:

Statewide Average: $18.16

Zone 1	$16.66	92.2% of statewide average
Zone 2	$17.77	96.6% of statewide average
Zone 3	$27.98	153.2% of statewide average

Accordingly, U S WEST's proposal is as follows:

1. Deaveraging of UNEs should be limited to deaveraging of the unbundled loop.

2. The unbundled loop should be deaveraged into three zones, based upon the relative size of MSAs.

3. For purposes of deaveraging the unbundled loop, the following prices should obtain:

Zone 1	(Seattle, Tacoma, Vancouver, Spokane)	$16.66
Zone 2	(Bremerton, Bellingham, Yakima, Olympia)	$17.77
Zone 3	(All other areas)	$27.98

3. Criticisms of U S WEST's Proposal Are Unjustified

Several parties, principally AT&T and Staff, take issue with U S WEST's proposal for deaveraging. U S WEST will discuss each of these criticisms in turn, demonstrating that the criticisms are meritless.

a. U S WEST's proposal is true deaveraging

Initially, AT&T complains that U S WEST's proposal is not "true" deaveraging. (Ex. 1-T at 5; Ex. 3-T at 5). Apparently, AT&T contends that the only "true" deaveraging consists of assigning wire centers with similar costs characteristics to the same zone. (Ex. 3-T at 4-8). The fact of the matter, however, is that the FCC has never stated that geographic deaveraging

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must be based upon wire center levels of cost.

Rather, the FCC Order (and related rules for deaveraging) requires the Commission to: (1) establish three cost related zones that are (2) structured consistently with the manner in which the costs of providing the loop are incurred. (Rule 51.507(f)). U S WEST's proposal does this. It proposes three zones. Further, these zones reflect a level of geographic cost deaveraging. U S WEST's proposal may have less difference between zones than other proposals. However, this does not mean that U S WEST's proposal fails to comply with the FCC's Order or rules.

b. U S WEST's proposal deaverages on a cost-related basis

Both AT&T and MCI assert that deaveraging must be done on a cost-based basis. (Ex. 3-T at 6; Ex. 33-T at 3). The FCC, however, did not require deaveraging on a strictly cost-based basis; rather, it ordered that deaveraging be performed on a cost-related basis. FCC Rule 51.507(f). As noted, U S WEST's proposal offers unbundled loops at lower prices in the low cost zones, and higher prices in the higher cost zones. (Ex. 64-T at 3). Plainly, U S WEST's proposal is cost related and, therefore, it complies with the FCC's rules.

c. A communities-of-interest approach is the most viable alternative

AT&T takes issue with using a communities-of-interest approach, claiming that such an approach is "backward." (Ex. 3-T at 6). According to AT&T, the "appropriate" methodology is to allow only costs to determine the zones (Id.), without regard to consumer impact.

However, as Mr. Thompson testified, there is nothing wrong with consideration of the consumer impact of the Commission's decision on geographic deaveraging, if the proposal

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conforms to the FCC's requirements. (Ex. 64-T at 3). U S WEST's proposal conforms to the FCC's rules, as is shown above. As Mr. Thompson also testified, the Commission must also assess the consumer's reaction to the inevitable deaveraging of rates. (Id.) It is highly likely that U S WEST's proposal would be more understandable by customers than AT&T's proposal, which averages central offices in cost-based groups.

U S WEST's proposal adequately differentiates costs between zones

MCI (explicitly) and AT&T (implicitly) claim that U S WEST's proposal does not adequately deaverage prices because "there is little variation from the statewide average rate." (Ex. 33-T at 6-7; Ex. 3-T at 7). This criticism is misplaced, for at least two reasons.

First, the FCC never required that deaveraging must achieve any specific price spread and/or deviation. Second, and most importantly, this criticism ignores the fact that U S WEST's proposal does, in fact, create a significant spread: from $16.66 in Zone 1 to $27.98 in Zone 3. Thus, this criticism is wrong on both the law and the facts.

e. U S WEST's proposal considers both density and loop distance as cost drivers

Mr. Montgomery, on behalf of several CLECs, argues that the U S WEST approach (and by inference, the AT&T approach), with its wire center-based zones, does not reflect cost causation, because it allegedly considers only density as a cost driver. (Ex. 301-T at 5). He argues that loop distance is a more important cost driver, and proposes a loop distance-based deaveraging plan that allegedly better reflects this important cost driver. (Id.)

It is certainly true that loop distance, along with density, is a major cost driver for loops – longer loops can cost significantly more than shorter loops. However, it is not correct

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to assume that a deaveraging plan that is based on deaveraging at the calling area level does not incorporate the cost impacts of loop length. In smaller, rural local calling areas with single wire centers, loop costs tend to be higher because of lower density, and because loops tend to be longer. In the U S WEST cost model, both of these factors lead to higher costs in smaller local calling areas, and this is reflected in its deaveraging proposal.

D. COMPARISON WITH OTHER PROPOSALS

1. AT&T/MCI

a. Summary of the proposal

AT&T, through the testimony of Mr. Denney, and MCI, through the testimony of Dr. Cabe, put forth their own deaveraging proposal. Although their proposal sets forth only prices for unbundled loops, Mr. Denney contends that the loop is the "most important" element for deaveraging, thus intimating that other UNEs may be deaveraged. (Ex. 3-T at 3). The AT&T/MCI proposal, like U S WEST's, proposes to deaverage loops at the wire center level. (Ex. 1-T at 5). Unlike U S WEST, however, AT&T and MCI would ignore community-of-interest concerns and assign wire centers to price zones based solely on cost differences between customers. (Ex. 1-T at 5-6). The AT&T/MCI proposal estimates costs by wire center generated using HM 3.1. (Id. at 8-9). AT&T/MCI applied a factor so that the average cost utilizing HM 3.1 would equal the statewide average for U S WEST determined by the Commission. (Id.) The resulting data is then sorted by wire center and assigned to various zones. (Id.) According to the AT&T/MCI modified proposal, AT&T and MCI suggest the following prices for U S WEST's unbundled loops:

Zone 1: $14.26

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Zone 2:	$19.76
Zone 3:	$50.03

(Ex. 3-T at 2).

On cross-examination, Mr. Denney readily admitted that the assignment of wire centers to various zones was arbitrary, based upon cut-offs which were entirely subjective:

> Well, what I did was I lined the wire centers up by cost and then looked through the list of wire centers.
> * * * *
> The choice of exactly where to cut that off is somewhat of an art form. Do you cut it off at $16, do you cut it off at $15, or $17. And those are choices that the Commission could make. If they want an equal number of customers in each zone, then you would choose different cut offs than if you wanted to look at a break in costs between the zones. If you wanted to assign a larger number of customers in the low-cost zone, that would determine a different cut-off.

(Tr. 2205-2206). Not surprisingly, Mr. Denney applied his "art" to ensure that the unbundled loop price in Zone 1 is below $16.00, that the vast majority of unbundled loops in Washington (Zones 1 and 2) are priced below $20.00, and that loops in areas in which AT&T/MCI do not wish to serve (Zone 3) are priced in excess of $50.00.

b. AT&T/MCI's proposal should be rejected

Although U S WEST objects to the proposal put forth by AT&T and MCI, U S WEST finds the proposal less objectionable than the proposals put forth by Staff and various CLECs. Nevertheless, U S WEST believes its proposal to be the best submitted, and urges the Commission to reject the AT&T/MCI proposal for several reasons.

Initially, as established above, the zones created in the AT&T/MCI proposal are entirely arbitrary. No solid reason has been put forth by either AT&T or MCI as to why the

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zones were established at the price points they were. (If U S WEST were to hazard a guess, it would be because AT&T and MCI wanted loop prices below $16.00 in Zone 1, where they are most likely to compete.)

The arbitrariness of the proposal is made manifest when one considers that the proposal would result in two zones within the boundaries of Seattle, and three zones within the boundaries of Spokane and Tacoma. (Tr. 2231). The problem is exacerbated when retail deaveraging comes on the heels of wholesale deaveraging. Customers in Tacoma and Spokane – living next to each other but in different wire center -- will pay rates based upon UNE prices anywhere from in excess of $14.26 to in excess of $50.03. Accordingly, AT&T's and MCI's proposal is neither customer friendly, nor transparent. It should be rejected in favor of U S WEST's proposal, which recognizes readily apparent communities-of-interest and which satisfies the FCC's criteria for deaveraging of UNEs.

Finally, by ensuring that Zone 3 communities have UNE prices in excess of $50.00, the AT&T and MCI proposal effectively precludes development of facilities-based competition in Zone 3. As Mr. Denney acknowledged, competitors are unlikely to enter areas where the cost of an unbundled loop is $50.03. (Tr. 2240-2241). With Mr. Denney's admission, it is clear that U S WEST's proposal is less arbitrary, more customer-friendly and more pro-competition than that of AT&T and MCI.

2. Staff

a. Summary of the proposal

Staff initially proposed to deaverage switching and to split customers into density zones with distance sensitive pricing in 1000 foot increments. This resulted in 63 different

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rates for U S WEST. Subsequently, Staff acknowledged that too many zones unnecessarily increases the burden in customer notification. (Ex. 260-T at 3). Staff also subsequently dropped its proposal to deaverage switching rates, given the positions of other parties. (Id. at 12). Staff eventually evolved a proposal for U S WEST which included four density zones and three distance bands, for a total of twelve (12) rate elements for U S WEST. (Id. at 13). Staff's revised, distance-sensitive rate proposals were developed using HAI 5.0a data or, in the alternative, HM 3.1 data. (Id. at 15). Staff invited the Commission to choose either the HAI 5.0a alternative or the HM 3.1 alternative.

b. Staff's proposal should be rejected.

There are several reasons why Staff's deaveraging proposals should be rejected. Initially, the proposal should be rejected because it impermissibly relies on data developed from HAI 5.0a. Staff's initial testimony recognized that only cost models that are a matter of record should be used to produce these cost estimates. (Ex. 251-T at 5). Staff's proposals, however, relied upon HAI 5.0a and, upon motion by U S WEST and GTE, the Commission struck those portions of Staff's proposals that relied upon HAI 5.0a. Moreover, Mr. Spinks admitted on cross-examination that Staff's final proposal – the one which supposedly relied exclusively upon HM 3.1 – was, in fact, permeated by HAI 5.0a data. (Tr. 2730-2737). Accordingly, the proposal put forth by Staff was not developed with a model of record and, therefore, should be rejected.

Moreover, like AT&T's proposal, Staff's proposal also results in multiple prices within a local calling area. This creates customer confusion and, as discussed above in reference to AT&T's proposal, constitutes sufficient reason to reject Staff's proposal.

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Staff's attempt to produce distance sensitive deaveraged prices for loops also suffers from the fact that Staff relies upon average cost and average loop length. (Ex. 93-T at 4-5). Thus, although Staff would like to set prices based on the length of each loop, Staff does not have data at the level required to determine that relationship. (Id.) Indeed, Mr. Spinks testified on the stand that two different wire centers could have a vastly different range of individual loop costs and yet have the same average loop price. (Tr. 2673). Indeed, similar differences can occur within a wire center, yet be masked by averages. (Tr. 2672). Thus, Staff's use of averages in its proposal prevents Staff from achieving its desired goal, i.e., to produce distance sensitive prices based upon the length of each loop.

Even if Staff could get down to the granular level of determining the length of each loop (which it cannot), Staff's proposal should still be rejected for the simple reason that implementation and administration of the proposal would be a nightmare. Initially, a multi-million dollar outlay would have to be made to U S WEST's OSS systems in order to implement the proposal. (Ex. 111-T at 8). Moreover, ordering of unbundled loops would become inordinately complex, requiring separate USOCs for each distance band. (Id. at 5). Conforming changes would have to be made to billing programs. (Id. at 7). Moreover, disputes would inevitably arise regarding loop distance. (Ex. 112-T at 6). In sum, Staff's proposal is flawed in its genesis, flawed in its development and impossible to implement and administer. It should be rejected.

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3. CLECS[4]

a. Summary of the proposal.

The CLECs' proposal was put forth by Mr. Montgomery, who testified that he used the "same basic data that Staff used to develop its proposal in formulating my recommended density-distance loop rate deaveraging." (Ex. 303-T at 2-3). Mr. Montgomery also volunteered that, ". . . the ILECs' arguments about the Staff's approach and methodology apply to my testimony too." (Id. at 3). Presumably, the CLECs acknowledge that their proposal is subject to the same motion to strike as Staff's proposal, since both proposals impermissibly rely upon HAI 5.0a data.

Mr. Montgomery uses Staff's data to build a "hybrid" approach, which would allow each CLEC to use one of two systems. (Ex. 112-T at 2). A CLEC could choose to use an "average" loop cost for one of two zones. (Id.) In the alternative, a CLEC could choose to use a distance sensitive price within each of the two zones, consisting of six distance bands within each zone. (Id.; Ex. 301-T at 11). Mr. Montgomery proposes that distance bands be determined using "off the shelf" software. (Ex. 303-T at 13). Mr. Montgomery also proposes that CLECs be subject to an "all or nothing" rule, whereby a CLEC would have to make a one-time choice of ordering loops using the "average" or distance-sensitive manner. (Ex. 301-T at 11).

CLECs choosing the distance-sensitive alternative would be billed by the ILEC at the statewide average cost. (Ex. 301-T at 12). CLECs would then calculate an "adjustment" for

[4] These include NEXTLINK Washington, Inc. (which endorses Mr. Montgomery's testimony) as well as Advanced Telcom Group, Inc., Electric Lightwave, Inc., GST Telecom Washington, Inc. and New Edge Networks, Inc. (on whose behalf Mr. Montgomery testified).

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the difference between the billed average rate and the cost based on the length of loop. (Id.)

The CLECs' proposal should be rejected.

There is little to recommend the CLECs' proposal, and much to object to. Initially, as discussed, because the proposal builds on Staff's proposal, it suffers from all of the problems of Staff's proposal. This includes impermissibly relying on HAI 5.0a data to develop the proposal.

In addition, the CLECs' proposal suffers from problems uniquely it own. First, although Mr. Montgomery claims his distance-sensitive proposal would not require changes to ILEC systems and software (Ex. 301-T at 11), Mr. Montgomery acknowledged on cross-examination that he had no experience in designing or developing these systems. (Tr. 2774). In fact, as Ms. Brohl testified, substantial changes would have to be made in the ordering of unbundled loops. (Ex. 112-T at 3-6). As Ms. Brohl notes, "[O]n the CLEC end of this transaction, Mr. Montgomery has recommended a multi-step and on-going manual process, with numerous opportunities for error for each and every unbundled loop." Mr. Montgomery acknowledges that these increased administrative burdens in ordering would be borne by CLECs. (Ex. 301-T at 11). Accordingly, Mr. Montgomery acknowledges increased costs and burdens on the CLECs.

What Mr. Montgomery fail to apprehend is the increased costs and burdens his proposal also places on the ILECs. As Ms. Brohl testified, "U S WEST would duplicate the CLECs manual process to 'fully review' each CLEC calculation." (Ex. 112-T at 5). Thus, Mr. Montgomery's distance sensitive proposal creates increased costs on both the ordering and provisioning ends. This, of course, provides "numerous opportunities for errors and disputes."

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(Id. at 6).

Mr. Montgomery attempts to downplay the potential for disputes, by claiming that parties' account representatives are "less adversarial" than their regulatory representatives, and (hopefully) "the industry in Washington can agree on a standardized, available product" to determine loop lengths. (Ex. 301-T at 12). U S WEST believes that Mr. Montgomery's hopes are misplaced. The Commission should not order a plan for UNE deaveraging which invites disputes to arise. Indeed, history indicates that disputes between carriers can arise even when contractual terms and obligations are clearly and explicitly defined. One can only imagine the disputes arising from the "trust me" approach advocated by Mr. Montgomery. Moreover, the CLECs can offer no valid reason why the Commission should defer until a later time the choice of Mr. Montgomery's unspecified distance product.

U S WEST submits that the CLECs' proposal is overly complex and would foster disputes for each and every UNE ordered. As the CLECs acknowledged it is subject to all the criticisms pertinent to Staff's proposal. Moreover, as Mr. Montgomery makes clear, the distance-sensitive alternative is a work in progress -- a work which is unlikely to reach an acceptable completion.

IV. CONSISTENCY OF PROPOSAL WITH PRIOR COMMISSION RULINGS

In the brief outline provided by the Commission, this section asks the parties to discuss whether their proposals are consistent with the Commission's prior statements on deaveraging, and "the implications of the party's position in the current proceeding." In this regard, U S WEST notes that the Commission's prior statements on deaveraging tended to indicate that the Commission would not undertake wholesale deaveraging separate from

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consideration of retail deaveraging and universal service issues. Thus, this entire proceeding is, in that sense, inconsistent with the Commission's prior statements on deaveraging. That said, U S WEST believes that its proposal is consistent with accomplishing wholesale deaveraging, and lends itself to use as a retail deaveraging scheme as well. It is in that way consistent with both the intent of this proceeding, as well as prior Commission statements on the subject.

A. 8TH SUPPLEMENTAL ORDER, UT-960369

The 8th Supplemental order in this proceeding contains the following statements about deaveraging:

> 274. We choose not to deaverage UNE and interconnection rates at this time. We agree with Commission Staff and the other parties who argue that it is more appropriate to consider this issue in the context of universal service reform, deaveraged retail prices, and the extent of competitive activity in Washington State.
>
> 496. The Commission finds it is not appropriate to deaverage costs for unbundled network elements and interconnection in this proceeding.
>
> 511. The deaveraging of costs should be addressed in the context of universal service, deaveraged retail prices, and inquiry into the extent of competitive activity in this state.
>
> 526. Costs for unbundled network elements and interconnection will not be deaveraged in this proceeding.

Thus, any deaveraging at all is inconsistent with the Commission's prior statements on the issue in the 8th Supplemental Order. However, as all parties are aware, that order was entered in April 1998, and much has changed since then.

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B. 17TH SUPPLEMENTAL ORDER, UT-960369

In the 17th Supplemental Order, the Commission made it clear that it had changed course regarding UNE deaveraging, stating in various paragraphs that the FCC's requirement to deaverage would be implemented in this Phase III. The Commission stated in that order, at paragraph 481, and in its notice of prehearing conference:

> In the Phase III proceeding, the Commission will ask the parties to make deaveraged pricing proposals that result in an average price for the loop that is equal to the statewide loop prices we establish in the instant Order. The parties should not take this as an opportunity to re-argue the merits of the statewide loop prices we establish in the instant order. The Commission makes clear to the parties that in Phase III the statewide average loop price will not be at issue -- the Commission will consider only the relative prices in different geographic zones contained in the deaveraging price proposals put forth by the parties.

U S WEST believes that its proposal is consistent with this requirement for the reasons set forth above in Section III., in which its proposal was discussed in detail.

C. USF ORDER, UT-980311, PARAGRAPH 72

The 10th Supplemental Order in Docket No. UT-980311(a), paragraph 72, reads as follows:

> 72. The Commission has estimated the cost of service for each wire center. At this point in time, verifiable data such as line counts and loop lengths are unavailable at a finer level of granularity.

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That paragraph also contains a footnote at the end, which reads as follows:

> It is likely that the rulemaking will determine that the level of support should be at the exchange level. In order to receive support from the federal universal service fund, a carrier must provide service to the entire exchange. We believe that the same obligation should be satisfied in order to receive support from the State fund. The level of support should be calculated at the same level of granularity at which the state level of support is required. As competition develops in the State, however, a need may arise to make the support calculation at a finder level of granularity.

Docket No. UT-980311 post-dated the initiation of this proceeding. The loop length and line count information found to be insufficient for costing below the wire center level is no different from the loop length information which is present in this docket. As such, this factor, as well as many others, weighs against the selection of a distance sensitive pricing scheme.

These two statements were made in the context of a docket which was essentially an initial investigation into USF issues. That docket did not produce or determine a funding estimate that was actually implemented, because there is no state fund at this time. Under the present state of the law (RCW 80.36.600) the earliest a fund could come into place is June of 2001. The Commission indicated at paragraphs 325, 331, and 334 of that same order that it would revisit both support and contribution levels before a fund was implemented. Clearly, such reconsideration would be necessary to consider the most current and accurate information.

Finally, these two passages raise the question of whether an MSA-based scheme (U S WEST's) or a wire center-based scheme (AT&T/MCI) are consistent with the

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Commission's statements about funding of universal service at the exchange level. Again, because these issues will clearly be revisited in the context of implementation of a universal service fund when and if such a fund is created, it is not necessary that deaveraging be done at the exchange level. Further, it has not been U S WEST's advocacy that deaveraging and universal service support must be done on the same geographic units. In other words, U S WEST has advocated that USF support be done at the wire center or the sub-wire center level. The support, which should be transparent to ratepayers, can address high cost areas within a particular wire center which, on average, may be low cost, and may have low average retail rates. Deaveraging of wholesale and/or retail rates does not require the same level of granularity.

D. COMMISSION'S SUPPORT FOR RURAL USF DEAVERAGING

U S WEST does not address this issue.

V. GENERAL CONSIDERATIONS

U S WEST believes that there is one additional consideration which is relevant to a decision in this case, and that is the consideration of consistency with outcomes in other states. As the Commission has heard in this and other proceedings, U S WEST's OSS are 14-state systems, and support the entire region. The billing systems obviously can be programmed for different rates in different jurisdictions, but those different rates do not necessitate fundamental changes to U S WEST's systems. Additionally, deaveraged rate structures that are consistent from one state to another will require fewer systems changes, and will therefore be easier to implement and less costly as well.

Several of the other 13 states in U S WEST's traditional service territory have already

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adopted deaveraged rate structures that are substantially similar to U S WEST's proposal herein. For example, New Mexico adopted a three-zone structure based on MSAs in accordance with U S WEST's proposal (Ex. 63-T at 4).

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VI. IMPLEMENTATION ISSUES

A. IMPLEMENTATION

Implementation of wholesale deaveraging can be simple or it can be exceedingly complex. U S WEST's proposal chooses the former, while Staff and the CLECs choose the latter. In order to implement wholesale deaveraging in accordance with U S WEST's proposal, U S WEST would have to create three separate billing codes, one for each of the three zones. Since each zone contains multiple wire centers, and wire centers are never split between zones, implementation would be a fairly simple function of assigning wire centers to zones, and U S WEST's current systems already identify customers to particular wire centers. (Tr. 2437-9, 2476).

In order to implement distance sensitive deaveraging such as proposed by Staff and Mr. Montgomery, the costs as identified above would be significant. Additionally, the timing of such implementation would be problematic, as there is no industry-accepted method of distance sensitive pricing currently in place, and all of the issues identified in Ms. Brohl's testimony would need to be addressed. These issues include whether the distance sensitive pricing is done on a mechanized (requiring systems changes) or manual (requiring labor-intensive review of each order each month) basis, and how the distances would be calculated. U S WEST does not anticipate that could happen to allow the Commission to meet the FCC's May 1, 2000 deadline.

B. THREE, FOUR, OR MORE ZONES

The FCC required at least three zones. U S WEST believes that three zones are all that is necessary for deaveraging at this time, and does not believe that other parties, who

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advocate more than three zones, have established a sufficient basis to support such a proposal. Specifically, more zones add complexity to the proposal, with no significant off-setting benefits. All proposals involve significant averaging within the zones. Averaging in this way may tend to make the results more accurate, as estimates which are too high or too low will tend to off-set each other. Thus, a larger number of zones may produce a more precise number, but a less accurate result.

C. COST OF IMPLEMENTATION – RECOVERY OF THE COST OF IMPLEMENTATION OF A DISTANCE SENSITIVE RATE STRUCTURE

It is U S WEST's position that the costs of implementing a distance sensitive rate structure should be recovered from the CLECs who purchase unbundled loops. This could be done by recalculating the loop cost to include those costs, or by revising the OSS costs (to be recovered through a separate charge) to include the deaveraging costs.

VII. CONCLUSION/RECOMMENDATIONS

The Commission should adopt U S WEST's proposal, and order geographic deaveraging in three zones in accordance with the table set forth in Section III. A. Other proposals should be rejected as too difficult to implement, or based on arbitrarily established groupings.

Respectfully submitted this 28th day of March, 2000.

U S WEST Communications, Inc.

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