BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PHASE III POST-HEARING BRIEF OF

NEXTLINK WASHINGTON, INC.

ELECTRIC LIGHTWAVE, INC.

ADVANCED TELCOM GROUP, INC.

GST TELECOM WASHINGTON, INC.

and

NEW EDGE NETWORKS, INC.

March 28, 2000

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I. INTRODUCTION

1. The Washington legislature has declared that one of the policies of this state is to "[p]romote diversity in the supply of telecommunications markets throughout the state." RCW 80.36.300(5). The Commission historically has taken this policy goal very much to heart and was an early leader in fostering the development of local exchange competition. *See, e.g.*, Docket Nos. UT-941464, *et al*., Fourth Supp. Order (Oct. 31, 1995). The Commission largely continued to pursue that objective following passage of the Telecommunications Act of 1996 ("Act"), resolving the vast majority of disputed issues arising from interconnection contract negotiations in a manner that is consistent with both federal and state requirements and objectives.

2. Despite the Commission's efforts, the development of effective local exchange competition in Washington has progressed at a snail's pace. U S WEST Communications, Inc. ("U S WEST") provisions approximately 6,500 unbundled loops to competitors, which is an insignificant percentage of the more than 2.3 million access lines it serves in this state. *See* Ex. 301T (Joint CLEC Montgomery Reply) at 7; Tr. at 2320 (USWC Thompson cross). The numbers for GTE Northwest Incorporated ("GTE") are even more stark – 600 unbundled loops compared to the 800,000 access lines GTE serves. *See* Ex. 301T (Joint CLEC Montgomery Reply) at 7; Tr. at 2499-2500 (GTE Dye cross). These figures amply demonstrate that few Washington consumers have a choice, much less an effective choice, among local service providers, and such choice is largely limited to those consumers within a reasonable distance of competitors' own networks.

3. The Commission's previous decisions in this proceeding, once they become final,

will not improve the competitive landscape. Statewide averaged recurring charges for unbundled loops will increase as much as 60% over existing interim rates,[1] while nonrecurring loop charges will increase by up to 330%.[2] Competitors will also be required to pay additional charges for access to incumbent local exchange company ("ILEC") Operations Support Systems ("OSS"). These price increases threaten a substantial negative impact on the viability of any form of local exchange competition that relies in whole or in part on facilities obtained from the ILECs.

4. Phase III of this proceeding presents the Commission with the opportunity to soften this impact somewhat by adopting geographically deaveraged unbundled loop rates that more accurately reflect the underlying costs of those facilities. While severely limited by the statewide average prices the Commission has previously determined, NEXTLINK Washington, Inc., Electric Lightwave, Inc., Advanced TelCom Group, Inc., GST Telecom Washington, Inc., and New Edge Networks, Inc. (collectively "Joint CLECs") – as well as Commission staff, AT&T, and MCI – have proposed cost-based deaveraged unbundled loop rates that will enable competitors to use ILEC facilities in at least a few geographic areas in Washington. U S WEST and GTE, on the other hand, recommend rates that do not reflect underlying cost differences and would effectively preclude competing local exchange companies ("CLECs") from using ILEC facilities to serve the overwhelming majority of Washington consumers.

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[1] Calculated as the difference between the statewide averaged price of $18.16 the Commission adopted in the Seventeenth Supplemental Order and the $11.33 interim loop rate in the AT&T interconnection agreement with U S WEST. *See* Tr. at 2225 (AT&T Denney cross).

[2] Calculated as the difference between the nonrecurring charges in U S WEST's compliance filing in Phase II of $179.14 (exclusive of EICT, loop conditioning, and OSS charges) and the nonrecurring unbundled loop charge of $41.50 ($50 retail recurring charge for business exchange service less the 17% avoided cost discount) in the TCG and NEXTLINK agreements with U S WEST. *See* Ex. 281T (NEXTLINK Knowles Response) at 5; Tr. at 2322-23 (USWC Thompson cross).

5. Geographic deaveraging is as much – or more – of an art than a science. *See, e.g.* Tr. at 2206 (AT&T Denney cross); Tr. at 2427-29 (USWC Carnall cross); Tr. at 2547-55 (GTE Tucek cross). The Joint CLECs urge the Commission to use that "art," within the limitations of the "science" contained in the record evidence, to establish cost-based geographically deaveraged loop rates that will maximize competitors' ability to use ILEC facilities to provide competing local exchange service. The Joint CLECs further request that the Commission adopt the concept of distance-sensitive loop prices and require resolution in Docket No. UT-003013 of the cost and implementation issues necessary to further deaverage loop prices in a manner that will facilitate the development of effective competition throughout this state.

II. POLICY CONSIDERATIONS

6. The primary policy consideration presented in Phase III of this proceeding is "whether the Commission wants to foster the development of local exchange competition – other than wholly facilities-based competition – *anywhere* in Washington." Ex. 281T (NEXTLINK Knowles Response) at 6 (emphasis in original). Congress and the FCC have recognized the vital importance of competitors' ability to use ILEC unbundled network elements as a means of providing local exchange service to the broadest range of potential customers without having to duplicate the ILECs' entire network. *See, e.g., In re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, FCC 96-325, First Report and Order ¶¶ 10-14 (Aug. 8, 1996) ("*Local Competition Order*").

7. A CLEC's ability to take advantage of the ILECs' scope and scale, however, depends in large measure on the price the CLEC must pay to use ILEC facilities. The statewide average unbundled loop rates the Commission established in Phase II *alone* exceed the retail price of residential service provided by U S WEST and GTE. *Id.* at 5-6. U S WEST's and

GTE's basic business exchange service retail rates exceed by less than ten dollars the statewide unbundled loop recurring rates plus the nonrecurring rates U S WEST and GTE included in their compliance filings in Phase II – without any consideration of the additional costs a CLEC must incur to provide that service using an unbundled loop, including collocation, collocated equipment, switching, transport, and overhead. *Id*. In short, CLECs cannot economically use unbundled loops to provide local exchange service in Washington at the statewide averaged rates adopted by the Commission. The Commission, therefore, must adopt significant deaveraging of loop rates if it seeks to encourage broader availability of competing telecommunications services through the use of the ILECs' unbundled network elements.

8. U S WEST and GTE dispute this conclusion, claiming that CLECs can expect revenues in addition to the basic exchange rates and thus have sufficient margin to make economical use of unbundled loops at the prices they propose. Neither U S WEST nor GTE, however, attempt to quantify the additional costs CLECs must incur to use an unbundled loop to provide the services that generate those revenues. Tr. at 2318-19 (USWC Thompson cross); Tr. at 2505-06 (GTE Dye cross). Upon a final Commission order in this docket, CLECs will incur far greater costs to use ILEC facilities in providing service to end-users than the ILECs incur to use the same facilities in order to generate the same level of revenues. CLECs will be required to pay U S WEST an amortized rate of $8 per month in nonrecurring loop charges – $7 or 700% more than the CLECs can recover from their end-user customers by matching U S WEST's retail nonrecurring charge.[3] *See* Tr. at 2322-23 (USWC Thompson cross). This $7 represents a 39%

[3] The amortized rate is based on recovery of the nonrecurring charges U S WEST listed in its compliance filing in Phase II over a three year period. Ex. 281T (NEXTLINK Knowles Response) at 5. Mr. Knowles also explained that competitive pressures would preclude CLECs from imposing any nonrecurring charge on their customers that exceed U S WEST's retail

premium charged to the CLEC in addition to the $18.16 statewide averaged loop rate that a CLEC and U S WEST both theoretically pay to use a U S WEST loop. That $7 also represents 14% of the approximately $50 in total monthly revenue U S WEST contends it receives from an average business customer. A CLEC using a U S WEST loop thus would have to be 14% more efficient than U S WEST just to generate the same return on investment U S WEST generates but without the benefit of U S WEST's significant captive customer base. This disparity increases dramatically if the costs U S WEST incurs to use a loop in lower cost areas is less than the rate it charges to the CLECs.

9. U S WEST and GTE also fail to provide any explanation for why CLECs are not making significant use of ILEC unbundled loops if the margin opportunities are as great as the ILECs represent. CLECs currently pay $11.33 or $13.37 per month to U S WEST for an unbundled loop under the interim pricing currently in effect, with nonrecurring rates as low as $41.50 (the $50 retail nonrecurring charge less the 17% avoided cost discount). Tr. at 2320-23 (USWC Thompson Cross). A CLEC currently paying $14.52 for a U S WEST unbundled loop ($13.37 plus $41.50 amortized over 36 months) faces a *65%* increase to $24.07 to obtain a loop from U S WEST under the prices U S WEST includes in its Phase II compliance filing.[4] Ex. 281T (NEXTLINK Knowles Response) at 5. Even U S WEST concedes that a price increase of that magnitude will impact the growth in unbundled loops CLECs seek to obtain from U S WEST. Tr. at 2321-26 (USWC Thomson Cross).

10. The Commission risks further slowing the already stunted growth of local

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nonrecurring charges. Tr. at 2747 (NEXTLINK Knowles cross).

[4] The price for an Expanded Interconnection Channel Termination ("EICT") is excluded from both the current interim total price and the $26.19 total in Mr. Knowles testimony.

exchange competition in Washington if geographically deaveraged loop rates do not reasonably approximate the cost to provide those loops. These policy considerations, as well as cost-based pricing requirements, should factor prominently in the rates the Commission adopts in its final order resolving this proceeding.

III. JOINT CLEC PROPOSAL

A. Statement of Joint CLEC Proposal

11. The Joint CLECs continue to urge the Commission to adopt distance-sensitive geographically deaveraged unbundled loop rates both to reflect more accurately the underlying costs of the loop and to facilitate the development of local exchange competition throughout the state. The Joint CLECs, however, are concerned that implementation of distance-sensitive rates based on the record developed to date would delay the availability of geographic deaveraging, and that imposition of the statewide averaged rates the Commission previously established in this docket would have a severe chilling effect on CLECs ability to use ILEC unbundled loops. *See* Ex. 281T (NEXTLINK Knowles Response) at 4-6.

12. Accordingly, the Joint CLECs have modified their proposal to recommend that the Commission establish interim geographically deaveraged prices for a minimum of five zones each for U S WEST and GTE comprised of wire center groupings based on the cost breakdown in Exhibit 2 (AT&T Denney) as modified to separate U S WEST and GTE wire centers and update U S WEST line counts ("Modified Exhibit 2"). *See* Tr. at 2255-58 & 2272-73 (AT&T Denney cross). The Joint CLECs further strongly urge the Commission to adopt the concept of distance-sensitive loop rates and require that the parties address the necessary cost and implementation issues in the new generic cost proceeding, Docket No. UT-003013, to enable the Commission to adopt and implement distance-sensitive geographically deaveraged loop rates as a

result of that docket.

13. As requested by the Commission, the Joint CLECs' modified proposal for interim five zone pricing is reflected in the following table:

	U S WEST	**GTE**
Zone 1	$ 8.35	$14.96
Zone 2	$13.66	$16.74
Zone 3	$15.48	$20.11
Zone 4	$17.28	$23.36
Zone 5	$26.64	$49.85

B. Corrections Necessary as a Result of the Hearing – Changes From Hearing Position

14. The Joint CLECs continue to maintain that the Commission should establish distance-sensitive loop rates to reflect the cost differences between loops of different lengths. No party disputes that loop length substantially impacts costs – indeed, GTE's calculations to develop wire center costs based on the outputs of its cost model are based on loop length. Tr. at 2787-88 (Joint CLEC Montgomery cross). The Joint CLECs, however, are concerned that the record may not be sufficient to establish reasonably accurate loop prices on a distance-sensitive basis from both a cost and implementation basis.[5] In addition, the Joint CLECs are now

[5] *See* Section IV(c), *infra*. In addition, Commission staff's initial analysis relied, in part, on a version of the HAI model that was not admitted into evidence in the earlier phases of this proceeding, and questions continue to be raised with respect to whether staff's revised analysis is entirely free from the influence of information the Commission has decided to disregard. The Joint CLECs do not believe that staff's final recommendation is tainted by its prior use of HAI 5.0a, *see* Tr. at 2806 (Joint CLEC Montgomery redirect), but the adequacy of the record evidence on which staff relied to develop reasonably accurate distance-sensitive costs remains a matter of

convinced that geographic deaveraging should be accomplished on a wire center basis, rather than on the exchange basis that staff has proposed. Tr. at 2784 (Joint CLEC Montgomery cross). These factors have necessitated the Joint CLECs' reevaluation of the proposal they advocated at the start of the hearings.

15. Based on their evaluation of the evidence presented at the hearing, the Joint CLECs have amended their geographic deaveraging proposal. The Commission's primary goal should be to establish geographically deaveraged loop rates that reflect underlying cost and can be implemented immediately. The Joint CLECs are concerned not only with the adequacy of the record to establish reasonably accurate distance-sensitive rates but that resolution of issues arising from implementation of distance-sensitive rates would delay the availability of geographic deaveraged rates. Accordingly, the Joint CLECs have modified their proposal to recommend that the Commission establish geographically deaveraged loop rates for U S WEST and GTE in at least five zones for each ILEC based on the wire center cost estimates in Modified Exhibit 2 (AT&T Denney) and to develop distance-sensitive rates as part of the Commission's inquiry in Docket No. UT-003013.

C. Summary of Proposal, Including Description of All Elements In and Beyond the Table

16. The Joint CLECs propose deaveraged loop prices in at least five geographic zones each for U S WEST and GTE comprised of wire centers grouped according to the averaged line costs in each wire center. The Joint CLECs, in consultation with other parties sponsoring or concurring in this proposal, used the wire center costs in Modified Exhibit 2 (AT&T Denney).

17. The Joint CLECs relied on AT&T's wire center cost estimates because the

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concern.

Hatfield Model sponsored by AT&T (and supported by Commission staff) calculates costs on a wire center basis, while the cost models sponsored by U S WEST and GTE do not. Tr. at 2270-71 (AT&T Denney cross). U S WEST has not even attempted to estimate costs on a wire center basis. GTE, in response to AT&T's analysis, developed wire center-specific cost estimates, but GTE's cost estimates are based on distance sensitive data that GTE has criticized as part of Commission staff's proposal and cost assumptions that even GTE contends are not fully reliable. *See* Tr. at 2572-74 & 2585 (GTE Tucek cross). AT&T, therefore, is the only party that has provided reliable evidence of U S WEST's and GTE's loop costs per wire center based on the statewide average price the Commission established in Phase II.

18. The Joint CLECs chose five zones as a compromise between the FCC minimum of three zones that AT&T and MCI initially proposed and the 12 zones the Joint CLECs initially proposed. This compromise increases the areas in which CLECs might economically use unbundled loops to provide local exchange service without creating implementation issues that would delay the availability of geographically deaveraged rates. The wire center groupings within each zone were developed primarily based on significant break points in the wire center costs. For example as shown in Modified Exhibit 2 (a copy of which reflecting the Joint CLECs' interim pricing proposal is attached to this brief) and as discussed during the hearings, there is approximately a 23% difference between the highest cost wire center in the U S WEST zone 1 and the lowest cost wire center in zone 2. *See* Tr. at 2274-75 (AT&T Denney cross). To the extent possible, the Joint CLECs also sought to create more zones among the more densely populated wire centers. The record evidence demonstrates that cost estimates are most accurate for those wire centers, *see, e.g.*, Tr. at 2427 (USWC Carnall cross), and these wire centers represent the areas where competitors currently are, or likely would be interested in, offering

local exchange service.

19. The Joint CLECs, however, remain deeply concerned that even 5 wire center-based zones severely limit the areas in which the use of unbundled loops is economically viable. NEXTLINK, for example, provides competing local exchange service in Spokane. Three of the seven U S WEST wire centers serving Spokane are in zones 4 and 5 where the loop prices of $17.28 and $26.64 approach or significantly exceed the statewide averaged price of $18.16 at which unbundled loops are not economically viable. *See* Ex. 281T (NEXTLINK Knowles Response) at 4-6. The absence of distance-sensitive pricing effectively precludes use of unbundled loops in these exchanges and correspondingly restricts consumer choice in the greater Spokane metropolitan area. Distance-sensitive prices not only would make many more wire centers potential candidates for initial competitive entry but would encourage expansion of the initial base in each wire center as the CLEC seeks to maximize its initial investment. Tr. at 2756-57 (NEXTLNK Knowles redirect); Tr. at 2781-82 (Joint CLEC Montgomery cross). The benefits of local exchange competition, therefore, will be available to far more Washington consumers if unbundled loop prices are geographically deaveraged on a distance-sensitive basis.

20. Accordingly, the Joint CLECs' five zone proposal is intended only as an interim step in establishing geographically deavcraged loop rates. The Joint CLECs strongly recommend that the Commission further adopt the concept of distance-sensitive geographically deaveraged unbundled loop rates in the order concluding this proceeding, and that the Commission direct the parties to address the cost and implementation issues needed to establish such rates in the new cost docket, UT-003013. The entrenched monopoly providers will address and participate in the prompt resolution of these issues – and allow consumers a reasonable hope of having alternative sources of local exchange service – only in response to such a specific Commission directive.

Tr. at 2799-2803 (Joint CLEC Montgomery cross).

D. Comparison With Other Proposals

21. The Joint CLECs' modified proposal is comparable to the proposal initially made by AT&T and supported by MCI. Indeed, the Joint CLECs' proposal is based on the same wire center data on which AT&T relied and uses that data (as modified) to propose five wire center-based zones, instead of the three that AT&T initially proposed. The Joint CLECs understand that AT&T and MCI have modified their position to concur in the Joint CLECs' five zone proposal.

22. The Joint CLECs also continue to support the concept of distance-sensitive loop pricing in Commission staff's proposal, and recommend that the Commission adopt that concept. The Joint CLECs, however, depart from staff in urging the Commission to develop appropriate distance senstive rates – including implementation of such rates – in the new generic cost docket, rather than in this proceeding, to avoid delay in the availability of geographically deaveraged rates and to ensure an adequate factual record.

23. The Joint CLECs' modified geographic deaveraging proposal continues to provide a sharp contrast to U S WEST's proposal, which is "geographic deaveraging" in name only. U S WEST proposes prices for three "zones," but as discussed more fully in Section V, *infra*, those zones are based on "community of interest" using Metropolitan Statistical Areas ("MSAs"), not cost differential. *See* Ex. 301T (Joint CLEC Montgomery Reply) at 5. Even U S WEST concedes that the prices in two of its zones do not vary significantly from the statewide average rate of $18.16, while the rate U S WEST proposes in the third zone is significantly *higher* than the statewide average. Tr. at 2312 & 2319-20 (USWC Thompson Cross). U S WEST's proposal thus does not comply with the concept of geographic deaveraging, much less the FCC's requirements with respect to developing appropriate geographically deaveraged rates.

24. GTE's proposal is equally flawed. GTE also proposes rates with little variance from the statewide average for three zones based on alleged "communities of interest." The absence of any cost nexus to those zones is amply demonstrated by the fact that the price GTE proposes for the most dense (and least costly) zone is *higher* than the price GTE proposes for its medium density zone. *See* Ex. 301T (Joint CLEC Montgomery Reply) at 5. GTE proposed a "compromise" position based on data provided by AT&T, but GTE proposes to combine the two least cost zones of the four AT&T illustrated into a single zone. GTE thus not only proposes to substantially increase the price of the least cost zone in AT&T's illustrative exhibit but would have the Commission *reduce* the level of geographic deaveraging and thereby further dilute the cost basis of the loops provided in each zone.

25. The Joint CLECs' modified proposal, therefore, is consistent with the positions AT&T and MCI now advocate and with the principles, if not the details, of Commission staff's proposal. The ILECs' proposals, on the other hand, are inconsistent with other parties' proposals both in principle and details, as well as with this Commission's commitment to fostering the development of effective local exchange competition.

IV. IS THE PROPOSAL CONSISTENT WITH THE COMMISSION'S PRIOR STATEMENTS ON DEAVERAGING AND THE IMPLICATIONS OF THE PARTY'S POSITION IN THE CURRENT PROCEEDING?

A. Eighth Supplemental Order

26. The Commission stated in paragraph 274 of its Eighth Supplemental Order in this proceeding 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." The Joint CLEC proposal is consistent with the Commission concerns expressed in its earlier order.

27. In the nearly two years since the Commission issued its Eighth Supplemental

Order, any advance in the development of effective local exchange competition in Washington has been virtually imperceptible. Publicly available data indicates that as of "mid-year 1999, unbundled loops in use constituted less than <u>one-tenth</u> of one percent of U S West's retail switched access lines in Washington; and barely <u>one-hundredth</u> of one percent of GT-NW's retail lines." Ex. 301T (Joint CLEC Montgomery Reply) at 7 (emphasis in original). This data also shows that U S WEST provisions *eighteen times* more access lines to its retail customers than new loops to CLECs, while GTE provisions almost *400 times* more retail lines than unbundled loops. *Id*. Local exchange competition through the use of ILEC unbundled network elements simply is not developing in Washington, and it will not develop if CLECs must pay the statewide averaged price established by the Commission in this proceeding. *See* Ex. 281T (NEXTLINK Knowles Response) at 4-6.

28. U S WEST and GTE raise universal service concerns with respect to geographic deaveraging of unbundled loops, but the record fails to support their concerns. The ILECs' produced no evidence that geographic deaveraging of loop rates has threatened the availability of universal service in any other state. *See* Tr. at 2356 (USWC Thompson cross). No basis exists for believing that the experience in Washington will be any different. The number of unbundled loops currently being provisioned in this state is liliputian, and neither U S WEST nor GTE has ever presented any evidence that any revenue loss attributable to existing interim loop rate levels has had any impact on the funds U S WEST and GTE devote to universal service. To the contrary, U S WEST seeks Commission approval of a regulated revenue freeze for the next four years in Docket No. UT-991358, as well as the ability to *reduce* rates for services subject to competition, while GTE has agreed to *reduce* its regulated annual intrastate revenues by $30 million during the same time period. *See* Ex. 281T (NEXTLINK Knowles Response) at 3.

Universal service will not suffer any adverse impacts from geographic deaveraging of unbundled loop rates.

29. The ILECs' threats of retail rate deaveraging similarly should carry little, if any, weight in determining whether and how unbundled loops should be geographically deaveraged. Despite the prospect of geographically deaveraged loop rates in Utah, U S WEST did not seek to deaverage its retail prices in that state. Tr. at 2372-74 (USWC Thompson cross); *see* Utah Code Ann. § 54-8b-2.4(3)(b) (permitting rate rebalancing prior to initiation of price cap regulation). Similarly in New Mexico, U S WEST has not proposed geographically deaveraged retail rates even though deaveraged loop rates have been in effect for three years. Tr. at 2378-79 (USWC Thompson cross). GTE also has not deaveraged its retail rates in response to geographically deaveraged loop rates in other states. Tr. at 2517-18 (GTE Dye cross). Even if retail rate deaveraging became necessary in the future, U S WEST conceded that retail rates need not necessarily mirror unbundled loop rates. Tr. at 2361 (USWC Thompson cross). In light of this history and the minimal levels of unbundled loops U S WEST and GTE currently are providing, the remote possibility that a future need for retail geographic deaveraging may arise is an insignificant consideration.

B. Seventeenth Supplemental Order

30. Paragraphs 480-82 of the Seventeenth Supplemental Order required the parties to propose geographically deaveraged loop prices based on the statewide averaged loop prices the Commission previously determined. The Joint CLEC proposal does just that, recommending loop prices for five zones each for U S WEST and GTE that are based on underlying wire center costs and that equal the statewide average prices the Commission adopted. The Joint CLEC proposal, therefore, is fully consistent with the Commission's Seventeenth Supplemental Order.

C. USF Order, Docket No. UT-980311(a), Paragraph 72

31. The Commission found in paragraph 72 of its Tenth Supplemental Order in Docket No. UT-980311(a) that insufficient evidence had been provided by the parties to enable the Commission to determine the costs of providing service on a more granular level than the wire center. This conclusion was based on a different evidence than the record compiled in this proceeding, but this same concern with respect to the evidence presented in this proceeding, in conjunction with the need for prompt implementation of geographic deaveraging, underlies the modification to the Joint CLECs' geographic deaveraging proposal. Despite these concerns, the record in this proceeding demonstrates that loop length significantly affects loop cost and that distance-sensitive unbundled loop prices more accurately reflect underlying costs as well as promote broader expansion of competitive choice to consumers throughout Washington.

D. Commission's Support for Rural USF Deaveraging

32. The Joint CLECs do not have additional comments applicable to this issue.

V. GENERAL CONSIDERATIONS

33. The Commission's primary general consideration in establishing geographically deaveraged prices is to ensure that those prices are "based on the cost . . . of providing the interconnection or network elements." 47 U.S.C. § 252(d)(1)(a)(i). The FCC has concluded that "deaveraged rates more closely reflect the actual costs of providing interconnection and unbundled elements." *Local Competition Order* ¶ 764. Accordingly, the FCC has required the creation of "a minimum of three cost-related rate zones to implement deaveraged rates" while permitting a state to "establish more than three zones where cost differences in geographic regions are such that it finds that additional zones are needed to adequately reflect the costs of interconnection and access to unbundled elements." *Id.* ¶ 765.

34. The Joint CLECs' modified proposal fully complies with the Act's and the FCC's requirements. The five zones the Joint CLECs propose are based on the relative cost differences between providing unbundled loops in the wire centers that comprise each zone. The Joint CLECs' recommendation that the Commission develop distance-sensitive loop prices in the new generic cost docket also furthers the FCC's directive to establish prices that "more closely reflect the actual costs of providing" unbundled loops.

35. The ILECs, on the other hand, would have the Commission undermine the FCC's requirements as a means of avoiding compliance with federal law. Both ILECs propose to establish zone based on "community of interest," rather than based on costs. Neither U S WEST nor GTE provide any evidence to demonstrate that their "community of interest" zones bear any relationship to the cost of providing unbundled loops in those zones. To the contrary, the ILECs effectively concede that their zones are not cost-related by observing that customers within the same alleged "community of interest" would be in different zones if those zones were based on wire center or exchange costs. *See, e.g.*, Ex. 63T (USWC Thompson Responsive Direct) at 8-9; Tr. at 2230-32 (AT&T Denney cross); Tr. at 2550-56 (GTE Tucek cross).

36. U S WEST and GTE nevertheless contend that their zones are "cost-related," apparently based on their belief that because the average price in each of their community of interest zones is different than their other zones, the zone categorization is related to cost. Such a position is tantamount to a claim that groceries are bagged in a cost-related manner because the average prices of the items in each of three bags of groceries are different. U S WEST and GTE's zones were not developed based on the costs of providing unbundled loops in those zones but have been selected using criteria other than cost as a means of keeping loop rates near or above the statewide average. *See, e.g.,* Ex. 303T (Joint CLEC Montgomery Rebuttal) at 3-7; Ex.

281T (NEXTLINK Knowles Response) at 7; Ex. 301T (Joint CLEC Montgomery Reply) at 5. Such zone selection is fundamentally inconsistent with the FCC's deaveraging requirements.

37. U S WEST and GTE also express concern that retail customers would be confused by a retail deaveraging scheme based on a wire center grouping used to establish geographically deaveraged unbundled loop rates. As discussed above, however, retail rate deaveraging historically has not accompanied unbundled loop rate deaveraging, and there is no requirement that any deaveraged retail prices mirror the deaveraging methodology employed to establish unbundled loop rates. More fundamentally, the ILECs' purported concerns directly conflict with one of the important benefits of effective local exchange competition – downward pressure on retail rates. The Commission should expect that as competition drives prices closer to cost, competition-induced price reductions, at least initially, will occur in lower cost areas, which are likely to be smaller in scope than an MSA or other "community of interest." Rather than stifle competition, as the ILECs propose, by preventing some customers from obtaining competitive benefits unless and until all customers within a broad "community of interest" can obtain the same benefit, the Commission should encourage the natural, incremental development of competition, which will eventually benefit all consumers. *See* Tr. at 2246-47 (AT&T Denney Cross).

VI. IMPLEMENTATION ISSUES

A. Implementation

38. No party has raised any issues with respect to implementation of geographic deaveraging on a wire center basis. To the contrary, GTE's "compromise" proposal is based on zones comprised of wire centers grouped by cost. *See* Tr. at 2551 (GTE Tucek cross). Accordingly, the Joint CLECs' modified proposal does not raise any implementation issues.

B. Three, Four, or More Zones

39. The Joint CLECs propose the use of at least five zones based on wire center groupings, rather than the FCC minimum three zones. Again, no party raised any implementation issues with respect to this type of geographic deaveraging. GTE's "compromise" proposal employs three zones, rather than the four zones in AT&T's illustrative table on which GTE's proposal is based, but GTE modified AT&T's analysis because GTE lacks confidence in the accuracy of its data, not because four zones create implementation issues. *See* Tr. at 2585 (GTE Tucek cross). Five wire center-based zones thus raise no implementation issues.

C. Cost of Implementation – Recovery of the Cost of Implementation of a Distance Sensitive Rate Structure

40. The Joint CLECs recommend that the Commission require the parties to address adoption and implementation of distance-sensitive geographically deaveraged loop rates in Docket No. UT-003013. Any issues with respect to cost recovery of such implementation should be included in that docket.

VII. CONCLUSION/RECOMMENDATIONS

41. Both policy and cost considerations support Commission adoption of the broadest possible number of geographic zones in which to determine deaveraged loop rates, as well as the desirability and need for distance-sensitive loop pricing. Based on the record with all of its limitations, the Joint CLECs propose the following:

A. The Commission should establish deaveraged loop rates for at least five zones each for U S WEST and GTE, comprised of wire center groupings based on the cost data in Modified Exhibit 2 (AT&T Denney) and described in Appendix A; and

B. The Commission adopt the concept of distance-sensitive geographic deaveraged unbundled loop rates and direct the parties to address cost and implementation issues associated with development of distance-sensitive loop prices in the new cost proceeding, Docket No. UT-003013, with the intent to establish such prices as the result of that docket.

RESPECTFULLY SUBMITTED this 28th day of March, 2000.

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By ____________________________________
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