

BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Pricing Proceeding)	
for Interconnection, Unbundled Elements)	DOCKET NO. UT-960369
Transport and Termination, and Resale)	
_____)	
)	
In the Matter of the Pricing Proceeding)	
for Interconnection, Unbundled Elements)	DOCKET NO. UT-960370
Transport and Termination, and Resale)	
for U S WEST COMMUNICATIONS, INC.)	
_____)	
)	
In the Matter of the Pricing Proceeding)	DOCKET NO. UT-960371
for Interconnection, Unbundled Elements)	
Transport and Termination, and Resale)	JOINT CLEC OPPOSITION TO ILEC
for GTE NORTHWEST INCORPORATED)	MOTION TO STRIKE CLEC BRIEFS
_____)	OR REOPEN PROCEEDINGS

NEXTLINK Washington, Inc., Electric Lightwave, Inc., Advanced TelCom Group, Inc., GST Telecom Washington, Inc., and New Edge Networks, Inc. (collectively “Joint CLECs”) provide the following opposition to the Joint Motion of GTE Northwest Incorporated (“GTE”) and U S WEST Communications, Inc. (“U S WEST”) to strike the post-hearing briefs of all other parties (other than Commission staff) or alternatively to reopen the record and allow discovery and a response (“Joint Motion”). The Joint CLECs and the other targeted parties based their modified geographic deaveraging proposal solely on evidence admitted into the record or required to be submitted by the Commission to correct record evidence. The representations made by GTE and U S WEST (collectively “ILECs”) to the contrary are inaccurate, and the ILECs have identified no basis on which the Commission should strike or reopen the record to explore modifications to parties’ proposals that the Commission itself invited. Accordingly, the Commission should deny the Joint Motion.

DISCUSSION

1. The Joint CLECs joined several other parties in recommending that the Commission establish, at least on an interim basis, geographically deaveraged unbundled loop prices for five zones each for U S WEST and GTE based on wire center costs. These parties used Exhibit 2C, the list of wire centers Douglas Denney compiled in ascending order of cost, revised as the Commission directed during the hearing. *See* Tr. at 2255 (AT&T Denney cross). These wire centers were grouped into five zones, rather than the three zones AT&T and MCI originally proposed, as a compromise between these parties' positions at the hearings. As the Joint CLECs explained in their post-hearing brief, additional zones were created in the more densely populated wire centers where cost estimates are more accurate and where competitors are more likely to offer service, and the wire centers were grouped using cost break points between wire centers. Joint CLEC Brief at ¶ 18; *see* Tr. at 2274-75 (AT&T Denney cross). Indeed, the modified proposal creates one zone that the Chairwoman suggested and that Mr. Denney testified would "set U S West and GTE on fire." Tr. at 2275. Mr. Denney apparently was correct.

2. GTE and U S WEST first contend that the Joint CLECs exceeded the scope of the brief outline the Commission established. GTE and U S WEST, however, selectively quote the outline section they reference as "'Corrections [to Party's Proposal] Necessary As A Result Of The Hearing.'" Joint Motion ¶ 2 (quoting Confirmation of Briefing Schedule). Quoted in full, however, Section III(b) of the outline required parties to address "Corrections necessary as a result of the hearing – *changes from hearing position.*" Confirmation of Briefing Schedule at 2 (emphasis added). The Commission thus unequivocally contemplated that parties may change their *positions* – not simply correct errors – in response to the evidence presented at the hearings,

which is precisely what the Joint CLECs and other parties have done.¹

3. GTE and U S WEST nevertheless contend that they are prejudiced by their inability to conduct discovery or cross examine witnesses on the five zone proposal. The ILECs will suffer no such prejudice. The five zones were developed consistent with the method Douglas Denney used to develop AT&T's original three zone proposal, which GTE and U S WEST extensively examined through discovery and cross of Mr. Denney. Mr. Denney also discussed creating more than three zones using his methodology in response to questions from the Chairwoman – as she questioned many witnesses on that subject – and GTE and U S WEST had every opportunity to conduct additional cross examination following that questioning. Tr. at 2274-75 (AT&T Denney cross); *see, e.g.*, Tr. at 2351-54 (USWC Thompson cross); Tr. at 2584-85 (GTE Tucek cross). Similarly, GTE and U S WEST never raised issues with respect to administrative costs or implementation of wire center-based deaveraging, at least with respect to a number of zones significantly less than one per wire center. GTE's sole stated concern with AT&T's illustrative breakdown of GTE wire centers into four zones was with the accuracy of GTE's wire center cost estimates, Tr. at 2585 (GTE Tucek cross), while U S WEST's witness testified that U S WEST's systems currently provide wire center information and would not need to be changed to accommodate loop prices by wire center. Tr. at 2436-39 (USWC Brohl cross).

4. GTE and U S WEST also had every opportunity to present the evidence they claim they need to provide. GTE contends it would have provided testimony on the use of the HM 3.1 model to estimate GTE wire center costs, but AT&T's initial three zone proposal also

¹ Even without such express acknowledgement, nothing in the Commission's rules, state statutes, or administrative procedures generally preclude a party from revising its position or proposal for agency action after hearings have been conducted to conform to the evidence admitted into the record.

relied on the use of the HM 3.1 model to estimate GTE wire center costs. GTE thus already provided, or had the opportunity to provide, evidence criticizing the use of the HM 3.1 model. Similarly, U S WEST asserts the need to introduce evidence on the very high proportion of business lines in zones 1 and 2 of the five zone proposal, but zone 1 in AT&T's original 3 zone proposal included the same high density wire centers. Again, U S WEST had every opportunity to produce evidence on the composition of lines by wire center.

5. GTE and U S WEST also attempt to attach unwarranted significance to the single use of the word "homogeneous" in the joint brief filed by AT&T and MCI, arguing that it represents a fundamental shift in the methodology used to assign wire centers to zones. Joint Motion at ¶ 5. The term "homogeneous" is defined as "of the same or a similar kind or nature." Webster's New Collegiate Dictionary (1981). The five zones were structured by grouping wire centers by cost into zones in which the costs were as similar as possible – just as Mr. Denney originally grouped the wire centers into three zones. *See, e.g.*, Tr. at 2231 (AT&T Denney cross). AT&T and MCI thus used the word "homogeneous" to refer to this grouping of wire centers having similar costs, not as any indication that the five zone proposal uses a new method for developing geographic zones. Nothing in the use of the term "homogeneous" in the AT&T/MCI brief gives rise to any need for additional discovery or testimony.

6. The ILECs further complain that they were denied the opportunity to evaluate the validity of Exhibit 2C as Mr. Denney revised it pursuant to the Commission's direction during the hearing. The cost estimates for GTE in the revised Exhibit 2C, however, are unchanged from the original Exhibit 2C, while the U S WEST estimates in revised Exhibit were changed only to use updated line count information. Contrary to the ILECs' representations, the revised Exhibit 2C attached to AT&T's brief is a response to Bench Request No. 6. *See* Tr. at 2255. The ILECs

certainly may question the accuracy of this response as they could any other bench request response, and to the extent they demonstrate that any corrections are necessary, the cost estimate for each of the five zones would be recalculated to reflect those corrections. Indeed, the Joint CLECs could have used Exhibit 2C as introduced at the hearing to make the five zone proposal, but the parties believed that they should use the most current and accurate information available as permitted or requested by the Commission. If the ILECs demonstrate that modifications to the individual cost estimate calculations are necessary to correct revised Exhibit 2C (or recalculation of the five zone cost estimates to use the original Exhibit 2C), any such corrections certainly would not necessitate striking multiple parties' briefs or reopening the record.²

7. Finally, GTE and U S WEST criticize the five zone proposal as the result of allegedly improper collusion in post-hearing briefs when the ILECs had no opportunity to respond. The Joint CLECs' change in position, however, did not occur until after the hearings, when the parties had an opportunity to evaluate the record, and thus could not have been presented any sooner than their brief. The Joint CLECs' coordination with other parties was no more improper than GTE and U S WEST coordination in filing joint motions to strike testimony or briefs, and GTE and U S WEST did not consult with other parties before filing either of their joint motions. The briefing schedule, moreover, was established consistent with the briefing throughout this proceeding – a single set of briefs filed by all parties on the same date – not based on a nonexistent agreement among the parties that they would not modify their position as a

² Any such corrections, moreover, would be insignificant and would not impact the five zone proposal as a whole. The most egregious change that U S WEST identifies is a \$.07 reduction in the cost estimate for its Seattle Main Wire Center, Joint Motion at ¶ 6, but U S WEST's witness testified that it views differences of as much as \$2.00 between cost estimates of entire zones as insignificant. Tr. at 2312 (USWC Thompson cross). U S WEST cannot credibly contend that a \$.07 difference in a single wire center is significant in light of its own evidence to the contrary.

result of the hearings as GTE and U S WEST contend.

8. Judge Wallis indicated informally that a party could file a response to another party's brief within three days if the party had a strong need to respond (characterized as an "outrage" response). The Joint CLECs provided an electronic copy of their brief to both GTE and U S WEST on the day it was filed electronically with the Commission. GTE and U S WEST, however, did not seek to file a responsive brief within three days, and filed their Joint Motion almost 10 days after the briefs were filed. GTE and U S WEST, therefore, have had the opportunity to respond to the five zone proposal through their Joint Motion, long after they should have provided a response in the form of a brief. GTE and U S WEST have not been prejudiced by this procedure.

CONCLUSION

9. The Joint CLECs and parties with similar interests have made a compromise proposal that the Commission establish unbundled loop prices for five wire center groupings each for GTE and U S WEST. The Commission specifically authorized such a change in position as a result of the hearings through the briefing outline it established, and the Joint CLECs have not exceeded that authorization or the record in making their proposal. Accordingly, the Joint Motion should be denied.

RESPECTFULLY SUBMITTED this 10th day of April, 2000.

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