

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Pricing Proceeding for Interconnection, Unbundled Element, 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
)	TWENTY-THIRD SUPPLEMENTAL ORDER
)	ORDER DENYING MOTION TO STRIKE BRIEFS; AUTHORIZING ANSWERING BRIEFS

- 1 Synopsis: The Commission denies a joint motion by GTE Northwest, Inc. (GTE-NW) and U S WEST Communications, Inc. (USWC) to strike the briefs of opposing parties or, in the alternative, to reopen the proceedings, finding that the matter complained of does not constitute evidence. The Commission authorizes GTE-NW and USWC to file answering briefs no later than Monday, April 17, 2000.
- 2 The Commission authorized parties to file simultaneous briefs in the latest phase of this docket. Parties did so. On April 6, 2000 U S WEST and GTE-NW moved to strike opposing parties' briefs or, in the alternative, to reopen the proceeding to allow discovery and a response to the proposal made on brief.
- 3 At the hearing, parties advanced various proposals for deaveraging the costs of the loop. One of the issues was how many groups or "zones" the Commission should use for deaveraging. This is important because the greater the number of zones, the less averaging will occur and the more closely the assigned cost and resulting price for wholesale service will track the actual cost of providing the loop. This means that, all other things being equal, as the number of zones rises, the least expensive lines will cost less, and the most expensive lines will cost more.
- 4 Parties other than Commission Staff and the two moving incumbent local exchange companies (called ILECs) include TRACER, an association of telecommunications customers, and carriers who compete with the incumbents for local exchange service and are called competitive local exchange companies, or CLECs. TRACER joins the CLECs

in the five-zone proposal, though we will refer to the parties collectively as CLECs.

5 The ILECs first contend that the proposal is barred by the Commission's organizational requirements for briefs, which forbade changes except those required by information of record. The CLECs respond that the briefing organization document did not forbid the change of parties' positions, but only contemplated limitations based on the need to change evidentiary representations by information of record. The Commission agrees that the briefing organization document did not forbid parties from modifying their positions after the hearing.

6 The ILECs contend that the five-zone proposal was never made a part of the record, that it surprises the ILECs, and that the simultaneous briefing prevented their opportunity to respond on brief. Moreover, they contend that the proposal constitutes evidence and that the ILECs had no opportunity to conduct discovery or cross examination upon it. Therefore, they ask the Commission to strike the briefs or, in the alternative, reopen the proceeding for additional discovery and response.

7 The CLECs respond that the proposal is not evidence but is a position that the parties chose to agree upon only following the hearing. They note that the possibility of more than three or four zones was discussed on examination of the witnesses through questions from the bench, and that all parties including the ILECs had the opportunity to ask follow-up questions.

8 The Commission agrees that the proposal is not evidence. It is based upon evidence of record and constitutes the CLECs' position in light of the record. The ILECs did have the opportunity, once the topic was raised, to inquire into it. They chose not to do so.

9 The ILECs also contend that the proposal is based on evidence not in the record, a version of Exhibit 2C. The CLECs respond that the document is a response to Bench Request No. 6, made at page 2255 of the transcript, and differs from the Exhibit 2C of record only by updating the U S WEST information by including current line counts. A review of the record discloses that this is true.

10 The Commission therefore denies the motion. As was made clear at the hearing during the examination of witnesses, the number of zones is merely a reflection of a party's position on the extent of the need to deaverage. It is based upon information that is of record. The decision on where to draw boundaries is a statement of position made on factors that were also described of record. We see no benefit that might accrue from allowing discovery and responsive evidence. The hearing provided parties ample opportunity to explore the underlying factors.

11 We do agree with the ILECs that they should have the opportunity to respond to the position first presented in the parties' briefs. The moving parties, GTE-NW and USWC, are authorized to file responding briefs, limited strictly to the CLECs' five-zone

proposal, to be filed with the Commission and served to be received by other parties no later than the close of business on Monday, April 17, 2000.

12 It is so ordered.

Dated and effective at Olympia, Washington this 10th day of April, 2000.

Washington Utilities and Transportation Commission

C. ROBERT WALLIS
Administrative Law Judge