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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

**REPLY BRIEF OF U S WEST
COMMUNICATIONS, INC.**

I. INTRODUCTION

On April 6, 2000, U S WEST and GTE filed a motion to strike the CLEC briefs that were filed in this docket on March 28, 2000. In the alternative, U S WEST and GTE requested that the Commission reopen the record to allow discovery and a response. On April 10, 2000, after responses by the CLECs, the Administrative Law Judge denied the motion to strike, but permitted reply briefs by U S WEST and GTE to be filed on April 17, 2000. U S WEST files this reply in accordance with the Administrative Law Judge's order. However, U S WEST's ability to file a reply, and adequately address and respond to the

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CLECs entirely new proposal, is hampered by the fact that the Commission has not permitted any additional discovery on that proposal.

Contrary to the suggestion in the April 10 order, the CLEC proposal is more than mere argument based on evidence already in the record – it is a substantively new proposal, which parties should have been afforded the right to cross-examine and discover. If, in fact, there is no CLEC witness who would support this proposal, that information should be highly relevant to the Commission’s consideration of its merits. But no one will ever know if there is a witness to support the proposal, because the CLECs concocted the proposal after the evidentiary record was closed, avoiding the question of whether any witness endorses this new proposal as the correct one.

More importantly, if a CLEC witness *did* sponsor this proposal, it represents a substantial departure from the proposals that each of those witnesses previously supported in their sworn testimony. Certainly a reasonable opportunity to be heard on this issue would require that parties be permitted to explore such a change in position with the witness through discovery or cross-examination. Again, such a opportunity is denied under the April 10 order.

The importance of being able to explore the basis for a proposal through discovery and/or cross examination is explicitly acknowledged by the CLECs. AT&T and MCI state that “the creation of zones is inherently a matter of judgment” and that “[t]he analyst’s judgment is inherent in absolutely any method of delineating zones.” (Brief at 4). Yet, no analyst who supports the new proposal has been identified to allow U S WEST to explore that analyst’s judgment – a vitally important aspect of any proposal. The brief of Nextlink, ELI, ATG, GST and New Edge identifies the same issue, stating that geographic deaveraging is as

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much or more of an art than a science. (Brief at paragraph 5). TRACER and Rhythms echo the position that judgment is inherent in the proper determination of zones. (Brief at paragraph 10). Yet these parties do not present a witness to verify that either the art or the science have been performed correctly in this new proposal.

Mere opportunity to file a reply is not adequate to cure the last minute change in position. U S WEST has not had an opportunity to conduct discovery of the supporters of the proposal, and has not had an opportunity to cross-examine a supporting witness. The CLECs' proposal, submitted as it was on brief, denies U S WEST any meaningful opportunity to respond to it, even with the ability to file this reply brief.

II. REPLY TO CLEC PROPOSAL

A. The CLEC Proposal is Self-Serving, Designed to Drive the Lowest Rate in Each Zone.

U S WEST agrees with AT&T and MCI Worldcom (Brief at 4) that the purpose of deaveraging UNEs is to facilitate the development of competition. U S WEST would stress, however, that competition should not be the only factor the Commission considers in determining a loop deaveraging scheme. The Commission is also charged with ensuring affordable telephone service through fair, just and nondiscriminatory rates. Traditionally, the Commission has achieved this goal through the use of highly averaged retail and wholesale rates. Because wholesale loop deaveraging will drive similar retail exchange service deaveraging, the Commission needs to be mindful of the impact of any wholesale deaveraging scheme on retail exchange service rates.

A close look at the CLECs most recent deaveraging proposal, presented only in their

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post-hearing briefs, reveals a plan that is not only self-serving, but is also, not surprisingly, completely devoid of any consideration the scheme may have on retail rates. One of the key factors the CLECs cite in advancing their 5 zone loop deaveraging proposal is that each zone be as homogeneous as possible. (Brief at 5). A close examination of the proposal, however, reveals that very little is homogeneous when compared to the local calling areas which currently define retail exchange services.

For example, the Seattle local calling area contains 4 of the CLECs 5 zones (zones 1, 2, 3, and 5), with unbundled loop prices ranging from \$8.35 to \$26.64. Likewise, the Spokane local calling area contains 4 of the CLECs 5 zones (zones 2-5), with unbundled loop prices ranging from \$13.66 to \$26.64. U S WEST submits that there is nothing “homogeneous” about the CLEC proposal and if it is ultimately adopted, and consequently reflected in retail rates, consumers will be confused by the apparent lack of homogeneity.

Probably the most egregious example of the self-serving nature of the CLECs’ proposal is the fact that its zone 1 only contains two wire centers. A two wire center zone is simply not geographic deaveraging. Further, it fails to meet the threshold for economic pricing credibility. It becomes very obvious that the main goal of the CLEC proposal is to achieve the lowest possible unbundled loop rate in each zone, regardless of how it may ultimately impact other services.¹

¹ As U S WEST suggested in its April 6 motion, if U S WEST were permitted an adequate opportunity to address the CLEC proposal, U S WEST would introduce evidence showing that although the CLECs represent zone 1 as having only 6% of U S WEST’s lines, that figure fails to communicate the true magnitude of the arbitrage potential that this zone creates. U S WEST’s business rates are just under \$27. The CLEC proposed loop price in zone 1 is \$8.35. U S WEST would have introduced evidence in rebuttal to the CLEC proposal showing that zone 1 alone contains over 13% of all of U S WEST’s business lines, and that zones 1 and 2 together contain 39% of those lines. Clearly, these are the customers the CLECs will compete for. This data belies the CLEC claim that U S WEST’s arbitrage concerns are unfounded.

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B. The Need For Five Zones is Not Supported By the Record.

The proposal to implement five zones is not supported by any testimony or evidence on this record and should be rejected on that basis alone. Inexplicably, the CLECs now propose five distinct cost zones², even though AT&T and MCI proposed three zones for U S WEST in their testimony. Indeed, Mr. Denney stated explicitly, from the first round of testimony to the last, that the Commission should establish three zones. (Exhibits 1-T at 2-4, and 3-T at 9-11). Mr. Montgomery’s clients would have been content with two cost zones, with distance based pricing within the zones.

Why five zones is now appropriate is a question which the CLECs never answer. AT&T and MCI claim, in spite of their earlier testimony in support of three zones, that five is now the correct number (Brief at 4-5) but never state why this is so. This is puzzling, since AT&T and MCI also claim that the number of zones proposed by Staff is too many. (Brief at 11). The transcript reference provided by AT&T in support of the five zones (Tr. 2263) is not particularly helpful as an explanation. It is merely Mr. Denney stating his belief that more zones leads to greater precision in estimating costs. Yet, it must be presumed that Mr. Denney had this knowledge when he recommended three zones, and he nevertheless recommended only three zones. It is absurd to claim that that testimony can now be used to support a greater number of zones.

² As noted above, U S WEST does not believe that a proposal which results in 4 of the 5 pricing zones being present in the Spokane local calling area can rationally be called “geographic” deaveraging. It is pure cost deaveraging, without real regard to the geographic area served. Indeed, the CLEC proposal shows that two wire centers can be contiguous and serve virtually the same geographic area, but have widely different costs. U S WEST continues to believe that geographic deaveraging requires maintaining the integrity of a specific geographic area, not carving them up like so many pieces of a jigsaw puzzle.

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The other CLECs (Nextlink, et al.) claim that five zones represents a “compromise” between the AT&T proposal of three zones and the other CLECs’ proposal of 12. This misrepresents the earlier proposals. The CLECs proposed 12 zones only by including distance sensitive bands within a geographic zone. Without a distance element, the joint CLEC proposal consisted of two zones and the AT&T proposal was for three. Five is hardly a compromise between two and three.

III. CONCLUSION

The CLEC five-zone proposal should be rejected, both because of the manner it which it was presented and because it is substantively flawed. The Commission should dismiss this attempt by the CLECs to put forward a self-serving proposal that would not survive rebuttal, or the scrutiny of discovery and cross-examination.

Respectfully submitted this 17th day of April, 2000.

U S WEST Communications, Inc.

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