

SERVICE DATE

DEC 21 1994

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.
U S WEST COMMUNICATIONS, INC.,

Respondent.
.....

DOCKET NO. UT-930957

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.
U S WEST COMMUNICATIONS, INC.,

Respondent.
.....

DOCKET NO. UT-931055

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.
U S WEST COMMUNICATIONS, INC.,

Respondent.
.....

DOCKET NO. UT-931058

FIFTH SUPPLEMENTAL ORDER
ON RECONSIDERATION AND
CLARIFICATION

SUMMARY

PROCEEDINGS: On August 11, 1993, in Docket No. UT-930957, U S WEST Communications, Inc. (U S WEST or company) filed tariff revisions designed to reduce rates for Rate Groups 2 and 3 Stand-By Line and Complex Flat exchange access lines, and revise the free call allowance provided for Directory Assistance and increase the rate for billable Directory Assistance calls.

On August 31, 1993, in Docket No. UT-931055, U S WEST filed Advice No. 2436T, a refiling of Advice No. 2412T which was withdrawn on August 13, 1993. These tariff revisions are designed to restructure the services associated with Terminal Loops,

Remote Central Office Service, Tie Lines, Exchange Service, and Interoffice Mileage, into new, comparable service offerings in the Private Line Transport Services Tariff, and revise the Simple/Complex business service flat rate structure.¹

On August 31, 1993, in Docket No. UT-931058, U S WEST filed Advice No. 2435T, a refiling of Advice No. 2411T which was withdrawn August 13, 1993. These tariff revisions are designed to restructure the Private Line Transport Services Tariff.

On September 15, 1994, the Commission entered its final order in these consolidated proceedings.² U S WEST petitioned the Commission for partial reconsideration of the Fourth Supplemental Order on September 22, 1994, and the Commission Staff, on September 27, 1994, petitioned for clarification of the Order. The following parties filed answers to the petitions for reconsideration and clarification: TRACER/TCA and City of Bellevue on October 13, 1994; Metronet Services Corporation, Public Counsel, Commission Staff, Department of Information Services, and U S WEST on October 14, 1994.

COMMISSION: The Commission offers the company an additional ten days from the date of the instant order to accept the provisions of the Fourth Supplemental Order. If U S WEST does not accept the Order, the Commission will honor the company's right, under paragraph 10 of the settlement agreement,³ not to accept a revenue decrease in excess of \$950,000, and the Commission will fulfill its obligation under paragraph 10 and reject the company's tariff filings in their entirety.

¹ Terminal loop service, or "term loops", is a generic description of several service offerings contained within U S WEST's General Exchange Tariff, WN U-24.

² Fourth Supplemental Order Rejecting Tariff Filings And Authorizing Refiling, Docket Nos. UT-930957,-931055,-931058, September 15, 1994 ("Fourth Supplemental Order")

³ U S WEST is currently regulated under an alternative form of regulation which was approved pursuant to a settlement agreement in the Fourth Supplemental Order Accepting Settlement With Modifications, Resolving Complaint And Authorizing An Alternative Form of Regulation, Docket Nos. U-89-2698-F and U-89-3245-P, January 16, 1990 ("AFOR Order"). Paragraph 10 of that agreement permits the company to make revenue neutral filings which will not increase or decrease the company's revenue requirement by more than \$950,000.

MEMORANDUM

I. Fourth Supplemental Order

In its Fourth Supplemental Order, the Commission resolved several issues. First, the Commission found that term loops services are functionally and technically equivalent to private line services and should be priced the same, but held that the company had not established its proposed tariff revisions to be fair, just, reasonable, and sufficient. The Commission rejected the cost studies and tariff revisions submitted by the company in support of its term loops proposals and ordered the company to refile revised tariffs with new cost studies by May 1, 1995, to be effective July 1, 1995.

Second, the Commission approved a \$0.10 per billable call rate increase for directory assistance service, but rejected the company's proposal to eliminate the free call allowance for businesses and to reduce to one the residential free call allowance. The new charge for directory assistance was set at \$.35 per call after two free calls per month for both residence and business customers.

Third, the Commission found the rates for the company's proposed simple/complex line rate restructure and the company's proposed complex line rate reductions to be fair, just, and reasonable. The company was ordered to refile tariffs to effectuate the provisions of the Fourth Supplemental Order if it chose to accept the results of the Commission's decisions on the three tariff filings. The Order converted the company's revenue neutral filing into a net revenue reduction to the company.

II. U S WEST's Petition for Reconsideration

The company petitions for reconsideration of the Fourth Supplemental Order, raising three issues:

(1) that it was not given reasonable notice that its overall revenue requirement would be subject to review and possible reduction;

(2) that it has a fundamental right to present evidence that its earnings are not excessive where the company's overall revenue requirement is at issue; and

(3) that its currently effective alternative form of regulation (AFOR)⁴ prohibits conversion of revenue neutral filings into revenue decreases.

The Commission first addresses the effect of paragraph 10 of the settlement agreement on the decisions it reached in the Fourth Supplemental Order.

Paragraph 10 of the settlement agreement provides in pertinent part:

During the settlement period, the Company will not file tariff changes to produce an increase in existing tariffed rates except as specifically provided for in this Agreement. * * * Traditional miscellaneous filings with annual revenue effects of less than \$950,000 each which is less than a .08% rate of return impact, that are made for such reasons as to update a tariff to cover current cost, or correct a tariff anomaly, are also permitted subject to the limitations in Paragraph 9. Each of these permitted tariff filings is subject to the normal tariff suspension and hearing provisions contained in Title 80 RCW. [Emphasis supplied.]

The Commission discussed paragraph 10 of the settlement agreement at page 29 of its AFOR Order:

Revenue neutral filings, in general, involve filings in which net revenues stay the same. * * * The Commission perceives no need to modify the terms of the agreement regarding such filings. The rate increase would be subject to review and suspension; again, the protections discussed above would apply.⁵

⁴ Paragraph 10 of the company's current alternative form of regulation prescribes the types of filings for revenue increases and decreases which the company may combine to achieve a revenue neutral result. In such filings, the Commission may not order an increase or decrease in the company's overall revenue requirement which exceeds an aggregate annual total of \$950,000.

⁵ "The Commission is not convinced that any action needs to be taken on this issue. Adequate protections already exist. The rate discrimination statute will continue to apply and any such filings will be subject to the Commission's review and suspension process." Id., p. 29

The company says that its proposals in this case were appropriate under paragraph 10 because they addressed "severe underpricing" of term loops and "traditional and historic underpricing of DA [directory assistance] based upon general public interest considerations." It also says that "whether or not there is competition, the Company and the Commission must give consideration to reducing and restructuring the current business local exchange access rates."

The company points out however that it has not proposed to decrease its rates unilaterally for business basic exchange services. The company agrees that it was within the Commission's prerogative to order the company to reprice all private line services, including term loops, but not to require the company to reduce business local exchange access rates as proposed in the Fourth Supplemental Order, despite the company's acknowledgement that some relief for these customers is appropriate now.

TRACER/TCA argues that U S WEST has misread the Commission order in that it does not purport to require the company to refile the full business exchange service rate reductions and restructure originally proposed by the company. They point to language in the order encouraging the company to make these reductions unilaterally. TRACER/TCA interprets the Commission's assertion that it is not restricted by the AFOR to order only revenue neutral outcomes to refer only to the order's requirement that the refiled rates based upon the new cost study of the private line transport tariff services be revenue neutral.

City of Bellevue argues the AFOR cannot usurp the Commission's statutory obligation to set rates that are fair, just, and reasonable, and that when U S WEST fails to carry its statutory burden of proof, the AFOR requires a result that is not revenue neutral to the company. Also, because paragraph 10 of the AFOR authorizes revenue decrease filings by the company without offsetting revenue increases, the Commission is therefore not bound to order only revenue neutral results. They point to paragraph 15 of the AFOR which authorizes U S WEST to file a "make-whole" rate case if it falls below its prescribed rate of return, which Staff and Public Counsel agree to "expedite."

Public Counsel disagrees "with many of the assertions, counter-charges and accusations" in U S WEST's petition, but does "agree with the point that the AFOR cannot reasonably be interpreted to allow a Company-initiated revenue neutral filing (filed pursuant to paragraph 10 of the AFOR) to be used to impose either net revenue reductions or net revenue increases in excess of \$950,000 for U S WEST. If the commission is dissatisfied with the revenue offsets presented, it can and should reject the filings."

Commission Staff reiterates its position throughout these proceedings that U S WEST's "package" of tariff filings should be rejected in their entirety. The company's filing was asserted to be a revenue neutral package under paragraph 10 of the AFOR. Staff believes the rate increases proposed by U S WEST "are unfair and unreasonable both in terms of amount and in kind." Staff argues customers who would receive the rate increases are not the same customers who would see rate decreases. Thus, complex line and business access customers would see rate decreases and public entities and residential and other customers would see rate increases.

The Department of Information Services states it is not in a position to respond to the U S WEST assertion that the AFOR prohibits the type of action taken by the Commission on these tariff filings. Metronet Services Corporation did not address this issue.

The Commission was obligated to suspend these tariff filings and conduct hearings to determine whether or not the tariffs' rates and terms and conditions, as proposed by the company, were appropriate. U S WEST failed to provide adequate cost support for its proposed rates and failed to carry its statutory burden of proof that the rates were fair, just, reasonable or sufficient.

The Commission in its Fourth Supplemental Order approved the elimination of term loops services and repricing of the technically and functionally equivalent service elements within the private line services tariff, and approved repricing and new terms and conditions of directory assistance service. The Commission accepted the company's proposed restructuring of the simple/complex line pricing and the repricing of the complex line rate.

While the rates and terms and conditions authorized in the Fourth Supplemental Order did not mirror precisely the company's filings, the Commission did find sufficient evidence in the record to approve substantially all the company's proposals. Having approved much of the company's revenue neutral package of tariff filings, the Commission offered the company the opportunity to accept the results of the Commission's investigation and decision by ordering that the tariffs be refiled as described in detail in the Fourth Supplemental Order.

The Commission did not intend the Fourth Supplemental Order to require the company to accept the results of the Commission's decisions on the proposed tariff filings. The Commission was cognizant of its commitment to the company under paragraph 10 of the AFOR and did not misapprehend its obligations or responsibilities -- indeed, we explicitly recognized the nature of these filings on page 24 of the Fourth Supplemental Order.

Apparently, that same paragraph also contains a sentence which appears to have been misinterpreted by the company.⁶

The Commission acknowledges the company's argument on reconsideration that the AFOR does not permit the Commission to convert a permitted revenue neutral filing into a revenue decrease. However, the company also noted in its petition that "[t]he AFOR does not compel the Commission to accept the Company's tariff proposals but it is required to consider them fairly and objectively based on the law and a factual record." We agree. This is precisely what paragraph 10 contemplated, and this is precisely the process in which the company, the parties, and the Commission engaged over the 12 months of this proceeding.

The Commission's decision precisely reflected the record evidence which the company proffered in support of its filings. Now, after nearly 12 months of costly litigation and successful pursuit of these tariff proposals, we fail to comprehend how the company could so casually reject our version of the result it had so vigorously pursued. Nevertheless, the company states in its petition that it "does not wish to avail itself of the 'authority' to refile the tariffs as described in the Order, and is satisfied with the rejection of the tariffs it filed."

The Commission always intended to honor paragraph 10 of the settlement agreement under which this proceeding was initiated. However, we also realize that the company is anxious to restructure its business services' pricing in anticipation of incipient local exchange competition. The company publicly espouses the wisdom of such a course of action, and is openly pursuing this strategy from several perspectives and in a variety of other forums.

Therefore, we will offer the company a final opportunity to avail itself of the restructuring and repricing options we have approved in the Fourth Supplemental Order. The Commission on its own motion will extend by ten days the current stay of the Fourth Supplemental Order to permit the company to re-examine our decisions there, and to determine whether to accept the Order.

If the Commission does not receive in writing, within ten days of the date of the instant order, an affirmative acceptance of the provisions of the Fourth Supplemental Order, the tariff filings which are the subject of that Order will be deemed rejected in their entirety. Because we find paragraph 10 of the settlement agreement to be binding upon both the company and the Commission at all times in this proceeding, we deny the company's petition for reconsideration.

⁶ "The Commission is not restricted by the current AFOR to order only revenue neutral outcomes from the company's tariff revision filing." Fourth Supplemental Order, p. 25

III. Commission Staff's Petition for Clarification

The Commission Staff's petition for clarification of the Fourth Supplemental Order raised three issues:

1. Line testing cost

Staff urges that the Commission's ordering of a new cost study for channel performance ("CP") requires a demonstration that the service is being provisioned in a least cost manner and separately identifies the cost of line testing. Since all customers require line testing, but not all require CP, Staff asks whether line testing should be part of the loop cost study rather than the CP study. Staff claims this would be consistent with 1FR and 1FB pricing where cost of testing is included in the line cost.

2. Non-recurring term loops costs

Staff notes the order mentions their assertion that the company's estimates of non-recurring term loops costs are subjective and unreasonable, but nowhere requires the company to re-do this cost study. Staff asks whether the company should be so ordered.

3. Separate cost studies

Finally, Staff asks whether the Commission's ordering new cost studies for network access channel, CP, and transport mileage are to be re-done for term loops services as a group or separately for off-premises extensions, tie lines, and remote central office services.

U S WEST opposes Commission Staff's request to have line testing costs studied as part of the "loop cost study," rather than as a part of the channel performance cost study. The company argues that its cost model determines CP and testing equipment cost elements for dedicated circuits. Requiring line testing costs to be included in the network access channel ("NAC") cost study would require "model modifications or development that would be costly and would provide no benefit."

U S WEST objects to re-filing a non-recurring cost study, which it notes does not include fill factor, rate of return, or depreciation rates. The company claims its current cost study was completed in May 1993, is reasonably current, and not affected by the Commission's decisions in the Fourth Supplemental Order.

Finally, the company argues against Staff's request for cost studies for term loops services. The company maintains that the Commission ordered the merger of term loops services with private line transport services and required new cost studies for the NAC, CP, and Transport Mileage elements of the private line service.

The Commission will not require U S WEST to include line testing costs as part of a loop cost study. However, consistent with the Fourth Supplemental Order, the company will be required to identify separately the costs of testing and to demonstrate that line testing is being provided in a least cost manner.

Additionally, the Commission will not require the company to re-do the non-recurring term loops cost study. This result is based on two factors. First, the Commission has determined that term loops customers should migrate to the private line tariff. Therefore, there is no need for a specific non-recurring term loops cost study. Second, the major problems associated with the private line cost studies do not pertain to the non-recurring cost studies.

Finally, because the Commission has determined that the term loops services should be eliminated and that customers should migrate to the private line tariff, separate cost studies for terminal loops services will not be required. Therefore, the Commission Staff's petition will be denied.

IV. Commission Conclusion

The Commission here expresses its commitment to the principles announced in the Fourth Supplemental Order. We do not wish to see lost either the policy analyses we made in this matter, or our decisions on the proposed tariffs which we were required by paragraph 10 and other law to order.

We continue to believe that the company should eliminate the term loops services; we are confident in our appraisal that these services are functionally and technically equivalent to service currently being provided under the private line transport services tariff. However, we also expect that whenever this transition is accomplished, new cost studies to support new rates for the network access channel, channel performance, and transport mileage elements of the private line tariff, which would be utilized by current term loops customers, must be part and parcel of that transition. And, we renew our charge to the company to use objective fill factor, Commission authorized rate of return, and Commission prescribed depreciation rates for these and all other cost studies, where relevant.

The Commission also supports a cost-based directory assistance rate. However, given the staleness of the company's cost study supporting its proposed rate increase in this proceeding, the Commission, consistent with the Fourth Supplemental Order, will require a new cost study in any future resubmission of changes in the directory assistance rate. Lastly, the company's simple/complex line rates are in dire need of restructuring. And, it is time for the company to address the pricing of its complex business line rates. The rate levels proposed in this proceeding were a good first step in both instances.

The Commission and the company are mutually bound by the terms of the settlement agreement approved in the AFOR Order. Pursuant to paragraph 10 of that agreement, the Commission cannot impose on U S WEST a non-revenue neutral outcome, in excess of \$950,000, in a revenue neutral filing by the company. In this proceeding, the company has been authorized substantial repricing and restructuring relief for several services. We encourage the company to accept these significant steps toward rationalizing its services and their corresponding rates.

ORDER

THE COMMISSION ORDERS:

- 1. The Commission's stay of the effectiveness of its Fourth Supplemental Order in these consolidated proceedings is extended for ten days beyond the effective date of the instant Order.
- 2. U S WEST Communications, Inc., may elect to accept all provisions of the Fourth Supplemental Order by notifying the Commission in writing within ten days of the effective date of the instant Order.
- 3. The tariff revisions filed in Docket Nos. UT-930957, UT-931055, and UT-931058 are rejected in their entirety if U S WEST has not notified the Commission within ten days of its agreement to all provisions of the Fourth Supplemental Order.
- 4. The Commission retains jurisdiction over the parties and subject matter to effectuate the provisions of this Order.

DATED at Olympia, Washington and effective this 21st day of December 1994.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

Sharon L. Nelson
 SHARON L. NELSON, Chairman
Richard Hemstad
 RICHARD HEMSTAD, Commissioner