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SERVICE DATE

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BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION, Complainant, v. U S WEST COMMUNICATIONS, INC., Respondent.	DOCKET NO. UT-911488
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION, Complainant, v. U S WEST COMMUNICATIONS, INC., Respondent.	DOCKET NO. UT-911490
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION, Complainant, v. U S WEST COMMUNICATIONS, INC., Respondent.	DOCKET NO. UT-920252 FOURTH SUPPLEMENTAL ORDER DENYING COMPLAINT; ACCEPTING TARIFFS CONDITIONALLY; REQUIRING TARIFF/PRICE LIST REFILING

PROCEEDINGS: U S WEST Communications, Inc., ("U S WEST") filed tariff revisions for its private line and business complex line services. It also filed tariff and price list revisions affecting its Centrex service, calling the revised offering Centrex Plus. The Commission suspended the tariff filings; U S WEST withdrew its price list. The Commission issued a complaint and order instituting an investigation to determine whether certain competitively classified Centrex services should be reclassified as noncompetitive monopoly services. These proceedings were consolidated for hearing. The Commission permitted the tariff revisions for the private line and business complex lines to become effective on an interim basis.

HEARINGS: The Commission held hearings before Chairman Sharon L. Nelson, Commissioner Richard D. Casad, Commissioner A. J. Pardini[1] and Administrative Law Judge Heather L. Ballash of the Office of Administrative Hearings.

PARTIES: Edward T. Shaw and Mark Roellig, attorneys, Seattle, represented U S WEST Communications, Inc., Sally Brown, assistant attorney general, Olympia, represented the Commission Staff. William Garling, assistant attorney general, public counsel section, Seattle, represented the public. Intervenors were represented as follows: Telecommunications Ratepayers Association for Cost-based and Equitable Rates ("TRACER"), by Arthur Butler, attorney, Seattle; Tele-Communications Association ("TCA"), by Stephen Kennedy, attorney, Seattle; Enhanced Telemanagement, Inc., ("ETI"), by Gregory Ludvigsen, attorney, Minneapolis; Washington Independent Telephone Association ("WITA"), by Richard Finnigan, attorney, Tacoma; MetroNet Services Corporation ("MetroNet"), by Brooks Harlow, attorney, Seattle; MCI Communications, Inc., ("MCI"), by Sue Weiske, attorney, Denver; Digital Direct of Seattle ("DDS"), by Craig Gannett and Gregory Kopta, attorneys, Seattle; Washington Department of Information Services ("DIS"), by Geoffrey Jones, assistant attorney general, Olympia.

SUMMARY: The Commission denies the complaint for reclassification of Centrex features as noncompetitive monopoly services. It allows the proposed private line and complex business line tariffs to remain effective[2] conditionally, pending further filings, and instructs the company to present new revisions to its Centrex tariff and price list.

I. PROCEDURAL HISTORY

On December 27, 1991, U S WEST filed tariff revisions and price list changes that it represented were initiated in part to provide consistent pricing among similar services and to provide equitable pricing in the private line business market.

In Advice Letter 2251T the company filed tariff revisions which it described as a distance sensitive rate stability plan for intrastate private line telephone services (Docket No. UT-911488). The company stated that the total effect

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[1]Commissioner Pardini's term in office expired prior to the Commission's deliberations and decision. Commissioner Richard Hemstad did not participate in the decisions in these proceedings.

[2]The tariffs were allowed to become effective on an interim basis pending resolution of the issues in the consolidated proceedings.

of the tariff revisions was an annual gross revenue decrease of approximately $515,000.[3]

In Advice Letter 2264T, the company filed tariff revisions (Docket No. UT-911490), which it described as a distance sensitive rate stability plan for business complex lines. The company stated that the total effect of the tariff revisions was an annual gross revenue decrease of approximately $786,000. In the same docket it also filed Reference Letter 2255L, a price list revision for its Centrex services,[4] calling the revision a new offering, Centrex Plus.

On January 29, 1992, the Commission suspended the filings in UT-911488 and UT-911490. On February 4, 1992, U S WEST withdrew the price list revisions in UT-911490.[5]

On March 4, 1992, the Commission issued a complaint and order instituting investigation (Docket No. UT-920252) to determine whether services classified as competitive in Cause No. U-86-86 should be reclassified as noncompetitive pursuant to RCW 80.36.320, et seq.

Docket Nos. UT-911488, UT-911490 and UT-920252 were consolidated by Commission Order on March 13, 1992. On April 17, 1992, the Commission entered its Third Supplemental Order permitting the company to implement its proposed tariffs on an interim basis, pending the Commission's order.

The Commission held hearings on March 27, April 6, May 12-14, September 17, 28-30, 1992, and February 8-10, 1993. The parties filed briefs on March 8, 1993. U S WEST filed final corrections to the estimated revenue effects it had previously indicated on June 25, 1993.

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[3]At the conclusion of the hearing U S WEST modified its projections, after considerable discussion among the parties and delay of the proceeding, to a revenue decrease of $988,470. Although all parties did not concede that the estimate is accurate, and U S WEST identified factors leading to a lack of precision, no party asked that the proceeding be further delayed for additional calculations.

[4]In Cause No. U-86-86, pursuant to RCW 80.36.310, the Commission granted a petition by U S WEST's predecessor, Pacific Northwest Bell Telephone Company, to classify as competitive the intercom dialing and optional features package elements of its "Centrex" central office services offering.

[5]The proposal remains significant to the issues in the consolidated proceedings, and will be discussed in this order.

II. BACKGROUND

Advances in technology in recent years and the advent of competition have caused radical changes in the way many telephone services are provided and in the identity of the providers. This is particularly true in organizations whose functioning requires extensive communication both among members of the organization and between the organization and its constituencies among the public.

Many of the terms used today have their origins in the history of telecommunications. An "exchange" has its name because it was the territory served by a switch where connections could be exchanged. Many large organizations had communication needs requiring a "private branch exchange" or, in telephone nomenclature, a "PBX", a smaller version of the switch, operated by an employee of the user. It allowed the customer to use a relatively large number of inside circuits, served by fewer "trunks", or connections to the outside telephone network, because only a few of the telephones might be used at any given moment for network access.

The functions continue. Modern exchanges may be served by large computers that accomplish switching digitally and perform a substantial number of additional tasks, including the collection of billing information, and offer a host of features. Modern PBXs may be small computers that also offer a wide variety of features in addition to the switching function. They can select least-cost long distance routing to minimize toll charges, provide detailed recording of message activity at each station and automatic or uniform call distribution among stations, provide high-speed data switching in a Local Area Network ("LAN") setting, as well as supply more basic station features such as call waiting, call forward, call blocking, speed calling, distinctive ringing and station hunting. The telephone company no longer owns all customer premises equipment, but a number of suppliers including U S WEST sell or lease PBX equipment. Rather than ordering a network line for each station, the customer may choose to pay for a PBX or similar device and to balance that equipment expense against savings from the need for fewer trunks.

Customers, however, do have the option to purchase equivalent services from the telephone company. Many telephone companies can configure their central office computer to offer many PBX-type features, including intercom calling among the organization's telephones. Known generically as Centrex, U S WEST has offered the service in various packages and under various names, including Centrex, Centron, Centraflex, and now, Centrex Plus. The versions appear similar in concept but different in rate level and combination of features.

Although PBX and Centrex appear functionally equivalent to the user, the engineering is vastly different. In Centrex, each telephone instrument requires a pair of lines, or loop, all the way to the central office for internal communication with another instrument at the customer's facility. In PBX systems, the loop need only reach from the instrument to the PBX for internal communications. For communications on the network outside the customer's facilities, the PBX loop to the instrument can be connected to an outside trunk or loop to the central office.

In a Centrex system, the central office switch allows the station line to function either as an intercom line or as a trunk. The only difference between the intercom function and the network function is which lines are connected by the switch. The telephone company can restrict the number of centrex station lines that at any given time may function as trunks, gaining access to network usage, but it still must provide a station line from the central office to the customer for every station served by Centrex, and must provide central office switching for both the intercom and the network functions. To serve a PBX system, on the other hand, the company need only provide a much smaller number of trunks and need provide no intercom switching.[6]

In Cause No. U-86-86, the Company sought and the Commission granted competitive classification[7] for certain Centrex services. Those were the intercom switching function and an "optional features package" of specified services that are available to Centrex customers. The network usage function, on this record called the Network Access Facility or "NAF", remains classified as a monopoly, noncompetitive, feature. The Commission did not specifically classify the station line[8] as a

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[6]Centrex is an equipment-intensive service that requires more network loop facilities than does providing trunks to a PBX system.

[7]Competitive classification is available under RCW 80.36.330 and related statutes, when <u>services</u> provided by the company are subject to effective competition from other suppliers. The consequence of competitive classification is that the company is free to offer and price the services subject only to the pressures of competition and the statutory requirement that such services must recover the costs of providing them. The law specifically exempts those services from the law prohibiting discrimination in providing telephone services.

[8] The station line is called the Network Access Channel or "NAC". It includes the termination, or connection to the switch; the drop, or connection to the customer premises; and the loop, or pair of wires connecting them.

competitive service, but rather the intercom function, performed by the company's switch.

U S WEST presented the package of tariff and price list changes we are now considering, it said, in order to bring its central office-based services into compliance with the nondiscrimination requirements of the Modified Final Judgment ("MFJ").[9] When the package was submitted, the Commission Staff examined it and the relationships between the tariffed and competitive Centrex features, and urged the Commission to review the Centrex services' competitive classification. The Commission agreed to undertake the review, and issued its complaint for that purpose.

III. THE COMPETITIVE CLASSIFICATION COMPLAINT

The first issue that we face in the competitive classification complaint is the standard to apply in deciding whether to rescind competitive classification.

A. Standard for Reclassification.

The company urges that we may reclassify the services only if we find that we erred in our original decision or if we find that the competitive market has substantially changed since the competitive classification. Otherwise, it says, the issue is "res judicata", a thing decided for all time. We reject that view. The statute allows reclassification when doing so will "protect the public interest".[10] Nowhere does the law imply that reclassification requires a particularly burdensome showing or that, once made, a competitive classification should remain thus forever. The pertinent standard, under the statute, is protection of the public interest.

The Commission is given considerable latitude in classifying competitive services, as well as in reclassifying them. When asked to reclassify a competitive service, we will consider existing competitive classification to be an important circumstance but not a controlling factor. We will review the

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[9] United States v. American Tel. and Tel. Co., 552 F. Supp. 131 (D.D.C. 1982), aff'd mem. sub nom., Maryland v. United States, 460 U.S. 1001 (1983, modified, United States v. Western Electric Co., 673 F. Supp. 525 (D.D.C. 1987), 714 F. Supp. 1 (D.D.C. 1988), affirmed in part and reversed and remanded in part, 900 F. 2d 283 (D.C. Cir. 1990).

[10] RCW 80.36.330 includes the following provision:

> (7) The commission may reclassify any competitive telecommunications service if reclassification would protect the public interest.

service, the market in which it is offered, and the relevant circumstances of the offer, in light of the tests for competitive classification stated in RCW 80.36.330.[11] Then we will determine whether good reason is shown for reclassification. In a reclassification proceeding, the burden of proof is on the company to demonstrate that the existing classification is proper and consistent with the public interest. WAC 480-120-025(2).

B. The Relevant Market.

In analyzing any service for classification or reclassification, we must examine the relevant market for the services. As a starting point in reclassification, we refer back to the evidence and the decision in the classification order in Cause No. U-86-86. There, U S WEST proved that the relevant market for the Centrex features classified as competitive is all multi-line business customers -- i.e., those with two or more lines. U S WEST does not ask in this case that the relevant market be changed, and presents no evidence that the market differs.[12]

C. Offer of Monopoly Features.

Commission Staff, in arguing that the competitive classification is inappropriate, makes two principal contentions. The first is that the company offers several monopoly features in the Centrex package that may only be obtained from the telephone network, not from competitors, and thus those features must be reclassified as monopoly. Commission Staff asks reclassification of the call forwarding, call waiting, hunting, direct-inward-dialing and distinctive ringing features.

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[11]The statute reads in part as follows:

(1) . . . In determining whether a service is competitive, factors the commission shall consider include but are not limited to:

(a) The number and size of alternative providers of services;

(b) The extent to which services are available from alternative providers in the relevant market;

(c) The ability of alternative providers to make functionally equivalent or substitute services readily available at competitive rates, terms, and conditions; and

(d) Other indicators of market power, which may include market share, growth in market share, ease of entry, and the affiliation of providers of services.

[12]U S WEST does describe the market differently, an issue we treat below.

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TRACER, TCA, DIS and WITA join in U S WEST's contention that there is no basis for reclassifying these features as noncompetitive monopoly elements. U S WEST argues that the Commission has repeatedly found that Centrex-type services are effectively competitive.[13] U S WEST also contends that the relevant market[14] has become more competitive, and that U S WEST's Centrex service share of the relevant market is no more than ten to fifteen percent.[15] Finally, U S WEST contends that it is covering all of its relevant costs in its prices, based upon cost studies it presented.

The Commission agrees that the number of alternative providers and the extent to which alternative services are available in the large customer market has increased since we entered our order in Cause No. U-86-86. Alternative providers have also increased their ability to make functionally equivalent or substitute services readily available at competitive rates, terms and conditions. The Centrex share of the Washington business market is between ten and fifteen percent.

The Commission is satisfied that the intercom and optional features elements of Centrex-type services are priced above cost pursuant to RCW 80.36.330(3).[16] However, we must point out again that our previous classification in U-86-86 did not apply to the broad product category of Centrex-type services but was limited to the intercom and optional feature elements of the broader product. The bottleneck or gateway monopoly elements

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[13]It cites the Second Supplemental Order in Docket No. U-88-2186-P, In re Contel of the Northwest, Inc., December 1988, as well as the Fourth Supplemental Order in Cause No. U-86-34, et al., W.U.T.C. v. Pacific Northwest Bell Telephone Company, April 1987.

[14]U S WEST defines the "relevant market" under the statute as the market for large business private network systems.

[15]Commission Staff argues that the Centrex share of the market would be even less, if U S WEST had no ability to discriminate among customers.

[16]The Commission agrees with Commission Staff's concerns that inconsistencies among the cost studies and company reluctance to clarify matters made much more difficult the evaluation of cost information. If the Commission undertakes an investigation into the "Building Blocks" costing and pricing methodology as discussed below, we would consider one of the important goals of that inquiry to achieve consistent costing and pricing standards. In the meantime, however, the company must recognize that it needs to present consistent and comparable information in proceedings that compare costs.

necessary for providing network service in the Centrex context are clearly not subject to effective competition, have not been competitively classified, and must therefore remain under tariff.

We reject the proposal to reclassify listed elements, with qualifications that we will describe below. "Centrex" is a package of features that, together, competes with PBXs offering other various packages of features. The issue is not whether a particular feature may be offered only by the incumbent's network, but whether from the consumer's perspective that feature is part of a service offered in an effectively competitive market.[17]

We do not believe that reclassification of the call forwarding, call waiting, hunting, direct-inward-dialing and distinctive ringing features would protect the public interest.[18] There need not be item-by-item identity among features to support competitive classification, but there must be functional equivalency and effective competition. Here, there is functional equivalency and effective competition. Each principal means of telecommunication management -- PBX and Centrex -- provides a context for services that the other cannot offer. In the context of the offering, the challenged services result in a functionally equivalent package and are effectively competitive with PBX functions.

We must remain particularly vigilant when any package contains a feature that may only be obtained from the telephone network.[19] Here we find that the listed features[20] are incidental to the service, not "bottleneck" or "gateway" monopoly

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[17]RCW 80.36.186 appears to contemplate the consolidation of monopoly features with competitive services.

[18]Staff partially supported its argument for reclassification of the call forwarding, call waiting and distinctive ringing features through exhibits in this record, which indicate they cannot be supplied by a PBX. The issue may not be certain, however; we take notice of exhibit 15 in Docket No. U-86-86 which indicates that PBXs can provide those services, along with station hunting.

[19]We do not commit to granting competitive classification for any such package.

[20]Direct inward dialing, call forwarding, call waiting, hunting, and distinctive ringing. DID is perhaps closest to being a pure monopoly feature, as it is an inherent attribute of network structure. Rather than reclassifying it, however, we will be vigilant about ensuring that it is not priced in an anticompetitive manner.

features essential to any equivalent service, and that the ability to offer the features has not enabled the company to achieve dominance in the relevant market for the service. That the features are and remain effectively competitive in the context of this package is indicated by the relative market share of PBX systems vs. Centrex-type services in the relevant market. Providing the classified features has apparently not led to the "captive customer base" proscribed by the statute. See, RCW 80.36.330. On the record presented, we find that it would not protect the public interest to reclassify any of the so-called optional features as noncompetitive.

C. Contribution.

Commission Staff's second principal argument is that if U S WEST is allowed to receive less contribution from essential monopoly elements when they are used in providing its own service than it receives when those essential elements are used by a dependent competitor in the provision of a service that competes with U S WEST's, then the company has the ability to create a "price squeeze" impediment to competition because it can price its own service lower than can competitors paying higher rates for the monopoly services.

Commission Staff's witness, Dr. Nina Cornell, pointed out that the complex business lines and Centrex Plus station line loops use the same facilities as a private line network access connection or NAC. The Centrex Plus station line bundles three sets of functions, she says,[21] while complex and simple business lines bundle two functions,[22] and private line NACs consist of a single function.[23] Commission Staff contends that U S WEST should receive more contribution when more features are bundled together. If U S WEST receives less contribution for more bundled functions, Staff argues, it is offering bottleneck monopoly functions to users for less if they also purchase competitive functions.

Commission Staff contends that U S WEST receives at least 15% more contribution from a simple business line and will receive at least 98% more contribution from a complex business line that it will from a Centrex Plus station line. Staff

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[21]They are the Network Access Connection or NAC, monopoly services (hunting, direct inward dialing, call waiting, call forwarding, and distinctive ringing); and competitive features such as intercom switching.

[22]They are the NAC and local usage.

[23]It is the NAC, i.e., the physical circuit available for transmission.

suggested that leaving to the judgment of U S WEST product managers the decision of which margin to require of which features would not lead to development of dynamically competitive telecommunications markets.

U S WEST contends that because Centrex service, as opposed to the service elements or features that make up that service, is effectively competitive, there is no legal or economic principle that requires alignment of contribution levels across business services, including Centrex. The company maintains that so long as it is covering all relevant costs in its prices, it is free to accept less contribution from its competitive services if that is required by the market.

We disagree with U S WEST'S arguments. It is true that under the law relating to competitive services, once a service is classified as competitive, the company may discriminate among customers[24] and price the service as it wishes, so long as the price covers costs[25] and does not give the company or another telecommunications provider an undue advantage.[26] However, we are concerned that the company may be confusing the breadth and extent of its services that were classified as competitive in U-86-86. That classification was limited to the intercom and optional feature elements of Centrex-type services, not <u>all</u> elements of the company's centrex products.

It is clear that in order to avoid a price squeeze on competitors dependent upon the same monopoly service elements that U S WEST uses in its competing service, the essential monopoly elements must be priced for U S WEST and dependent competitors equivalently. Imputation was developed to deal with

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[24]RCW 80.36.180 reads in part as follows:
Rate discrimination prohibited. No telecommunications company shall, directly or indirectly, . . . charge . . . a greater or less compensation for any service . . . than it charges, . . . any other person . . . for doing a like . . . service . . . under the same . . . conditions. . . . <u>This section shall not apply to contracts . . . for services classified as competitive under RCW 80.36.320 or RCW 80.36.330.</u> (Emphasis added).

[25]RCW 80.36.300 reads in part as follows:
(3) Prices or rates charged for competitive telecommunications services shall cover their cost. The commission shall determine proper cost standards to implement this section, provided that in making any assignment of costs or allocating any revenue requirement, the commission shall act to preserve affordable universal telecommunications service.

[26]RCW 80.36.186.

this issue; here, tariffing the essential elements serves the same purpose, to protect the public interest.

D. Conclusion.

Consequently, we deny the competitive classification complaint, conditional upon the company's compliance with the requirements we set out in this order for unbundling of pricing and tariffing. The services identified by Commission Staff need not be reclassified as noncompetitive.

IV. PRICING COMPETITIVE FEATURES

Commission Staff argues that U S WEST should not be allowed to bundle competitive services with monopoly features and to charge less for the monopoly features when they are purchased as part of a bundle with U S WEST's competitive Centrex features. Staff recommends that the proposed tariffs and price lists be rejected because they do not properly align prices across services.

A. Unified Line Tariff.

In order to ensure that prices for common monopoly service elements are nondiscriminatory, Commission Staff says it is essential that U S WEST be required to implement a unified line tariff so that similarly situated customers pay the same amount for monopoly elements. Staff also recommended that no customers be allowed to enter into rate stability contracts for complex business lines or for private line network access connections until a new, nondiscriminatory line tariff schedule has been approved by the Commission. Public Counsel supported Staff's recommendation.

TRACER, TCA and DIS supported U S WEST's proposal. They argued that Centrex-type services will benefit U S WEST ratepayers because overall they provide more contribution to U S WEST than PBX trunks, will provide benefits to large business users, and will enhance dynamic efficiency.

Commission Staff argues that the company should develop a unified line charge to apply across its equivalent tariffs -- simple business, complex business, private line and Centrex. The company is aghast at this suggestion, calling it a "building block" approach[27] and saying that it is inappropriate to impose

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[27]Under the "building block" concept, a company would offer its features item by item at a common rate for each feature, irrespective of the use to which the feature is put. Under that approach, for example, a line is a line is a line and would carry the same charge whether used in Centrex, simple business, complex

that sort of restructure of its services upon it, in isolation from other companies. It urges that such a step would inevitably require a complete restructuring of all telecommunications pricing. Commission Staff responds that adopting a unified line charge in one setting does not embrace the "building block" approach for the provision of all service.

The Commission will not require the unified line tariff proposed by Commission Staff. Although we consider it possible that "building blocks" may ultimately form the foundation of the nation's approach to pricing network interconnection arrangements, we agree with the company that it is unnecessary to order specifically the requested step in this proceeding. However, if the company determines that a unified line tariff may be a convenient and efficient method of implementing the tariff requirement stated below, it should be free to exercise that option.

B. Imputation.

We do believe that the company's pricing of its "bottleneck" monopoly features in the Centrex mode runs afoul of our prior rulings on the imputation of prices for services. As we found for the "Prime Saver" volume discount toll service that was the subject of Docket U-87-1083-T,[28] the Commission believes the principles of imputation are appropriate for pricing essential monopoly elements of competitive services.

By requiring imputation, the Commission intends to restrict U S WEST's ability to impede competition by charging dependent competitors more for an essential monopoly function when the function is used by the competitor to provide a service that is substitutable for a service offered by U S WEST. Proper principles of imputation will also assist U S WEST in achieving its stated objective for the filings at issue: to achieve nondiscriminatory rates across Complex Business Lines, Private Line NACs, Centrex Plus and Centrex Plus 100%.

Consistent with our decision in Cause No. U-87-1083-T, U S WEST may use long-run incremental costing ("LRIC") for the intercom and optional features elements of Centrex Plus. Tariffing the common and essential elements will serve the same

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business, or private line.

[28]Fifth Supplemental Order, Docket No. U-87-1083-T, WUTC vs. Pacific Northwest Bell Telephone Company, at 15-18. As the order points out, the Commission's imputation test began in the Commission's access charge orders in Docket No. U-85-23, et al. The imputation test was also applied in Docket No. U-88-2052-P for certain of U S West's high-volume toll offerings.

effect as imputation and will allow the Commission to review the features' cost and contribution in a more rational way.

C. Further Study.

Before taking the suggested step of establishing a unified line tariff or broadly implementing a "building block" approach to costing and pricing, we would have to assure ourselves that doing so is appropriate for the different customers and that it is in the best interests of the public. That will require a thorough understanding of the approach's mechanics, of its effect on telecommunications service, and its effect on U S WEST and other companies providing service in the State.

The company suggested, if we were disposed to move in that direction, that we order an inquiry into the issues and invite participation from a number of constituencies including all telephone companies. We believe that the suggestion is worth consideration; we request that the Commission Staff explore the concept of such an inquiry with all relevant stakeholders, including the nature of the resources required, and present a proposal to us no later than March 31, 1994. While we do not commit the Commission to accept that or any such proposal, we believe it may be time to begin exploring the concept of building blocks costing and pricing and its consequences. In deciding whether to pursue an inquiry, we will consider the fiscal resources available for its completion and the nature of any comments, and apply our best considered judgment.

V. UNBUNDLING

The parties' discussions convince us that the company's proposal regarding the interrelating centrex line and feature charges is unnecessarily difficult to understand and difficult to monitor. In U-86-86, we instructed the company that we expected it to unbundle its services; instead, the latest proposal increases the bundling.

It is difficult to determine how the NAF and the NAC are priced, and the company's price list appears to include monopoly services that the Commission has not classified as competitive.[29] We cannot easily verify that the tariff and pricing proposals the company has presented meet its stated goal of reducing discrimination, we cannot easily verify whether the proposals satisfy Washington laws forbidding discrimination among customers, and we cannot easily verify that the competitive

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[29]The Commission Order classified intercom service as competitive, not the network access connection or station line.

services not only cover costs but impute the cost of monopoly services appropriately.

The company appears to contend that the centrex services are so different from other services that a different cost analysis is required to support them. We disagree.

That the centrex services are bundles of the same elements that the company offers in other contexts is apparent from the parties' analyses and, in fact, from the very stated purpose of the company's filing -- to make rates equitable across services. That requires an acknowledgment that elements are, in fact, equivalent.

In a private line setting the company provides the end user a NAC for localized network access connection, allowing it to supply central office functions for fidelity and amplification. In a business line setting, the NAC is also an essential element of service. In centrex the NAC is also an essential element of providing network service. The NAC is an essential, monopoly, bottleneck or gateway service. The company cannot provide network service without providing the NAC. A NAF cannot provide service unless it is used with a NAC; each is an essential element of the monopoly service. The company may charge only for the NAFs that the customer requests and that it provides. But because the NAC is an essential noncompetitive bottleneck service, the company must unbundle the NAC, tariff it, and charge for each one it provides.

We rule that the company may not combine the functions of the NAC, an essential bottleneck or gateway service, with other services in its price list under the term "station line".[30] Instead, it must tariff the monopoly bottleneck service.[31] It clearly may price list the intercom switching, comparably to its tariffed NAF component for network switching and access. It must provide cost data support for its tariff and its price list components parallel with its price support for comparable services in the business and private line tariffs.

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[30]We recognize that this is inconsistent with our specific prior ruling in <u>Contel</u>, cited above, but believe that it is proper under the analysis we adopt here.

[31]All services relating to Centrex should be clearly referenced in the Centrex-related services tariff, and in the price list, so a person picking up that tariff can identify elements that are needed, identify where information is found about those elements, and price the service from those references. For convenience the price list could also restate or include a copy of the tariff.

We direct the company to begin true unbundling of its Centrex service. In particular, it must tariff the Centrex station line NAC as a bottleneck monopoly element, and it should reduce the bundling of elements to a minimum consistent with prudent engineering principles for minimum quality of service.

Because the federally mandated customer access line charge ("CALC") is required for each Centrex station line to help cover assigned interstate, non-traffic sensitive costs, the CALC should be separately tariffed or included in the rate for the Centrex station line NAC. In recognition that competitive classification for U S WEST's Centrex-type service is limited to the intercom and optional feature services and not the broad product, the Commission agrees that for the time being a CALC offset is appropriate and not inconsistent with RCW 80.36.330 (3). The Commission expects the company to justify continuing the offset if it seeks to do so in future filings.

The company's goal was to equalize certain rate elements. We do not require it to file a unified line tariff. But having the features tariffed in a parallel manner for different services -- and having cost data presented in a parallel manner -- will improve our ability to evaluate them and to apply rational imputation principles.

A. Rate stability.

Because we will order a refiling of tariffs and price lists consistent with the terms of this order, we accept Commission Staff's proposal that no customer be allowed to enter a rate stability contract for complex business lines or for private line network access connections until the Commission has approved new line tariff schedules.

B. Conclusion.

There may be some question as to whether it is appropriate to encourage the relatively extensive use of outside plant resources in performing Centrex-type services. In general, we would agree with the Commission staff that the Commission should not be in the business of determining telecommunications service or technology "winners and losers." Ultimately, we believe telecommunications solutions for customers are best shaped by market forces driven by a high degree of dynamic efficiency in the telecommunications industry. The Commission, however, does have the responsibility to ensure that U S WEST and other local exchange companies do not use ratepayer investment to perform competitive services without recovering pertinent costs. It is possible that continued use of Centrex-type network services will promote the public interest -- but it is of little value to customers if that use fails to cover costs.

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Therefore, we approve the already interim rates for application on an extended interim basis. We instruct the company to present, no later than March 31, 1994, a revised Centrex proposal, including a tariff that clearly identifies pertinent charges for the NAC and for the switching functions provided to Centrex customers, in a manner parallel to tariffs for other commercial services, and including as tariffed items any price listed monopoly bottleneck elements that the Commission has not classified as competitive. The price list should clearly state where in the company's tariffs the rates for associated tariffed services are set out. The price list and tariff together should -- as far as practical, yet maintaining pertinent standards of network and service integrity -- unbundle the service offerings for Centrex customers.

In preparing this proposal, the company may re-evaluate the tariff proposals now in effect on an interim basis, may decide to propose changes, and may choose to include other tariffed elements. We do not direct the use of a unified line charge, but we direct the company to present parallel offerings, to state clearly why differences are not prohibited by the statutory ban on discrimination and are consistent with tests for imputation, and why the resulting rates are fair, just, reasonable and sufficient. The interim tariffs shall continue until March 31, 1994, and if a filing is made consistent with the terms of this order, until that filing is resolved.

VI. SERVICE RESTRICTION.

We are quite concerned about the company's attempt to limit resale of its services. It proposes to close prior centrex offerings that are available to customers with two to 19 lines. Instead, it would require a 20-line minimum at one location for service under Centrex Plus. The Commission views the 20-line limitation as an attempt to remove those services from the resale marketplace. That is not permissible.

Resale and rebilling[32] are an essential adjunct of free

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[32]Two parties involved in the business of resale and rebilling participated in this proceeding. Enhanced Telemanagement, Inc., (ETI) is in the business of reselling U S WEST'S central office based services and resale of toll service for various long distance carriers such as MCI, Sprint and AT&T, and voice mail service.

MetroNet Services Corporation ("MetroNet") is engaged in the business of telecommunications rebilling, customer service and telecommunications consulting. MetroNet serves as the customer of record for joint user groups involved in the shared use of U S WEST'S centrex-type services. MetroNet places orders with U S WEST for centrex-type lines on behalf of end users in a access to, and the growth of competition in, telecommunications service. They bring appropriate market pressures to bear on the underlying provider of resold services, and allow aggregation, combination and coordination of services to supply smaller customers whose needs may be uneconomic for the original supplier to meet.

In Cause No. U-86-86, the company sought competitive classification to compete in the entire business multi-line market. It urged competitive classification because it provided Centrex services only to 13% of the <u>entire</u> market, including all customers <u>with two or more lines</u>. Now, having won the right to compete for the two to 19-line customer, it defines the market for its Centrex services as only <u>"large business customers"</u>.

The company's proposed Centrex Plus price list would restrict Centrex Plus against services to customers having fewer than 20 lines at a single premise. Intervenors point out that this will severely restrict opportunities for resale among small business customers. It would bar smaller customers from the service, and would severely restrict resale, without reclassification to redefine the market, and without showing whether that would affect the competitive view of the market for the services.

Under the law, U S WEST may discriminate among customers in a competitive market. But it may not, after classification, without specific Commission approval, use activity in a broadly defined market to secure competitive service classification, then segment the market it is approved to serve and unilaterally eliminate a noncompetitive or less competitive segment from the service. If the company perceives that it has a captive customer base among smaller customers for its tariffed business line services, then reclassification may be proper. Restricting such customers from receiving Centrex services either directly or by resale would be anticompetitive, rather than the response to a competitive market situation.

That is not to say that the company may never restrict its service. It must, however, do so consistently with law and with our approval of the consequences.

Based upon a thorough examination of the record, the Commission concludes that if measures are implemented to ensure that removal of the 20 lines per location restriction of the

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joint user group, and passes through directly to the end user the pertinent part of U S West's bill.

Resale and rebilling are subject to appropriate restrictions, such as registration, compliance with tariffs, compliance with law, etc.

Centrex Plus offering will maintain appropriate levels of contribution toward the support of universal service, then removal of that restriction is in the public interest. To ensure that the support of universal service is maintained, U S WEST shall by March 31, 1994, be required to state the specific dollar amount of net lost contribution that will occur from removal of the 20 lines per location restriction. If the company deems it necessary for the continued support of affordable universal service, it may propose a per line flat surcharge to be charged to resellers, rebillers and shared users of centrex-type services to equitably recover any lost contribution.[33]

U S WEST's tariff and price lists shall provide that resellers and rebillers, in addition to complying with applicable provisions of the Commission's telecommunications quality of service rule, shall be prohibited from limiting their subscribers' choice of toll service provider or blocking access to any toll provider. Resellers and rebillers shall also ensure their customers have the capability to reach 911 emergency service providers as well as the local exchange operator. Direct access to the 911 emergency service provider shall be without charge and subscribers must be able to reach the local exchange operator without incurring a charge greater than the cost of the service to the reseller or rebiller.

FINDINGS OF FACT

Having discussed above in detail both the oral and documentary evidence concerning all material matters, and having stated findings and conclusions, the Commission now makes the following summary of those facts. Those portions of the preceding detailed findings pertaining to the ultimate findings are incorporated herein by this reference.

1. The Washington Utilities and Transportation Commission is an agency of the state of Washington, vested by statute with authority to regulate rates, rules, regulations, practices, accounts, securities, and transfers of public service companies, including telecommunications companies.

2. U S WEST Communications, Inc., is engaged in the business of furnishing telecommunications service within the state of Washington as a public service company.

3. On December 27, 1991, U S WEST Communications, Inc., ("U S WEST") filed tariff and price list revisions for its

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[33] See, Order Authorizing the Resale of Centron Service, Minnesota Public Utilities Commission in Docket No. P-999/CI-90-235 (January 19, 1993).

private line service, business complex line service, and Centrex Plus service. The Commission suspended the tariff filings on January 29, 1992. U S WEST withdrew its price list proposal on February 4, 1992. The Commission issued a complaint and order instituting investigation on March 4, 1992, alleging that certain competitively classified Centrex services should be reclassified as noncompetitive monopoly services. These proceedings were consolidated for hearing.

4. The relevant market for Centrex-type services is business telecommunications systems using two or more telephone lines.

5. Service features of private branch exchanges and the competitively classified intercom service and optional features of Centrex-type services are functionally equivalent for purposes of competitive classification. The number of alternative providers of PBX service and the extent to which these alternative services are available in the relevant market has increased since entry of the order in Cause No. U-86-86. The ability of alternative providers to make functionally equivalent or substitute services readily available at competitive rates, terms, and conditions has also increased.

6. The Centrex-type services share of the Washington business customer market is between ten and fifteen percent. U S WEST has no captive customer base for Centrex-type services.

7. The cost studies provided by U S WEST in support of its filing are sufficient to determine whether services are priced above cost for purposes of this proceeding. U S WEST's centrex-type services are priced above cost pursuant to RCW 80.36.330(3).

8. U S WEST does not impute its rates for services it provides under tariff when it prices those features as competitively classified services.

9. The proposed tariffs state rates and charges for services that are not shown to be fair, just, reasonable and sufficient pursuant to the terms of this order.

CONCLUSIONS OF LAW

1. The Washington Utilities and Transportation Commission has jurisdiction over these proceedings and the parties to these proceedings.

2. The Commission should deny the complaint requesting reclassification of competitive services in Docket No. UT-920252.

3. The Commission should allow the tariffs to remain effective on an interim basis until March 31, 1994, pending tariff and price list proposals by the company, and if the proposals are filed on or before that date and are consistent with the terms of this order, until those filings are resolved.

4. The Commission should reject the tariffs proposed in Docket Nos. UT-911488 and UT-911490.

ORDER

THE COMMISSION ORDERS That the complaint in Docket No. UT-920252 is denied, and the tariffs filed in Docket Nos. UT-911488 and UT-911490 are rejected.

THE COMMISSION ALSO ORDERS That the rates now in effect on an interim basis may continue in effect until March 31, 1994 and, if tariff and price list proposals are filed on or before that date that are consistent with the terms of this order and accompanied by supporting information as required by the terms of this order, until the Commission resolves any issues associated with the filings.

DATED at Olympia, Washington and effective this 18th day of November 1993.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

Sharon L. Nelson

SHARON L. NELSON, Chairman

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RICHARD D. CASAD, Commissioner

NOTICE TO PARTIES:

This is a final order of the Commission. In addition to judicial review, administrative relief may be available through a petition for reconsideration, filed within 10 days of the service of this order pursuant to RCW 34.05.470 and WAC 480-09-810, or a petition for rehearing pursuant to RCW 80.04.200 or RCW 81.04.200 and WAC 480-09-8920(1).