

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Continued Costing and Pricing of Unbundled Network Elements, Transport, Termination and Resale

Docket No. UT-003013

JOINT COMMENTS OF COVAD COMMUNICATIONS COMPANY AND RHYTHMS LINKS, INC. IN RESPONSE

INTRODUCTION

Covad Communications Company and Rhythms Links, Inc. ("Joint Commentors") submit these comments pursuant to paragraph 25 of the Third Supplemental Order in this docket. The Joint Commentors limit their comments to the Commission's decision to move the issue of loop conditioning from Part B of this docket to Part A. Joint Commentors' Motion For Reconsideration also addresses the loop conditioning issue only.

DISCUSSION

I. If The Commission Does Not Modify Its Decision To Move Loop Conditioning From Part B To Part A Of This Docket, An Opportunity To File Supplemental Testimony On The Issue Is Essential For Joint Commentors To Having A Meaningful Opportunity To Address Conditioning.

In the First Supplemental Order in this docket, the Order On Prehearing Conference, the Commission stated:

The issues for consideration in Part B include UNE (unbundled network element) platform, subloop unbundling, recurring UNE rates, high capacity loops, loop conditioning, inside wiring, dark fiber, shared transport, enhanced extended loops, and flat-rate reciprocal compensation.

Id., ¶16 (emphasis added). Based on the First Supplemental Order, there seemed to be no ambiguity that loop conditioning issues would be addressed in Part B, rather than in Part A.

For some reason GTE filed loop conditioning testimony according to the Part A schedule. In spite of GTE's filing, the Joint Commentors had no reason to believe that the Commission would take up loop conditioning issues in Part A because the First Supplemental Order was so clear. In reliance on the provisions of the First Supplemental Order, the Joint Commentors continued to focus their discovery and testimony preparation exclusively on the issues that the First Supplemental Order stated would be dealt with in Part A. On July 17, 2000, the Commission modified the Part A schedule to include, for the first time, loop conditioning. Id., ¶25.

Under the current Part A schedule, if the Joint Commentors are required to file responsive testimony on loop conditioning issues, they must do so on July 21, 2000, less than four days after the Joint Commentors were notified that loop conditioning was to be addressed. If the Joint Commentors are to have any meaningful opportunity to participate on the loop conditioning issue, it is essential that at a minimum they be given additional time to file supplemental testimony on loop conditioning and not be required to address that issue on July 21st.

The *minimum* additional time that Joint Commentors need to file supplemental testimony regarding loop conditioning is three weeks, and even this would make the schedule unreasonably tight. The Joint Commentors have not yet been able to engage an expert witness on loop conditioning. They will need to hire their expert, who will need to review the testimony and prior Commission orders. Additionally, discovery is needed to address GTE's cost study and testimony. That would take a minimum of two weeks. Three weeks is a barely adequate time to do discovery and prepare testimony. With the current hearing schedule it is doubtful more time

could be allowed. Accordingly, while three weeks is barely sufficient, Joint Commenters request leave to file supplemental testimony on line conditioning on August 11, 2000.

II. The Commission Should Reconsider The Provision Of The Third Supplemental Order Switching Loop Conditioning From Part B to Part A.

Given that Joint Commentors need discovery on conditioning, at best their witness is likely to have a few days to review the discovery responses before having to file testimony. Assuming the request for three weeks to file supplemental testimony is granted, their witness will also have only a couple of weeks to review the issues, prior Commission orders, and the GTE Cost Study and then develop testimony. Moreover, other parties will have a difficult time filing reply testimony in response to supplemental testimony filed three weeks from now.

There are only two ways to avoid these problems: continue the hearings or restore line conditioning to Part B. Continuing the hearings would delay resolution of issues that the Commission properly determined should be expedited, such as line sharing, and the Joint Commentors are opposed to that. The other option is quite viable, however. There is no compelling reason that line conditioning needs to be addressed in Part A.

Given the significant prejudice to the Joint Commentors of having to try to do discovery and file testimony regarding loop conditioning on an expedited basis, and the consequential difficulties that will be faced by other parties in the case given the current hearing schedule, the Joint Commentors respectfully suggest that the Commission should return to the original schedule and restore the loop conditioning issue to Part B.

CONCLUSION

For the foregoing reasons, the Commission should either reconsider its decision to move the loop conditioning issue to Part A and restore that issue to Part B or, at a minimum, give the parties an additional three weeks (to August 11, 2000) to file supplemental response testimony on loop conditioning issues.

Respectfully submitted this 21ST day of July, 2000.

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