

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND	)	
TRANSPORTATION COMMISSION,	)	
	)	
Complainant,	)	DOCKET NO. UT-971140
	)	
v.	)	
	)	
WASHINGTON EXCHANGE	)	
CARRIER ASSOCIATION, <i>et al.</i> ,	)	FIFTH SUPPLEMENTAL ORDER
	)	REJECTING TARIFF FILING
Respondents.	)	
.....	)	

**SUMMARY**

**Proceedings:** On July 15, 1997, the Washington Exchange Carrier Association filed with the Commission, in Docket No. UT-971140, revisions to its currently effective Tariff WN U-1, with a stated effective date of October 1, 1997. The tariff revisions, as filed, would effect an annual increase in charges to interexchange carriers of approximately \$572, 000, by decreasing the annual universal service fund charges by approximately \$1,080,000 and increasing the annual carrier common line charges by approximately \$1,652,000.<sup>1</sup> The Commission at its regularly scheduled open public meeting of September 24, 1997, suspended the effect of the tariff revisions pending a hearing on whether the proposed charges are just and reasonable. WECA has extended the statutory suspension period for its tariff filing to October 31, 1998.

**Hearings:** The Commission convened a prehearing conference in this matter December 14, 1997, before Administrative Law Judge Terrence Stapleton (ALJ). The Commission conducted four days of evidentiary hearings, May 26-29, 1998, before Chairwoman Anne Levinson, Commissioner Richard Hemstad, Commissioner William R. Gillis, and the presiding ALJ. The record in this matter consists of nearly 200 exhibits, including both filed written testimony and exhibits of expert witnesses for the parties, and single and multiple page documents utilized by the parties in cross-examination of others' expert witnesses; almost 800 pages of transcribed proceedings; and over 150 pages of post-hearing briefs of the parties.

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<sup>1</sup> These revenue requirement figures, for which rates were calculated at a 10.5 percent rate of return, were adjusted in WECA's rebuttal testimony to reflect the 10.3 percent rate of return stipulated by WECA and Commission Staff for purposes of this filing.

**Parties:** The Washington Exchange Carrier Association (WECA or Association) is represented by Richard A. Finnigan, who also appears on behalf of several local exchange company members of the Association who intervened in their own names<sup>2</sup>; other local exchange company members of the Association who intervened in their own names are represented by Robert S. Snyder;<sup>3</sup> Staff of the Washington Utilities and Transportation Commission (Commission Staff) by Mary M. Tennyson, Senior Assistant Attorney General; AT&T Communications of the Pacific Northwest, Inc. (AT&T) by Susan D. Proctor and Ron Gayman; U S WEST Communications, Inc. (U S WEST) by Lisa Anderl; United Telephone Company of the Northwest (United) by Ann Pongracz and Nancy L. Judy; MCI Telecommunications Corporation (MCI) by Clyde MacIver and Brooks Harlow; and, GTE Northwest Incorporated by Richard E. Potter.

**Commission:** The Commission rejects the WECA tariff filing finding that the Association has failed to carry its burden of proof to show that the proposed increase is just and reasonable as required by RCW 80.04.130(2).

## MEMORANDUM

### I. Overview

This proceeding stems from tariff revisions filed by WECA to the Washington intrastate carrier common line (CCL) and universal service fund (USF) rate elements, generally referred to as the nontraffic sensitive (NTS) rate elements.

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<sup>2</sup> Mr. Finnigan represents Asotin Telephone Company, Cowiche Telephone Company, Ellensburg Telephone Company, Inter-Island Telephone Company, Inc., Lewis River Telephone Company, Mashell Telecom, Inc., McDaniel Telephone Company, Pend Orielle Telephone Company, Telephone Utilities of Washington, Inc., The Toledo Telephone Company, Inc., and Yelm Telephone Company, in their individual capacities as companies required to file the WECA tariffs with the Commission, for this proceeding to be jointly referred to as "RAF-Companies."

<sup>3</sup> Mr. Snyder represents Hat Island Telephone Company, Hood Canal Telephone Company, Inc., Inland Telephone Company, Kalama Telephone Company, Pioneer Telephone Company, St. John Cooperative Telephone and Telegraph Company, Tenino Telephone Company, Western Wahkiakum County Telephone Company, and Whidbey Telephone Company, in their individual capacities as companies required to file the WECA tariffs with the Commission, for this proceeding to be jointly referred to as "RSS-Companies."

These rate elements, commonly known as “access charges,” were instituted by the Commission in its Eighteenth and Nineteenth Supplemental Orders (ORDERS), Cause No. U-85-23.<sup>4</sup> These rate elements partially replaced the former system of “separations and settlements” arrangements existing at the time of the divestiture of AT&T. As the Commission noted at paragraph 4, page 20, of the 18TH ORDER:

The industry compensation structure for jointly provided toll services must be changed to conform to the requirements of a competitive intrastate (interLATA and intraLATA) telecommunications industry. The proposal . . . to replace the existing settlements contracts with a system based on the use of tariffed access charges applied in a nondiscriminatory manner to all intrastate toll carriers meets these requirements.

The subject tariff filing is an annual requirement imposed upon the WECA member companies by the ORDERS and by WAC 480-80-047:

All local exchange telecommunications companies in the state of Washington shall annually review and if necessary update the traffic sensitive and nontraffic sensitive carrier common line switched access tariffs and billing and collection tariffs on file with the commission. The review shall be conducted in the manner prescribed in the Eighteenth and Nineteenth Supplemental Orders in Cause No. U-85-23 et al., including the transition to a twenty-five percent allocation factor[.] WAC 480-80-047(1).

In addition, the Commission has codified the opportunity for collective consideration of the intrastate NTS tariff filing by authorizing that “the Washington Exchange Carrier Association (WECA) may file with the commission petitions and publish and file with the commission tariffs and may represent before the commission those of its members that authorize it to do so.” WAC 480-80-048. The rule also provides that “[a]ll initial WECA tariffs and all changes to such tariffs shall be submitted to the commission subject to all the procedural requirements and protections associated with telecommunications company filings before the commission.” WAC 480-80-048(2).

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<sup>4</sup> Washington Utilities and Transportation Commission v. Pacific Northwest Bell Telephone Company, et al., Cause No. U-85-23, et al., Eighteenth Supplemental Order (December 30, 1986).

The instant proceeding represents WECA's 1997 NTS access tariff filing to update the CCL and USF rate elements. The proposed revisions to the current charges reflect the collective 1997 projected intrastate NTS toll revenue requirements and projected demand units (minutes of use) of the individual member companies.

The tariff revisions filed by WECA would result in a reduction in the USF rate and an increase in the CCL rate. Overall, the effect of WECA's revised proposal, at a 10.3 percent rate of return, is a net increase in the NTS access charges to interexchange carriers of approximately \$374,000 on an annual basis. The ultimate issue in this case is whether the revised tariff filing produces rates which are fair, just, and reasonable, and consistent with the filing requirements enunciated in the ORDERS.

As noted above, one outcome of the ORDERS was a new compensation structure for jointly provided toll services. The local exchange companies were ordered to file access charge tariffs to be applied in a non-discriminatory manner to all intrastate toll carriers to implement this new compensation structure. These access charges ultimately were to reflect the Commission mandated allocation of the local exchange companies' nontraffic sensitive (NTS) costs based upon a division of 50 percent to local exchange telephone services, 25 percent to interstate toll, and 25 percent to intrastate toll (with certain exceptions noted in the Order).<sup>5</sup> The Commission called for a transition to the targeted allocation on a gradual basis, with the first step to be taken as directed in the Order and implemented in the first access charge tariff filing. The Commission and the companies were to review the effects of the 18TH ORDER at the time of the next annual review and filing of access charge tariffs, prior to taking the next step in the transition to the mandated NTS allocation. The annual tariff review and allocation transition process were codified by the Commission in 1991, at WAC 480-80-047(1).

## **II. Burden of Proof**

The Commission has authority to regulate the rates of telecommunications companies.<sup>6</sup> RCW 80.01.040(3) provides, in relevant part, that the Commission shall:

[r]egulate in the public interest, as provided by the public

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<sup>5</sup> This allocation of cost factor, or allocator, is also known as the subscriber plant factor, or SPF.

<sup>6</sup> RCW 80.04.010 defines "public service company" to include telecommunications companies.

service laws, the rates, services, facilities, and practices of all persons engaging within this state in the business of supplying any utility service or commodity to the public for compensation, and related activities; including . . . telecommunications companies[.]

RCW 80.36.080 imposes the following standard with regard to the rates to be charged by telecommunications companies:

All rates, tolls, contracts and charges, rules and regulations of telecommunications companies, for messages, conversations, services rendered and equipment and facilities supplied . . . shall be fair, just, reasonable and sufficient[.]

The Commission's authority over changes to the rates charged by telecommunications companies is found in RCW 80.36.130, which provides in relevant part:

(1) Whenever any public service company shall file with the commission any schedule, classification, rule or regulation, the effect of which is to change any rate, charge, rental or toll theretofore charged, the commission shall have power, either upon its own motion or upon complaint, upon notice, to enter upon a hearing concerning such proposed change and the reasonableness and justness thereof[.]

And, further:

(3) At any hearing involving any change in any schedule, classification, rule or regulation the effect of which is to increase any rate, charge, rental or toll theretofore charged, the burden of proof to show that such increase is just and reasonable shall be upon the public service company.

The Commission, pursuant to its authority under RCW 80.01.040,<sup>7</sup> has promulgated rules to address the filing and revision of tariffed access charges by telecommunications companies. WAC 480-80-047, *Access charges*, requires all local exchange companies annually to review and if necessary update their nontraffic sensitive carrier common line switched access tariffs on file with the commission, in the manner prescribed in the ORDERS in Cause No. U-85-23 et al., including the transition to a twenty-five percent allocation factor. WAC 480-80-048, *Collective consideration of Washington intrastate rate, tariff, or service proposals*, permits the Washington Exchange Carrier Association to file tariffs with the Commission, and to petition the Commission for changes to those tariffs, on behalf of those of its members who authorize it to do so.

#### **A. WECA's Position**

WECA acknowledges that "the burden of proof to establish that the rates produced by the filing are fair, just and reasonable is borne by WECA" pursuant to RCW 80.04.130. WECA brief at 5. WECA contends that it has demonstrated through the cost studies and testimony of the individual company members<sup>8</sup>, that the collective projected 1997 intrastate NTS toll revenue requirement was properly derived through application of the accounting procedure rules of the Federal Communications Commission<sup>9</sup>, and that it has complied with the Commission Orders in U-85-23.

The Association in its brief cites the testimony of Yelm witness Hanson as illustrative of the process followed by each individual company to develop their revenue requirement:

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<sup>7</sup> The utilities and transportation commission shall:

(4) Make such rules and regulations as may be necessary to carry out its other powers and duties.

<sup>8</sup> See, Exhibits T-121 (JKB T-3); T-123 (JKB T-1); T-77 (SRH T-1); T-134 (LJ T-1); T-51 (CMK T-1); T-55 (CMK T-4); T-84 (JM T-1); T-190 (LS T-1); T-1 (RAS T-1); T-158 (JTT-1); T-93 (DJN-1); T-66 (CMK-6); T-144 (ERM-1). WECA brief at 5.

<sup>9</sup> 47 CFR 36, *Jurisdictional Separations Procedures; Standard Procedures For Separating Telecommunications Property Costs, Revenues, Expenses, Taxes and Reserves for Telecommunications Companies*; 47 CFR 64, *Miscellaneous Rules Relating To Common Carriers*; 47 CFR 69, *Access Charges* (October 1, 1997).

- Q. Does the cost study contained in Exhibit C-78 (SRH C-2) demonstrate directly the amounts assigned to non-regulated accounts?
- A. No. In doing a Part 64 analysis, the amounts assigned to non-regulated accounts are removed from the company's total operations before the Parts 36 and 69 cost studies are run.
- Q. Please explain how the growth estimate was derived for estimating growth in the projected 1997 cost studies.
- A. The forecast for plant investment began with the latest available actual financial data. The information that was available was through November 30, 1996. The actual data was then adjusted for expected investment activity for the remainder of the year to arrive at a year-end estimated balance. Budgeted capital additions for 1997 were added to the appropriate plant categories to determine a forecasted 1997 plant investment balance. Both the 1996 and 1997 year-end data was adjusted for Part 64 and other study adjustments determined to be necessary in order to estimate study balances. The average of the 1996 and 1997 study balances were developed, and the average balance was utilized in Parts 36 and 69 cost study program to develop the estimated 1997 WECA intrastate NTS revenue requirement.

Expense estimates were also developed using the latest financial data, which again was through November 30, 1996. This figure was annualized and then reviewed for reasonableness by comparing it to prior year balances, known activity during 1996, and expected activity for the remainder of 1996 to determine whether there were adjustments that were necessary for the end of year balance. The 1996 balance was then used as a base to estimate 1997 year-end expense balances. For the majority of accounts, the expected 1997 wage growth factor of 9% was applied to the account as the estimated growth factor. One exception was depreciation, which was based upon estimated investment from capital budgets. There are other exceptions. Using these growth factors, 1997 year-end balances were developed, Part 64 and other adjustments deemed necessary were applied to the 1997 estimate to arrive at a 1997 estimated study balance. This study balance was utilized in the Parts 36 and 69 cost study program to develop the estimated expense level for the 1997 WECA intrastate NTS revenue requirement. Exhibit T-77 (SRH T-1), p.2, l. 13 - p. 4, l. 14. Each company provided an explanation of their cost study approach. WECA brief at 6-7.

The individual companies' revenue requirements from these cost studies were supplied to WECA, where they were combined and subjected to a formulaic computation which produced the rates filed in this proceeding. The process followed by WECA was established by the Commission in its 18TH ORDER. WECA argues that no party contradicted the individual company witnesses on the cost studies generated for this filing, nor discredited WECA witness Phillips' development of the rates filed in this proceeding. The Association therefore concludes that "[t]he companies, through substantial and compelling evidence, have established the revenue requirement and the resulting rates that are appropriate for this case and are contained in the WECA filing[.]" and that the companies and WECA sustained their burden of proof.

### **B. Commission Staff's Position**

Commission Staff argues that while WECA, with cost study information provided to it by the individual companies, has calculated a collective revenue requirement which results in the rate increase filed in this proceeding, WECA has failed to demonstrate that a rate increase is warranted, and has offered no evidence of changed circumstances driving a need for higher rates. Similarly, Staff argues that the individual companies failed to provide their actual results of operations to demonstrate they are not overearning, and have failed to demonstrate, on a *pro forma* basis, that they are not achieving their authorized rate of return. Staff witness Twitchell summarized his review of the filing by stating that "my findings are that the Washington Exchange Carrier Association companies experienced a Revenue Requirement in excess of 10.3% of \$6,204,795."<sup>10</sup> Exh. T-171 at 4.

Commission Staff criticizes the cost studies generated by the companies for their use of projected costs, projected access lines, and projected minutes of use for calendar year 1997. Staff criticizes these "projected" cost studies for failing 1) to reveal the rationale for the adjustments made, 2) to document and support the projections and assumptions used, and 3) to provide the complete cost study for Staff's review, replication, and verification. Because the individual companies did not release the results of operations for the "test period" upon which their proposed rates are premised, Staff cannot compare the projections with actual results to determine whether the rate levels are reasonable. Mr. Twitchell testified:

The WECA companies based the filing on projected 1997 results of

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<sup>10</sup> We interpret Mr. Twitchell's testimony to mean that the companies have realized revenues in excess of that which is necessary to recover their costs and a 10.3 percent rate of return.

operations. The staff did not receive adequate support to audit the projected 1997 results and concluded that they were incomplete. The projection included increases in expenses and rate base but did not adjust revenues for growth or productivity. Without support for the accuracy of such a projection the staff used actual 1996 data. The actual 1997 data was not available. Exh. T-171 at 6.

Commission Staff notes that while “[t]he companies and WECA argue that the WECA filing has always been done on a projected basis . . . the Commission regulation governing the WECA filing, effective beginning with the 1991 WECA filing, provides in part as follows:

WAC 480-80-047

(2) Filing dates. The review shall be conducted and a report of results filed by July 1 of each year beginning October 1, 1991. Each company shall at the same time file such revised tariffs as it may deem to be required by its report. The tariffs shall be effective September 1 of the same year. The tariffs shall reflect usage and cost data of the previous year.” Staff brief at 18-19.

Staff disputes WECA's contention at hearing that the rule does not require the use of actual data by the companies, citing WAC 480-80-047(2). Further, “[i]f the actual usage and cost data of the previous year does not adequately reflect a company's investment, or other changes, the company can request an adjustment and provide detailed work papers to support the adjustment. By doing so in compliance with the rule, the companies must reveal their actual results of operations which would include any excess earnings.” Staff brief at 19.

Additionally, Commission Staff faults the companies for failing to show that their calculations of the carrier common line and universal service rate elements are accurately structured and properly computed, citing the formulaic manner in which these calculations were made. Mr. Twitchell on cross-examination clarified his concern:

[W]hen you take the intrastate NTS revenue requirement and divide it as Mr. Phillips did by the intrastate SPF, you do not get total revenue requirement for NTS. There is no logical reason for that calculation. That should be corrected even though it was stated in 85-23.

If they do not want to make that correction, they should specify why they think that calculation is correct rather than that's the formula that's followed. Tr. at 760.

Commission Staff points to the fact that WECA itself does not attempt to verify or replicate the cost study results provided to the Association by the individual member companies. WECA witness Phillips testified that he does not perform this check, and that the companies do not supply him with the cost studies which generate the numbers presented to him for his use in preparing the WECA NTS access tariff filing. On cross-examination, the following colloquy occurred:

- Q. Did you verify those projected 1997 intrastate toll revenue requirements in any way?
- A. What we do, what we do -- what I do, as WECA administrator, each year, when we put together a filing, we compare that with the numbers that were in the previous filing for a reasonableness test. We don't perform any audits, we don't perform any verification. I guess that's the purpose for filing it with the Commission, and that's what the Commission Staff then takes a look at that and verifies the support. Tr. at 140.

Commission Staff argues that the individual companies have failed to fully document and disclose the results of their cost studies and to adequately support the calculations upon which the proposed rate levels are premised in this filing. Staff further argues that its audit of the companies' numbers and its inability to verify the figures reported to WECA by the companies conclusively demonstrates that the companies and WECA have not sustained their burden of proof.

### **C. U S WEST's Position**

U S WEST argues that the 18TH ORDER requires that all tariff filings of WECA and the individual member companies be accompanied by complete work papers, in hard copy and on diskette if available. Further, U S WEST notes that this requirement for "complete work papers" has been codified at WAC 480-80-047(3):

With each annual report, each company shall also file complete work papers and data sufficient for the Staff of the Commission to review the correctness of the report and related tariff filing.

U S WEST asserts that its own expert witness' experience shows that WECA has failed to comply with the requirements of WAC 480-80-047(3):

I had difficulty determining if the studies conformed to Part 36 separations rules. In reviewing the studies, many companies reported intrastate revenue requirements without displaying total booked or subject to separations accounts. Additionally, the companies did not display interstate separated results. The interstate separated results are important, since the booked investment, reserves and expenses, etc., less the interstate portion of those costs leaves the costs to be recovered in the intrastate jurisdiction. Since the companies did not provide the entire cost study, the accuracy of the intrastate costs could not be determined. Exh. T-168 at 4.

U S WEST argues that WECA's response that this filing pertains to the intrastate jurisdiction and therefore a review of interstate results is unnecessary and unwarranted "is without justification and ultimately inapposite." Brief at 6. Finally, as to WECA's claim that Commission Staff had never requested this type of information in previous filings, U S WEST responds that "the dispute is irrelevant. WAC 480-80-047(3) requires WECA to support its current tariff filing with pertinent information, regardless of what was provided previously." Brief at 6.

U S WEST urges that "WECA was required to provide complete studies showing both interstate and intrastate jurisdictional separations results in order to substantiate the tariffs" -- it failed to do so, and the tariffs should be rejected. (Emphasis in original.) *Id.*

#### **D. AT&T's Position**

AT&T asserts that the Commission should direct WECA to support its tariff filings with all necessary and sufficient documentation and work papers. AT&T argues that it and other intervenors were frustrated in their attempts to obtain and review complete and accurate company financial data, noting that in Colorado and Oregon, companies are required to file the total company cost study already prepared and submitted to the National Exchange Carrier Association. This Commission should enforce a similar requirement, because without this information, it cannot ensure that the companies are not over-recovering their revenue requirement from the primary revenue sources -- interstate access charges, intrastate access charges, and local rates. AT&T argues the record in this proceeding clearly shows that the revenue requirement upon which this increase is premised was not calculated in compliance with the Commission's Orders in Cause No. U-85-23, and the filing should be rejected.

### **E. United Telephone's Position**

United believes that much of the contentiousness of the instant proceeding results from the fact that WECA, Commission Staff, and other parties have, "without basis, strayed from the design governed by U-85-23 in their positions in this proceeding." Brief at 1. There is not a sufficient record in this proceeding to revise or overhaul the scheme adopted in U-85-23, and any reform of universal service should be undertaken in Docket No. UT-980311 which specifically addresses the policy and administrative aspects of a universal service funding mechanism.

As to the specific question whether WECA has met its burden of proof, "United takes no position except to note that the claim cannot rest on whether interstate revenue requirements were provided." Brief at 2. United argues that interstate costs have no bearing on intrastate CCL rates, nor are they required for calculating the USF rate as governed by U-85-23.

### **F. Commission Discussion and Decision**

#### **1. Data Filing Requirement**

In its 18TH ORDER , the Commission refused to adopt an industry intraLATA telecommunications plan (Plan or ITP) sponsored by U S WEST's predecessor Pacific Northwest Bell Telephone Company, Washington Independent Telephone Association, and AT&T, which attempted to address the concerns of the local exchange companies and AT&T regarding a new industry compensation structure. The presiding administrative law judge had recommended the adoption of a modified version of the ITP.<sup>11</sup> The Commission instead found it appropriate to state those provisions of the Plan it found acceptable through its findings of fact, conclusions of law, and order, rather than simply adopt the Plan by reference, and therefore modified some of the Plan's provisions and added additional provisions. The 18TH ORDER at Finding of Fact paragraph 22 provides:

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<sup>11</sup> "1. The intraLATA telecommunications plan (ITP) as modified in the body of this order is hereby approved and adopted as the procedure for implementing the revisions of RCW 80.36.160." Washington Utilities and Transportation Commission v. Pacific Northwest Bell Telephone Company, et al., Cause No. U-85-23 *et al.*, Seventeenth Supplemental Order (Proposed Order), at 29. (17TH ORDER).

In the following provisions the Commission revises and restates the ITP in its own words. These provisions for the joint provision of telecommunications services in the state of Washington are fair, just, and reasonable[.]

Here, we discuss those Plan provisions from the 18TH ORDER relevant to our discussion of the filing requirements imposed upon WECA and the individual member companies:

**a. The projected 1987 intrastate nontraffic sensitive revenue requirement will be developed by the LEC.<sup>12</sup>**

WECA challenges Commission Staff's position that the 1997 projected revenue requirement was inadequate and failed to provide for an adjustment to revenues. Citing the testimony of Mr. Phillips, WECA argues its filing does in fact provide for an adjustment to revenues "by projecting the access minute growth that will occur in the projected test year. This increase in minutes produces an increase in revenue." WECA brief at 23.

Commission Staff responds that the language of WAC 480-80-047(2) does not support the filing of tariff revisions "based on projected revenue requirements, developed from projected year end expenses and projected access lines and projected minutes of use." Staff brief at 19. Staff argues that if actual usage and cost data from the previous year do not adequately reflect a company's investment or other circumstances, it should propose an adjustment, supported by detailed work papers.

The 18TH ORDER was entered December 30, 1986, and the first access charge tariff filing pursuant to the ORDER was to be filed no later than January 30, 1987. At that time, the local exchange companies could not have predicated their tariffed rates on anything other than a "projected" basis. The 18TH ORDER, however, neither directs nor authorizes all succeeding annual tariff filings to be made on a "projected" basis, and, as noted above, requires that all filings "be accompanied by complete work papers." That WECA thereafter prepared its tariff filings using a projected format, including the 1997 filing now before us, and that Commission Staff objected to this format, is moot.

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<sup>12</sup> From Finding of Fact 22, at II.C, 18TH ORDER at 25.

As Commission Staff notes, WAC 480-80-047(2) requires that “[t]he tariffs shall reflect usage and cost data of the previous year.” We interpret this rule to require WECA to support its annual tariff filing with actual results of operations data for the year immediately preceding that in which the filing is made, including *pro forma* adjustments as appropriate. The WECA filing fails to comply with the ORDERS and WAC 480-80-047(2) and should be rejected.

**b. The NTS revenue requirement calculated in Paragraph II C above will be limited to that which is assigned to the intrastate jurisdiction.<sup>13</sup>**

WECA contests the position of Commission Staff and other parties that it is necessary to review the complete interstate cost studies of the individual member companies in order to gain a complete picture of the NTS revenue requirement. WECA argues that the company witnesses testified that review of the interstate cost studies is not necessary to ascertain whether the intrastate cost studies are properly prepared. “The intrastate cost study is a complete study.” WECA brief at 26.

Commission Staff urges that it is necessary to review the entire study of each company’s NTS costs, including interstate costs, in order to properly audit the company’s calculations supporting the tariff filing. Staff points out that its ability to review separately the development of the interstate and intrastate NTS costs is essential to identifying the costs allocated to each jurisdiction and to ensuring that there is no duplication of costs reported in the individual studies. Staff brief at 21-22.

U S WEST points out that WECA eventually dropped its initial position that review of interstate results was unnecessary and unwarranted, permitting limited interstate review. U S WEST believes that WECA did not, however, meet its obligation to provide the data to Commission Staff in a form which allows accurate verification and analysis of WECA’s calculations for the intrastate jurisdiction. U S WEST brief at 5.

AT&T maintains that Commission Staff’s “already imposing task of auditing” the companies was made unnecessarily more difficult by the lack of cooperation of the companies. “Intervenors were similarly frustrated in their efforts to obtain and review a complete and accurate picture of the companies’ financial information.” AT&T brief at 7.

The Commission adopted “[a]n allocation of NTS costs 50 percent to local exchange, 25 percent to interstate toll, and 25 percent to intrastate toll[.]” 18TH ORDER at

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<sup>13</sup> From Finding of Fact 22, at II.D, 18TH ORDER at 25.

20. While the individual companies ultimately must transition to a 25 percent allocator when calculating their intrastate NTS toll revenue requirement, the 18TH ORDER is absolutely clear on this point: The intrastate NTS toll revenue requirement must not include the revenue requirement to be recovered from interstate NTS toll rates or from local rates. In order to comply with the 18TH ORDER and Commission rule, “each company shall also file complete work papers and data sufficient for the staff of the commission to review the correctness of the report and related tariff filing, if any.” WAC 480-80-047(3). If Commission Staff requests that the companies submit for review complete interstate and intrastate cost studies, and actual results of operations for the previous year in order to ensure that the intrastate NTS toll revenue requirement is “limited to that which is assigned to the intrastate jurisdiction,” it is the obligation of the individual companies to supply such information and data to Staff in both a timely manner and in a form which facilitates Staff’s review of such information. As noted above, Mr. Phillips, WECA administrator, testified “that’s the purpose of filing [the tariff revisions] with the Commission[.]” The record in the instant proceeding contains many references to the companies’ refusals to provide these cost studies and other data to the Staff and the parties examining the WECA tariff filing.<sup>14</sup> WECA and the individual member companies have failed to comply with the 18TH ORDER and WAC 480-80-047(3) and the filing should be rejected.

## **2. 25 Percent Allocator**

As stated above, the Commission’s administrative law judge in Cause No. U-85-23 determined that NTS costs should be allocated according to a Commission Staff recommendation:

6. The availability of the local loop to interexchange companies is an asset as equal in value to interstate carriers as it is to intrastate carriers. An allocation of NTS costs 50 percent to local exchange, 25 percent to interstate toll, and 25 percent to intrastate toll, as proposed by Commission staff is reasonable. 17TH ORDER at 25.

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<sup>14</sup> See, e.g., Exh. T-45 at 7 and 16-17; Exh. T-168 at 3-4; Exh. T-171 at 6-8; Tr. at 755-761; Commission Staff brief at 11-13 and 19-22; U S WEST brief at 4-6; AT&T brief at 7-8.

In the 18TH ORDER, the Commission adopted the 17TH ORDER's determination of the appropriate allocation of NTS costs:

The Commission adopts an allocation of NTS costs based upon a division of 50 percent to local exchange services, 25 percent to interstate toll and 25 percent to intrastate toll (with exceptions for Asotin Telephone Company, General Telephone Company and Pacific Northwest Bell Telephone Company). This allocation will be implemented on a gradual basis with initial tariffs transitioning NTS costs toward 25 percent in an amount equivalent to up to \$2 per access line per month for the first year. Further review will determine what additional amounts, if any, will be required to continue the transition. 18TH ORDER at 5.

Lest the notion of "further review" be misconstrued, the Commission addressed the timing of the phase-in to a 25 percent target allocator in the following way:

The Commission has previously endorsed the concept of a pragmatic, gradual, and flexible transition toward the 25 percent gross allocator. It is important that these policies not be misinterpreted as a lack of commitment to our goal. To endorse a 6-year phase-in would, in our opinion, send the wrong signal to the industry. 18TH ORDER at 10.

It is noteworthy that in discussing the recommendation for a six year transition, the Commission stated in its 18TH ORDER that "it is directly contrary to the stated position of AT&T and the WITA companies (as a group) which advocate an expeditious \$2 per month shift in the first year with another shift in the second year." *Id.* The Commission requested a report from each company identifying the effects of the CCL after 10 months, indicating "whether the next step of the transition (beginning in 1988) should be modified." *Id.* (Emphasis supplied.)

The Commission expressed its willingness to be flexible in securing a 25 percent target allocator:

However, the need for a variance from a reasonable standard should be demonstrated on a complete record. \* \* \* On a company specific basis the Commission will consider other exceptions to the 25 percent target. However, we deem it unlikely that any company will justify a target allocator greater than the 35 percent level suggested in the brief of Commission staff." *Id.*

At no time, has the Commission abandoned or retreated from its prior decision to require companies to transition toward a 25 percent allocation factor.

The WECA member companies have failed to demonstrate upon this record why they have not made the transition to a 25 percent allocator, or, in the alternative, why they have not proposed a next step in that transition. The 18TH ORDER clearly stated that ultimately this goal would be reached, with exceptions for companies demonstrating upon a complete record that such transition was not in the public interest -- no such demonstration by any company has been made on the record in this proceeding. As noted above, the Commission, in 1991, codified provisions of the ORDERS regarding the annual review of tariffed access charges at WAC 480-80-047, *Access charges*, "including the transition to a twenty-five percent allocation factor." WAC 480-80-047(1). The Commission finds that the WECA access charge tariff filing in this proceeding does not comply with the Commission's ORDERS and WAC 480-80-047 and should be rejected.

Based upon our review of the entire record in this proceeding, we find, with regard to the annual report and updated nontraffic sensitive carrier common line switched access tariff, that WECA and the individual member companies have failed to comply with the 18TH ORDER and WAC 480-80-047. The Commission finds therefore that WECA and the individual member companies have not sustained their burden of proof to show that the increase in the NTS revenue requirement is just and reasonable, and rejects the tariff filing in this matter. As a result of this finding, it is not necessary to address other issues raised by the parties. Having said that, however, we believe it is incumbent upon the Commission to address two matters which have been called into question during the conduct of the instant proceeding: (1) the continuing viability of the ORDERS in Cause No. U-85-23, and (2) the responsibility of WECA and the individual member companies to produce documents, data, and information.

**G. Future WECA Filings****1. Disputed Issues**

The Commission, as discussed above, has to date never signaled a retreat from completion of the transition to a 25 percent allocator for intrastate NTS toll revenue requirement. Through this proceeding, we have become acutely aware of the degree to which WECA, the individual member companies and Commission Staff disagree over the continuing viability of the ORDERS and rules, and, more importantly, their inability to resolve these differences in recent years. We also have become aware of the number and breadth of issues which comprise the disagreement over ongoing compliance with those ORDERS and Commission rules.

We believe that substantial issues must be raised, addressed, and resolved before WECA undertakes its next annual review and makes its report of results in July 1999 -- principal among which is the transition to the 25 percent allocator. We will require the 1999 WECA report to identify and support the amount of the transition to be taken by each company whose current allocator exceeds 25 percent. The 18TH ORDER stated "[t]he annual transition amount of \$2 per access line per month noted in the ITP is a reasonable phase-in mechanism for companies whose intrastate SPF now exceeds 25 percent. Variance from this adjustment may be approved upon a showing of extraordinary hardship." While we remain flexible and open to the concept of "transition", an immediate and significant next step in that transition must be taken now. Any company capable of adequately documenting "extraordinary hardship" from the full \$2 per access line per month may petition for waiver or relief from the next step in the transition. Among other issues that WECA, the companies, and Staff must discuss include: those recommended for further investigation in the settlement that resulted in our closing Docket No. UT-910355; corporate overhead and executive compensation; the use of straight dial equipment minutes; and the flawed calculation from exhibit 213 in Cause No. U-85-23.

The Commission will require WECA, the individual company members, and Commission Staff, at a minimum, to begin informal discussions on a monthly basis to address these issues; U S WEST and AT&T, and any other interested party, should be offered the opportunity to participate in this process. We ask for monthly updates, beginning December 1, 1998, on the status of issues addressed and the parties' progress towards a consensus resolution of these issues. We expect the parties to submit a final report no later than April 1999. The Commission is convinced the parties can amicably resolve their differences, and to that end we have suggested these discussions be "informal"; however, the lack of a "formal" context for this effort should not be interpreted as inviting laxity either in pursuing this effort or reaching a consensus resolution of these issues.

## **2. Access to Data**

The Commission is deeply distressed by the testimony in this matter regarding the failure of the Association and the individual member companies to file unabbreviated interstate and intrastate cost studies, and actual usage and results of operations data in support of their tariff filing in contravention of the ORDERS and Commission rule. The refusal of some individual member companies to respond to data requests in a timely manner, or not at all, and the unrealistic and unworkable constraints visited upon Commission Staff and other parties in their efforts to audit the cost studies and other data and information that were made available for Staff's review are unacceptable.

WECA is authorized under WAC 480-80-048 to file petitions and to publish and file tariffs with the Commission; all initial tariffs and all changes to such tariffs, *e.g.*, the instant tariff filing, are subject to all the procedural requirements and protections accorded other telecommunications company filings before the Commission. The rule also authorizes the Commission "to supervise the activities of WECA[.]" We will not belabor the obligation upon WECA and each individual member company to produce documents, data, and information when requested by the Commission. The statutes authorizing the Commission to issue subpoenas for the attendance of witnesses and production of papers, books, accounts, documents and testimony, and to inspect, at any and all times, the papers, books, accounts, and documents of any public service company, are the settled law of this state. Further, the framework for the annual review and tariff filing for updating the intrastate NTS toll revenue requirement of the WECA member companies is prescribed in Commission rule and order.

There can be no excuse for the failure of WECA and the individual member companies to timely produce and file with the Commission any and all documents, data, and information requested by Commission Staff in a formal adjudication. The Commission in this proceeding has entered a protective order affording those documents, data, and information the confidential treatment allowed by state law. The Association and the companies knew long before the filing reached the Commission what type of supporting documentation such a filing would encompass -- it is the documentation required by the ORDERS and WAC 480-80-047. There can be no claim of surprise, and no claim of unpreparedness: if the filing were composed and filed as required by Commission Order and rule, the documentation would have accompanied the filing and already would have existed in the nature and form which would satisfy Staff and other parties' discovery needs. The Commission will not countenance the obfuscation, delay, and outright denial of information to Commission Staff which characterized this proceeding.

### **FINDINGS OF FACT**

1. The Washington Utilities and Transportation Commission is an agency of the state of Washington vested by statute with authority to regulate rates, services, facilities, practices, rules, accounts, and transfers of public service companies, including telecommunications companies.
2. WECA is authorized by WAC 480-80-048 to file petitions and to publish and file initial tariffs and changes to such tariffs with the Commission, subject to all the procedural requirements and protections associated with telecommunications companies' filings before the Commission.
3. By tariff revision filed July 15, 1997, as amended, WECA seeks an annual increase in the intrastate nontraffic sensitive revenue requirement, to be charged to interexchange carriers, of approximately \$374,000.
4. The proposed tariff revisions are not accompanied by complete work papers, in either paper copy or electronic format, as required by the Eighteenth Supplemental Order in Cause No. U-85-23, do not reflect usage and cost data for the preceding year, and were not filed with complete work papers and data sufficient for Commission Staff to review the correctness of the filed tariffs, as required by WAC 480-80-047.

5. The WECA filing does not propose a \$2 per access line per month transition for those individual member companies whose intrastate subscriber plant factor exceeds 25 percent, nor does it include a showing of extraordinary hardship which would support a variance from this transition amount, as required by the Eighteenth Supplemental Order in Cause No. U-85-23 and WAC 480-80-047.

6. The Commission on this record is unable to verify that the proposed increase in the intrastate nontraffic sensitive revenue requirement is limited to only that which is assigned to the intrastate jurisdiction, as required by the Eighteenth Supplemental Order in Cause No. U-85-23.

### **CONCLUSIONS OF LAW**

1. The Washington Utilities and Transportation Commission has jurisdiction over the subject matter of and the parties to this proceeding.

2. The WECA 1997 annual review and update of the intrastate nontraffic sensitive carrier common line rate element does not comply with the Eighteenth Supplemental Order in Cause No. U-85-23 and WAC 480-80-047 and should be rejected.

3. WECA has not sustained its burden of proof under RCW 80.04.130 to show that the proposed increase in rates in currently effective Tariff WN U-1 is just and reasonable and the tariff revisions should be rejected.

### **ORDER**

#### **THE COMMISSION ORDERS:**

1. The tariff revisions filed by the Washington Exchange Carrier Association are rejected;

2. All outstanding motions made in the course of this proceeding which are consistent with the findings, conclusions, and decision should be granted; those inconsistent with same should be denied.

3. The Commission retains jurisdiction over the parties to and the subject matter of this proceeding to effectuate the terms of this Order.

DATED at Olympia, Washington, and effective this        day of  
October 1998.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

ANNE LEVINSON, Chair

RICHARD HEMSTAD, Commissioner

WILLIAM R. GILLIS, 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 480-09-820(1).**