

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND)	
TRANSPORTATION COMMISSION,)	
)	
Complainant,)	DOCKET NO. UT-971140
)	
v.)	
)	
WASHINGTON EXCHANGE)	
CARRIERS ASSOCIATION, <u>et al.</u> ,)	SIXTH SUPPLEMENTAL ORDER
)	GRANTING LIMITED CLARIFICATION
Respondent.)	
.....)	

BACKGROUND

On October 30, 1998, the Commission entered its *Fifth Supplemental Order Rejecting Tariff Filing* (5TH ORDER) in this proceeding. On November 9, 1998, U S WEST Communications, Inc. (U S WEST), filed a motion for clarification and/or reconsideration of the 5TH ORDER. The Commission by letter notice to the parties on November 10, 1998, called for answers to the U S WEST petition. The Washington Exchange Carrier Association (WECA), United, and Commission Staff filed answers to the U S WEST motion.

MEMORANDUM

I. U S WEST Motion

U S WEST, in its motion, asks the Commission to clarify its decision "to address the continuing viability of the U-85-23 orders." U S WEST finds at least three interpretations to be put upon the Commission's decision to have the parties address the ongoing viability of these orders, and seeks specificity as to which, or other, interpretation is to guide the parties in this effort.

U S WEST proposes three possible interpretations of the Commission's 5TH ORDER in this matter:

1. Cause No. U-85-23 remains viable for the foreseeable future and the Commission has ordered the parties to begin discussions to better implement it to avoid the problems raised in this docket.

"U S WEST respectfully requests the Commission to change its decision[,]" if this was the intent of the 5TH ORDER, because problems with U-85-23 "are insurmountable, of questionable value in light of changes in the toll market, and are or suspect legality."

Therefore, the Commission should initiate a formal process, including both rule making and adjudication, "to formulate and implement a clear methodology for the future recovery of carrier universal service expenses[,] and permit integration of access charge reform, universal service support, and the historical funding ordered in U-85-23.

- 2. Cause No. U-85-23 is to be abandoned and the Commission has requested the parties devise an acceptable and appropriate substitute.

U S WEST agrees, in part, if this was the intent of the 5TH ORDER – "U-85-23 should be abandoned" – however, because the orders in U-85-23 have been codified, any changes should result from a formal, rather than an informal, Commission process.

- 3. The Commission has decided to replace the orders in U-85-23 but, pending replacement, the parties should meet to discuss how to conform to U-85-23 until such time as it will be replaced in a formal process.

If this was the intent of the 5TH ORDER, "U S WEST is in agreement." The Commission should move expeditiously to commence a formal process and to limit the continued viability of a funding mechanism which has outlived its viability.

"If the Commission's Order is not susceptible to any of the above interpretations, U S WEST respectfully requests the Commission to specify its exact decision as to the viability of the process implemented in Cause No. U-85-23."

II. Answer of United Telephone Company

"United agrees with U S WEST. There are many conflicts and ambiguities that arise between the Commission's access reform order in UT-970325 and the Commission's direction in the U-85-23 orders that will affect future WECA filings."

United claims the cost and minute basis for rate development, rate design, and pooling arrangement in U-85-23 conflict with the Commission's access charge reform rule making in Docket No. UT-970325: First, by allowing weighting of terminating carrier common line charges in order to avoid bypass; and, second, by allowing for recovery of universal service funds from statewide originating and terminating minutes.

U-85-23 calls for use of embedded, Part 69 cost studies for rate development, including terminating local switching. But, the access charge reform rule making requires use of total service long-run incremental cost (TSLRIC), or the rate charged for local interconnection, for developing the local switching rate.

Additionally, U-85-23 specifies a USF rate additive limited to a local exchange company's (LEC) loop cost in excess of 115 percent of statewide average LEC loop cost. In Docket No. UT-970325, an interim universal service fund rate is defined as a residual rate intended to make access charge reform revenue neutral.

United agrees with U S WEST that changes to U-85-23 must result from a formal proceeding. Many issues that arise in reconciling orders from U-85-23 and the access charge reform rule are beyond the scope of the instant proceeding -- no record exists upon which the Commission could address these issues. United therefore "supports an immediate industry effort to conform U-85-23 to UT-970325, and ultimately, to any statewide universal service that may emerge out of UT-980311."

III. Answer of WECA

The Washington Exchange Carrier Association answers that the Commission's directive to the parties is to discuss certain issues relating to the access charge tariff filing process. However, "U S WEST has taken this simple direction and attempted to leverage it as a Commission direction to replace U-85-23." WECA urges that the instant proceeding is not, and cannot be, the forum for reversing and replacing the orders in U-85-23.

The Commission directed WECA member companies, WECA, and Commission Staff, and invited other interested persons, to use informal discussions to address a set of specific issues relating to WECA's access charge filings. While it may be appropriate to open a new formal proceeding to address other parts of U-85-23, the Commission's directive to the parties is not an opportunity for U S WEST, or any other party, to raise every problem that exists with U-85-23.

IV. Answer of Commission Staff

Commission Staff does not believe any of U S WEST's three potential interpretations of the 5TH ORDER properly reflects the Commission's decision. "Staff does not read the Order as indicating an intent on the part of the Commission to replace or abandon the Orders in U-85-23." Instead, Staff reads the 5TH ORDER to find that the principles of U-85-23 are still viable, but that the parties must correct flaws inherent in and flowing from implementation of the Orders, and how the U-85-23 Orders' directives can be reconciled in the future.

Commission Staff believes that should the parties reach consensus that portions of the mandates in U-85-23 should be modified, the final report to the Commission could make recommendations, as appropriate, including a formal process to implement such modifications -- rule making and/or adjudicative proceedings.

The Commission's directive to engage in informal discussions to correct problems with WECA access charge tariff filings is an appropriate format within which to address the issues, but is not the appropriate vehicle to replace or abandon U-85-23.

COMMISSION DISCUSSION AND DECISION

The Commission ordered WECA, the individual member companies, and Commission Staff to begin informal discussions on a monthly basis to address issues relating to the ongoing implementation of the Commission's 18th and 19th Supplemental Orders in U-85-23 (18th and 19th Orders). Specifically, we noted "those [issues] 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."

We agree with WECA that Docket No. UT-971140 "has never been and should never become the means by which U-85-23 is replaced." However, we also agree with WECA that "a number of the issues that are involved in U-85-23 are being discussed in various other dockets before the Commission." As United notes, "[m]any of the issues that arise in reconciling U-85-23 with UT-970325 are beyond the scope of the instant proceeding, and therefore a record does not exist on which the Commission could base its decisions."

The Commission is certainly not unaware of the potential for conflict resulting from the policy directives embodied in the access charge reform rule, the universal service adjudication and the proposed universal service funding rule, and the ongoing implementation and application of policy directives from U-85-23. In the instant proceeding, we addressed the annual WECA report and tariff update requirement of the 18th and 19th Orders in the context of the record before us. However, that record included a specific reference to the universal service adjudication and rule making then underway, and the 5TH ORDER implicitly referenced those proceedings and the access charge reform rule making vis-a-vis the 18th and 19th Orders:

We also have become aware of the number and breadth of issues which comprise the disagreement over ongoing compliance with those [18th and 19th] ORDERS and Commission rules.

United signals that it "supports an immediate industry effort to conform U-85-23 to UT-970325, and ultimately, to any statewide universal service program that may emerge out of UT-980311." The effort tasked by the 5TH ORDER for WECA, the individual member companies, Commission Staff, U S WEST, United, Public Counsel,

AT&T, and all other interested persons is intended to be that "immediate industry effort" described by United. If the participants ultimately conclude that formal proceedings are necessary, as suggested by United and U S WEST to integrate access charge reform, universal service support, and the historic funding mechanism of U-85-23, they should report their conclusion to the Commission.

We agree with Commission Staff's observation that "[i]f the parties to the discussions reach a consensus recommendation that portions of the mandates in U-85-23 should be modified, the final report, to be delivered to the Commission no later than April, 1999, would make such recommendations, and suggest a process that can be pursued to make such modifications."


The Commission urges the participants to the "informal discussions" to expeditiously address the specific concerns with ongoing implementation of the 18th and 19th Orders identified in the 5TH ORDER, and reiterated above. Further, the 5TH ORDER is clarified to encourage the participants to the informal discussions to identify, raise, and address the larger issues of coordination and integration of policy directives in the access charge reform rule and the universal service formal proceedings in the context of the policy directives of U-85-23. As Staff notes, recommendations to the Commission on such matters, including the appropriate process for addressing such recommendations, are appropriate to the task chartered by the Commission's 5TH ORDER.

ORDER

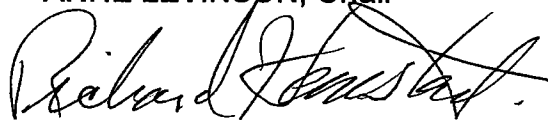
THE COMMISSION ORDERS That the U S WEST Communications, Inc., motion for clarification is granted only to the extent it is consistent with the clarification explicitly stated in the body of the instant Order.

DATED at Olympia, Washington, and effective this 15th day of December 1998.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION



ANNE LEVINSON, Chair



RICHARD HEMSTAD, Commissioner