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June 7, 2000

## VIA ELECTRONIC MAIL ORIGINAL VIA FEDEX

Carole J. Washburn  
Secretary  
Washington Utilities & Transportation Commission  
1300 S. Evergreen Park Drive SW  
P.O. Box 47250  
Olympia WA 98504-7250

Re: Telecommunications Rulemaking, Docket Nos. UT-990146, *et al.*

Dear Ms. Washburn:

Advanced TelCom Group, Inc., Electric Lightwave, Inc., and NEXTLINK Washington, Inc. (collectively "Joint Commenters"), provide the following comments on the draft rule language on imputation in response to the comments provided by U S WEST Communications, Inc. ("U S WEST") and GTE Northwest Incorporated ("GTE").

The Joint Commenters, in conjunction with other competing local exchange companies ("CLECs"), have proposed language for a rule on imputation. This rule would codify the Commission's consistent requirement in adjudications that the incumbent local exchange companies ("ILECs") not price their services at a level below the costs they impose on competitors for underlying facilities and services. The ILECs raise several objections to such a rule, none of which should preclude Commission adoption.

The ILECs' primary objection is that the proposed imputation rule is beyond the scope of this rulemaking proceeding and should be considered, if at all, in a separate proceeding. The Commission's objective in this proceeding is to review its existing rules and to amend those rules as necessary to ensure that they adequately reflect current and appropriate Commission requirements and procedures. Amendments, however, are not limited to revising existing rule language. Indeed, Commission staff has proposed several new rules, recognizing that additional rules may be needed to fulfill the Commission's charge from the Governor. GTE acknowledges that

“while imputation has not been reduced to the terms of a specific Administrative Rule, it is a practice of this Commission and has been explored and adopted in several adjudicative proceedings, including U85-23 and UT 950200.” GTE Letter at 2 (April 7, 2000). This general rulemaking is precisely the proceeding in which the Commission should codify that practice.

U S WEST and GTE nevertheless contend that imputation implicates major policy questions that are not suited for this rulemaking. The Commission has already resolved those policy questions in the prior adjudications that GTE references. The only issue for a rulemaking, therefore, is how best to reflect those policy determinations in rule language – the same issue raised in the context of reviewing the Commission’s existing rules and staff’s additional proposed rules. GTE states that other policy issues, such as deaveraged pricing and universal service, should be resolved before considering a rule on imputation. The Commission, however, has not delayed the implementation of imputation pending resolution of such policy issues, and resolution of these issues should not delay codification of the imputation requirement.

The ILECs also object to the proposed imputation of unbundled network element (“UNE”) prices. U S WEST contends that imputation is only applicable to prices for bottleneck facilities, and UNEs are not bottleneck facilities because competitors have adequate alternatives.<sup>1</sup> Congress and the FCC have consistently found to the contrary. Most recently, the FCC in its *UNE Remand Order* designated loops, transport, and other network facilities as UNEs because access to those facilities is necessary and lack of such access would impair competitors’ ability to provide service. Only operator services, directory assistance, and (in some cases) switching were not UNEs under the federal Telecommunications Act of 1996 because the FCC found that sufficient alternative sources for these services and facilities are available. UNEs, therefore, are bottleneck facilities and their prices should be imputed into the ILECs’ retail rates consistent with federal law and Commission practice.

GTE takes a somewhat different tack, contending that it should not be required to impute UNE prices when competing carriers are not using GTE UNEs to provide service. GTE, of course, does not explain how these hypothetical circumstances could arise if UNEs are priced and provided consistent with federal and state law. Even if such circumstances could exist, GTE misses the point. UNEs must be provided at rates based on total element long-run incremental cost (“TELRIC”). If GTE can provide retail service at a rate that is lower than the prices of the underlying UNEs, GTE either is providing that service below its cost (and thus engaging in cross-subsidization) or is pricing its UNEs well above cost. Either alternative is prohibited, except in those limited circumstances in which the Commission has concluded that a retail service should be priced below cost for public policy reasons. The imputation rule thus not only establishes a retail price floor, but provides a check on the reasonableness of UNE prices.

GTE also contends that inclusion of nonrecurring charges as part of the imputed UNE prices would be one of “certain problems which would complicate application of this rule.” GTE Letter at 2. GTE does not explain either why this would be a “problem” or would “complicate application of this rule.” The only problem or complication with respect to imputing nonrecurring charges is if those charges are excessive and do not permit CLECs economically to offer service in GTE territory using GTE UNEs. The imputation rule would assist the Commission to resolve that problem, not create problems or complications.

U S WEST and GTE should have no objection to an imputation rule if their UNEs are priced appropriately. The ILECs have consistently claimed that the UNE prices adopted by the Commission are too *low*, which should

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<sup>1</sup> U S WEST also claims that the availability of its services at a wholesale discount eliminates any risk of a price squeeze. U S WEST’s resale obligations, however, are entirely separate from its obligation to provide access to UNEs, and the availability of retail services at an avoided cost discount does nothing to ensure that U S WEST is pricing its retail services above the costs it imposes on facilities-based competitors.

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enable them easily to satisfy the Commission's imputation requirements. U S WEST also relies on an imputation analysis as a basis for its line sharing pricing proposal in Docket No. UT-003013. The ILECs objections in this rulemaking fail to provide any reasoned basis for a Commission refusal to codify its imputation requirement.

The Joint Commenters appreciate the opportunity to comment on these issues and look forward to continued participation in this proceeding.

Sincerely yours,

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cc: Rex Knowles  
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