

NOV 30 1999

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> ,)	EIGHTH SUPPLEMENTAL ORDER
)	ACCEPTING REPORT AND
Respondents.)	SETTLEMENT AGREEMENT
.....)	

BACKGROUND

On July 15, 1997, the Washington Exchange Carrier Association (WECA) 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 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. The Commission conducted four days of evidentiary hearings before Chairwoman Anne Levinson, Commissioner Hemstad, Commissioner Gillis, and Administrative Law Judge Terrence Stapleton. The parties included: WECA; the individual company members of WECA; Commission Staff; AT&T Communications of the Pacific Northwest, Inc. (AT&T); U S WEST Communications, Inc. (U S WEST); United Telephone Company of the Northwest (United); MCI Communications Corporation (MCI); and GTE Northwest Incorporated (GTE).

On October 30, 1998, the Commission entered the *Fifth Supplemental Order Rejecting Tariff Filings* (Fifth Order). The Commission recognized that substantial issues had to be raised, addressed, and resolved before WECA could undertake its next annual review in order to make its report of results in July 1999. The Commission required 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, were offered the opportunity to participate in this process.

On September 9, 1999, WECA filed with the Commission, on behalf of WECA, its member companies, and Commission Staff¹ a *Report and Settlement Agreement*. WECA, also on September 9, 1999, filed with the Commission a Supplement to WECA's 1999 annual report -- the original report was filed July 30, 1999, in compliance with WAC 480-80-047.

MEMORANDUM

I. Scope of Discussions

The Fifth Order in this proceeding directed that the informal discussions between the interested parties include certain matters, principal among these was the Commission's concern over the issue of the transition to a 25 percent gross allocator for non-traffic sensitive costs. Additionally, the Commission also asked the parties to address the following matters:

- Those items recommended for further investigation in the settlement that resulted in the closing of Docket No. UT-910355
- Corporate overhead and executive compensation
- Use of straight dial equipment minutes
- The "flawed calculation" from Exhibit 213 in Cause No. U-85-23.

The issues that grew out of the dismissal of the complaint in UT-910355 are as follows:

- What process shall determine the return factor to be used in the annual non-traffic sensitive (NTS) and traffic sensitive (TS) access filings.
- Whether it is desirable to continue the transition to a 25 percent NTS gross allocator.
- Whether prior transition amounts should be reflected in the actual allocator.
- Whether the transition should go below a company's actual subscriber line usage (SLU).

¹ The proffered settlement is offered by Commission Staff and WECA on behalf of itself and its member companies. The other participants in the informal discussions required by the Fifth Order do not object to the settlement, but are not signatories.

- When should the gross allocator shift be completed.
- Questions related to the access charge rule, WAC 480-120-047, including issues of filing dates, support data, and the appropriateness of combining traffic and non-traffic sensitive filings.

In addition to those items specifically raised by the Fifth Order, the WECA Committee members determined that it would be useful to include additional items in the discussions. These items are as follows:

- The use of actual revenue requirement in filings adjusted for known and measurable changes versus the use of projected revenue requirement;
- Treatment of investor supplied working capital;
- The removal of pay phone expenses from the pool;
- The removal of United Telephone Company from the pool;
- McDaniel Telephone Company converting from an average schedule to a cost company;
- The effect of EAS conversions — converting toll minutes to local; and
- Inclusion of Pend Oreille Telephone Company in the pool process.

Near the end of the series of meetings, Commission Staff and WECA also discussed the standards for entering and exiting WECA pools.

II. Changes in the Environment Affecting the Discussions

In its filing, WECA notes that there have been at least two major changes since entry of the Fifth Order that affect the on-going viability of the Commission's decisions in Cause No. U-85-23. One is the implementation of intraLATA toll dialing parity which has increased customer choice of intraLATA toll carriers. IntraLATA toll dialing parity was implemented February 8, 1999.

The second major change is the implementation of the Commission's new Access Charge Reform Rule, WAC 480-120-540, which began in early-1999. WECA maintains that the practical effect of the rule has been substantial modification of the rate design aspects of the various Orders in Cause No. U-85-23 (U-85-23 ORDERS).

Under WAC 480-120-540, the rate design for the carrier common line (CCL) component is changed in that the terminating CCL rate is reduced to zero. In addition, terminating traffic sensitive rates are reduced to total service long-run incremental cost (TSLRIC), or, for many companies, a surrogate of a TSLRIC-based cost is used. The amount thus eliminated from terminating access rates is then shifted, in whole or part, to new interim universal service rates. The rule allows the amount that is not placed in the interim universal service rate element to be placed on originating access rate elements. This is a substantial amendment to the rate design established in the U-85-23 Orders. Thus, at least as to terminating access, the rate design aspects of the U-85-23 Orders have been superseded.

These changes in environment had a substantial effect on the direction of the discussions undertaken in resolution of the issues identified above. As a result, some items were found to be rate case specific items which did not need resolution at this time. The product of the discussions is set out below.

WECA points out that it currently administers the funds collected through the interim universal service rate element; these charges formerly appeared in the terminating CCL rate. WECA also continues to administer the traditional WECA universal service pool, the originating CCL rate pooling process, and the Pend Orielle rate additive. Under the provisions of the *Report and Settlement Agreement*, WECA will continue to perform these functions, as modified by the Agreement.

III. Report and Settlement Agreement

The parties to the Agreement recommend resolution of the outstanding issues from the Fifth Order in the following manner:

- That the Commission accept the analysis set forth in Exhibit 1 to the *Report and Settlement Agreement* that all WECA members have transitioned at least \$2 per line per month in satisfaction of the Fifth Order.
- That the Commission consider revising or repealing WAC 480-80-047 to terminate the annual access charge report/tariff filing requirement.
- That the Commission require WECA to prepare and file a tariff change to include Pend Oreille Telephone Company in the traditional USF, interim USF and CCL pools on a revenue neutral basis, adjusting the WECA pool rates to reflect that inclusion and the elimination of the separate Pend Oreille rate additive from the WECA tariff and the tariffs of U S WEST, GTE, and United.

- That the Commission accept the process described for membership in the pooling process other than traditional USF as follows:
 - Access charge revenues will be pooled on a voluntary basis, pursuant to contracts signed by the pooling parties and approved by the Commission. It is contemplated that the contracts will be as close as possible to the existing Non-Traffic Service Fund Administration Agreements which are presently in effect, modified to reflect the terms of this settlement agreement.
 - The contract shall contain a clause describing that any party to the contract may leave the pool upon reasonable notice to WECA and the Commission.
 - By March 1, 2000, WECA shall establish and file for approval by the Commission mechanisms by which pooled revenue will be allocated among members, rates will be adjusted upon entry or exit of members, and whether the WECA rates are to be adjusted in the future for exogenous regulatory accounting changes and, if so, by what mechanism. It is contemplated that this filing will put into place the mechanisms to govern WECA's activities in the future, and it is not intended that those mechanisms are to be adjusted or reviewed on an annual basis.
 - Any local exchange company may enter the pool upon reasonable notice to WECA and the Commission with the terms of entry described in the WECA mechanisms to be approved by the Commission, as described immediately above.
 - An exiting company may establish its own originating access charges at a level that will produce revenues equal to those it was receiving from the WECA pool, as long as the total revenue collected by the pool and the exiting company in access charges is not increased as a result of the member's exit, as reflected in the charges established at the time that the exiting company establishes its own originating access charges. Alternatively, an exiting company may file rates that would change its revenue contemporaneous with its withdrawal from the WECA pool; in the event such filing becomes effective, either upon Commission approval or by operation of law, upon the company's withdrawal from the WECA pool, WECA rates will be adjusted to reflect the net effect of such withdrawal upon the pool. Unless an exiting company that continues to qualify to receive funds from the traditional Universal Service Fund chooses to forego such funds, its withdrawal from any other WECA pool shall not affect its right to

receive funds from the traditional Universal Service Fund so long as it continues to qualify to receive such funds. Filings by an exiting company and WECA shall be coordinated to have the same effective date.

- WECA shall continue to perform its functions in administering the pools as described above.
- That the Commission allow the WECA rates to remain at their current level (after the Pend Oreille filing described above and after a filing is made to include a new originating rate to reflect the settlements reached over the handling of some companies' access charge reform filings, such as those in Docket No. UT-990413).
- That the Commission permit any company that believes that the revenue it receives from WECA is insufficient may remain in the pool and make a tariff filing for a company-specific additive. Issues unresolved in this case, such as rate of return, corporate overhead and executive compensation adjustments, jurisdictional separations, *etc.*, may be addressed and resolved in the company's specific filing.

IV. Commission Discussion and Decision

The Commission, in the Fifth Order in this proceeding, directed Staff and WECA to meet in informal discussions due to the number of issues unresolved in this matter. The Commission noted that many of these issues have existed for several years, but have not been addressed in a particular case or in comprehensive discussions which included WECA as an organization. Therefore, while individual companies may have resolved one or more of the issues, there remained substantial difference of opinion between Staff and WECA member companies regarding the annual review and report, and ongoing compliance with Commission orders in Cause No. U-85-23.

WECA has filed five interim reports with the Commission detailing the status of the informal discussions. The Commission notes that the participants have met on at least a dozen occasions and discussed a wide-ranging agenda of issues. Staff first met with WECA counsel Mr. Finnigan on November 18, 1998, to discuss how to proceed. Those present agreed to meet informally, and set the first work session of the group for December 9, 1998. Staff prepared meeting notices, arranged for meeting locations, and prepared summaries of the meetings, which were filed as reports to the Commission, after review by all participants. On December 9, 1998, those present agreed on a list of issues and topics for future discussion.

The *Report and Settlement Agreement* filed September 9, 1999, leaves a number of issues unresolved. The parties agree that the access charge tariff filings required of the companies in compliance with the access charge reform rule, WAC 480-120-540, modify the method by which access charge rates are set and that the formula prescribed for this purpose in Cause No. U-85-23 is no longer valid. The discussions unfortunately did not resolve a number of important issues, including whether companies will use actual, as opposed to projected, revenue requirements in future filings and how the return factor to be used in the annual NTS and TS access filings will be determined.

The Commission, in directing that the informal discussions take place, anticipated that more process-oriented than result-oriented agreements would result from the discussions. Nevertheless, the recommendations by the parties, in light of developments since the original tariff filing that initiated this proceeding, are a substantial step in the right direction. The Commission therefore finds it appropriate and useful to accept the *Report and Settlement Agreement* in furtherance of the goals expressed in the Fifth Order.

ORDER

1. The Commission accepts the *Report and Settlement Agreement* between Commission Staff and WECA filed September 9, 1999.

2. The Commission accepts the analysis performed by WECA, and filed as Exhibit 1 to the September 9, 1999 *Report and Settlement Agreement*, as indicating that all WECA member companies have transitioned at least \$2.00 per line per month in satisfaction of the Eighteenth Supplemental Order in Cause No. U-85-23 and WAC 480-80-047.

3. The Commission accepts the process for WECA membership as fully described in the *Report and Settlement Agreement* at pages 6 and 7.

4. WECA shall establish mechanisms by which pooled revenue will be allocated among its members, rates will be adjusted upon entry or exit of members from the pool, and other situations requiring adjustment of rates. WECA shall file those mechanisms and procedures with the Commission for its approval no later than March 1, 2000.

5. WECA shall continue in its current role as fund administrator, as modified by the Settlement Agreement, until such time as new Universal Service fund legislation is adopted and effective.

6. Commission Staff is directed to consider, and recommend to the Commission, no later than March 1, 2000, whether WAC 480-80-047, which establishes the annual access charge report and tariff filing requirement, should be amended or repealed.

DATED at Olympia, Washington, and effective this 30th day of November 1999.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION


RICHARD HEMSTAD, Commissioner


WILLIAM R. GILLIS, Commissioner