

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION
COMMISSION

In the Matter of the	)	DOCKET NO. UT-003013
)	
	)	FIFTH SUPPLEMENTAL ORDER --
	)	DENYING MOTION TO SUSPEND
Continued Costing and Pricing of Unbundled Network Elements, Transport, and Termination	)	PROCEEDINGS; CLARIFYING PRIOR
	)	ORDER; ADDRESSING FOCAL
	)	PETITION FOR LATE INTERVENTION;
	)	OPPORTUNITY TO FILE COMMENTS
	)	ON PART B PROCEEDINGS
.....	)	(Wednesday, August 16, 2000)

GTE’s Motion to Suspend Proceeding

1 On July 18, 2000, the United States Court of Appeals for the Eighth Circuit issued its opinion on remand from the Supreme Court addressing the merits of the FCC’s forward-looking pricing methodology, in addition to various other FCC rules such as proxy rates and wholesale pricing provisions.

2 On July 28, 2000, GTE filed a motion requesting that the Commission suspend all activity in this case for six weeks to permit the parties to analyze the effect of the Eighth Circuit Court’s decision on this proceeding. GTE’s request would require comprehensive rescheduling of filing and hearing dates in both Part A and Part B of the New Generic Proceeding.¹

3 GTE states three general grounds for requesting that the Commission suspend the current schedules for both Part A and Part B:

- The permanent rates established by the Commission in Phase II of the former Generic Proceeding "were based at least in some measure on the vacated FCC rules";
- GTE is in the process of assessing the effect of the Eighth Circuit’s decision on the cost studies and testimony filed in Part A; and
- GTE’s cost models and studies it was preparing to file in Part B are based on the vacated FCC rules.

4 GTE fails to specifically refer to any permanent rates established in Docket No. UT-

¹ This proceeding is referred to as the “New Generic Proceeding” or “Phase IV” in the instant Order.

960369, *et al.*, that are inconsistent with the Eighth Circuit's decision and which must be reconsidered before Phase IV can proceed.

5 GTE fails to specifically refer to any Part A testimony or cost studies that rely on vacated FCC rules. Part A issues include OSS, collocation, and line sharing.

6 GTE must specifically identify costs submitted by the ILEC that must be revised in order to be consistent with the Eighth Circuit Court's decision before the Commission will consider suspending or rescheduling proceedings.

7 GTE claims that the cost models and studies it is prepared to file with the Commission in Part B are based on the vacated FCC rules. GTE states that it is presently analyzing the degree to which its cost studies should now be modified; however, GTE again fails to disclose any specific details in support of its motion.

8 The Part B schedule has already been extended to allow additional time for the parties to prepare testimony subsequent to the clarification of Part B issues. Direct testimony is scheduled to be filed on Friday, August 4, 2000. The parties are capable of assessing the impact of the Eighth Circuit Court's decision within the current procedural framework, and there is sufficient time built into the schedule to meet due process concerns.

9 If some aspect of the Part A proceeding can not be fully addressed because of the effect of the Eighth Circuit Court's decision, then the Commission can schedule additional hearings or carry the matter over to Part B of the proceeding. Furthermore, the Commission finds that it is premature to suspend or reschedule Part B proceedings.

10 The Commission denies GTE's motion.

Opportunity to File Comments on Part B Proceedings

11 Parties may file comments regarding the effect of the Eighth Circuit Court's decision on Part B proceedings no later than **Wednesday, August 16, 2000**. Fax filing and service is authorized provided that a hard copy is filed and served the following business day. The Commission's Records Center fax number is **360-586-1150**.

Commission Staff's Petition for Clarification

12 Commission Staff requests clarification of two provisions in the Commission's Third Supplemental Order. The first request relates to paragraph 10 wherein the Commission states that parties will be allowed to revisit nonrecurring costs previously established in the former generic proceeding that may be impacted by additional efficiencies.

13 The Commission clarifies that parties also are allowed to revisit nonrecurring costs that

have been filed with the Commission but are not yet approved.

- 14 Commission Staff also requests clarification of paragraph 18 and asks whether the Commission will consider terms and conditions for reciprocal compensation in addition to recovery mechanisms, formulas, or rates.
- 15 The Commission has previously ordered that reciprocal compensation plans (or arrangements) for terminating local and ISP-bound traffic approved in arbitration proceedings be interim pending final orders in the generic proceeding.
- 16 The Commission clarifies that the Commission will consider all alternative reciprocal compensation proposals, including terms and conditions that are relevant to reciprocal compensation recovery mechanisms and rates for terminating local and ISP-bound traffic.

Focal Petition for Late Intervention

- 17 On July 25, 2000, Focal Communications Corporation of Washington (Focal) filed a Petition for Late Intervention pursuant to WAC 480-09-430(1). Focal seeks to intervene and participate in Part B of this proceeding. Focal states that it has a substantial interest in the reciprocal compensation and interconnection facilities cost-sharing issues to be addressed in Part B.
- 18 Focal also states that its participation will not broaden the issues to be addressed or delay the proceedings, and Focal will coordinate with other parties with similar interests to minimize duplication or overlap in presentation of positions.
- 19 The Commission finds it appears that Focal has a substantial interest in Part B of this proceeding and that its participation will not broaden the issues to be addressed. The Commission will allow Focal to participate in Part B of this docket pending action on its request. Objections to Focal's Petition must be filed no later than **August 16, 2000**.

Part A - Hearing Schedule Update

- 20 The Part A hearing was previously scheduled to conflict with two open public meetings and related briefings at the Commission, shortening the overall available time for presentations. The open public meeting scheduled on August 23, 2000, has been canceled and time previously reserved for the open meeting is now available for hearings.
- 21 Hearings will be conducted on Monday, August 21, 2000 through Friday, August 25, 2000, and Monday August 28, 2000 through Friday, September 1, 2000, except that hearings will begin at **1:30 p.m.** on both **Tuesday, August 29, 2000 and Wednesday,**

August 30, 2000. The Commission reserves Saturday, August 26, 2000, for hearings if it appears necessary in order to complete Part A presentations within the scheduled time.

Filing Requirements - Number of Copies

- 22 Every original pleading and written testimony submitted to the Commission in this proceeding must be filed with fifteen copies. The parties must provide the bench with eight copies of all documents that they intend to use on cross-examination, in addition to providing copies to other parties.
- 23 **NOTICE TO PARTIES: Any objection to the provisions of this Order must be filed within ten (10) days after the date of mailing of this document, pursuant to WAC 480-09-460(2). Absent such objections, this prehearing conference order will control further proceedings in this matter, subject to Commission review.**

Dated at Olympia, Washington and effective this day of August, 2000.

LAWRENCE J. BERG
Administrative Law Judge