

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND	)	
TRANSPORTATION COMMISSION,	)	DOCKET NO. UT-990672
	)	
Petitioner,	)	
	)	COMPLAINT ALLEGING UNLAWFUL
v.	)	ACCESS CHARGES AND NOTICE OF
	)	PREHEARING CONFERENCE
GTE NORTHWEST, INC.,	)	(June 15, 1999; 1:30 p.m.)
	)	
Respondent.	)	
.....	)	

The Washington Utilities and Transportation Commission (Commission), on its own motion, and through its Staff, alleges as follows:

I. INTRODUCTION

1.1 This proceeding is commenced to enforce compliance with the Commission's rule on terminating access charges for telecommunications companies, WAC 480-120-540 (access charge reform rule). The Commission issued the order adopting that rule on October 5, 1998, by General Order R-450, in Docket No. UT-970325, and the rule became effective December 20, 1998.

1.2 Respondent GTE Northwest, Incorporated (GTE), has challenged the access charge reform rule in Thurston County Superior Court. WITA et al. v. Washington Utilities & Transportation Comm'n, Thurston Co. No. 98-2-02413-2 (filed November 9, 1998). GTE and the other petitioners in that case filed a motion to stay of the effectiveness of the rule, but the court denied that motion. Therefore, the rule is in effect.

1.3 At the Commission's regularly scheduled open meeting on April 14, 1999, the Commission accepted Staff's recommendation and determined to issue this complaint.

II. PARTIES

2.1 The Commission is an agency of the state of Washington, authorized by law to regulate the rates, practices, accounts, and services of public

service companies, including telecommunications companies, under the provisions of Title 80 RCW.

2.2 Respondent GTE is a telecommunications company subject to regulation by the Commission and is a "local exchange company" as that term is defined in RCW 80.04.010 and as it is used in WAC 480-120-540.

### III. JURISDICTION

3.1 The Commission has jurisdiction in this matter pursuant to RCW 80.01.040(3), RCW 80.04.110, RCW 80.36.080, RCW 80.36.140, RCW 80.36.170, RCW 80.36.186, and RCW 80.36.610.

### IV. STATEMENT OF FACTS

4.1 The access charge reform rule, WAC 480-120-540, became effective December 20, 1998. The rule requires in part:

(1) Except for any universal service rate allowed pursuant to subsection (3) of this section, the rates charged by a local exchange company for terminating access shall not exceed the lowest rate charged by the local exchange company for the comparable local interconnection service (in each exchange), such as end office switching or tandem switching. If a local exchange company does not provide local interconnection service (or does so under a bill and keep arrangement), the rates charged for terminating access shall not exceed the cost of the terminating access service being provided.

(2) The cost of the terminating access shall be determined based on the total service long-run incremental cost of terminating access service plus a reasonable contribution to common or overhead costs. Local loop costs are considered "shared" or "joint" costs and shall not be included in the cost of terminating access. However, nothing in this rule prohibits recovery of local loop costs through originating access charges (including switched, special, and dedicated as defined in subsection (4)(a) of this section).

(3) If a local exchange company is authorized by the commission to recover any costs for support of universal access to basic telecommunications service through access charges, it shall recover such

costs as an additional, explicit universal service rate element applied to terminating access service.

4.2 In the Order adopting the access charge reform rule, the Commission provided guidance to companies seeking to recover costs of universal service pursuant to subsection (3) of the rule:

The rule provides for explicit recovery of universal service costs that have been determined by the Commission, but such costs have not yet been determined for some companies. The Commission is investigating the costs of universal service in Docket UT-980311(a). Some companies may wish to wait for the results of that investigation, which is scheduled to conclude late this year, before making any major shift in its terminating and originating access revenues. Commission Staff would support, and the Commission would accept, an interim compliance filing that leaves existing terminating revenues in place if it:

- (a) includes a cost-based terminating rate consistent with subsection (1) of the rule,
- (b) includes an interim universal service rate that recovers the residual amount of terminating revenues,
- (c) commits the company to revise the interim universal service rate to reflect the Commission decision in Docket UT-980311(a) within 30 days after the final order in that docket, and
- (d) is otherwise consistent with the requirements of this rule and in the public interest.

Order of Adoption, at 24.

4.3 On December 1, 1998, GTE filed a revision to its access charge tariff, WN U-16, 2nd Revised Sheet 344, in Docket No. UT-981527, to comply with WAC 480-120-540. In that tariff filing, GTE established its "cost-based" terminating rate at \$0.0021080 per minute. The universal service element of the terminating access rate was established, on the 3rd Revised Sheet 346, at \$0.0586239 per minute.

4.4 On December 7, 1998, GTE filed a revised cover letter committing the company to file a revised tariff and revisions to its interim terminating (universal service) access charge element within thirty days of a Commission order on reconsideration of the Commission's Tenth Supplemental Order in Docket No. UT-980311(a). On February 11, 1999, the Commission issued its Eleventh Supplemental Order on Reconsideration in Docket No. UT-980311(a).

4.5 On March 12, 1999, GTE filed a revision to its Tariff WN U-16, 5th Revised Sheet 346, in Docket No. UT-990406, purporting to be consistent with its commitment described in paragraph 4.4 above. (GTE's 4th Revised Sheet 346 in Docket No. UT-981543 made a change unrelated to the issues in this proceeding.) This filing decreased GTE's interim terminating (universal service) access charge element to \$0.0449955 and offset this by increasing its originating access charges through the introduction of the deaveraging of its originating carrier common line (CCL) charge. This tariff went into effect by operation of law on April 12, 1999. The Commission's inaction on these tariffs did not express any Commission approval, tacit or otherwise, as to the fairness, justness, or reasonableness of the rates contained in those tariffs.

4.6 On April 14, 1999, GTE filed a revision to its access charge tariff in Docket No. UT-990570 to its deaveraged CCL charge. That revision is scheduled to go into effect by operation of law on May 15, 1999.

4.7 The universal service element in GTE's tariff, WN U-16, purports to recover all costs of universal service as estimated by the Commission in Docket No. UT-980311(a) and is applied in addition to other terminating access charges assessed against other telecommunications companies. However, GTE also provides toll service comparable to the toll service to which it assesses access charges, and the universal service element in GTE's access charge tariff is not applied to GTE's toll services. Therefore, telecommunications companies using GTE's terminating access service bear the entire burden of universal service costs, while GTE's toll services do not contribute to universal service.

4.8 GTE also receives money from the federal universal service fund which is intended to offset in part GTE's costs of providing universal service support. The universal service rate element in GTE's tariff fails to account for receipt of these federal support payments.

## V.

### FIRST CLAIM FOR RELIEF: UNDUE OR UNREASONABLE PREFERENCE UNDER RCW 80.36.186

5.1 The Commission, through its Staff, realleges the matters contained in parts I-IV above.

5.2 RCW 80.36.186 states:

Notwithstanding any other provision of this chapter, no telecommunications company providing noncompetitive services shall, as to the pricing of or access to noncompetitive services, make or grant any

undue or unreasonable preference or advantage to itself or to any other person providing telecommunications, not subject any telecommunications to any undue or unreasonable prejudice or competitive disadvantage. The commission shall have primary jurisdiction to determine whether any rate, regulation, or practice of a telecommunications company violates this section.

5.3 By collecting the costs of universal service only from rates charged to telecommunications companies other than GTE, and not from GTE itself, GTE's terminating access tariff unlawfully provides an undue or unreasonable preference or advantage to itself and unlawfully subjects other telecommunications companies to undue or unreasonable prejudice or competitive disadvantage in violation of RCW 80.36.186.

## VI.

### **SECOND CLAIM FOR RELIEF: UNREASONABLE PREFERENCE UNDER RCW 80.36.170**

6.1 The Commission, through its Staff, realleges the matters contained in parts I-IV above.

6.2 RCW 80.36.170 states:

No telecommunications company shall make or give any undue or unreasonable preference or advantage to any person, corporation or locality, or subject any particular person, corporation or locality to any undue or unreasonable prejudice or disadvantage in any respect whatsoever. The commission shall have primary jurisdiction to determine whether any rate, regulation, or practice of a telecommunications company violates this section. This section shall not apply to contracts offered by a telecommunications classified as competitive or to contracts for services classified as competitive under RCW 80.36.320 and 80.36.330.

6.3 By collecting the costs of universal service only from rates charged to telecommunications companies other than GTE, and not from GTE itself, GTE's terminating access tariff unlawfully subjects other telecommunications companies to an undue or unreasonable prejudice or disadvantage in violation of RCW 80.36.170.

**VII.  
THIRD CLAIM FOR RELIEF: EXCESSIVE  
TERMINATING ACCESS CHARGES**

7.1. The Commission, through its Staff, realleges the matters contained in parts I-IV above.

7.2 Because the universal service element of the access charge tariff purports to reflect all costs of universal service and because some of these costs already are covered by payments to GTE from the federal universal service program, the rates in GTE's terminating access charge tariff are not fair, just, and reasonable, in violation of RCW 80.36.080.

**VIII.  
FOURTH CLAIM FOR RELIEF: FAILURE OF GTE TO PARTICIPATE  
IN UNIVERSAL SERVICE SUPPORT ON AN EQUITABLE  
AND NONDISCRIMINATORY BASIS**

8.1 The Commission, through its Staff, realleges the matters contained in parts I-IV above.

8.2 Because GTE has failed to recognize its own toll services in the determination and application of its universal service element, the rates in GTE's terminating access charge tariff do not provide for contributions to universal service on an equitable and non-discriminatory basis in violation of 47 U.S.C. §254(b)(4), 47 U.S.C. §254(f), and RCW 80.36.080.

THEREFORE, the Commission enters into a full and complete investigation of the matters alleged and will commence public hearings pursuant to chapter 34.05 RCW and chapter 480-09 WAC for the following purposes:

1. To determine whether the rates for terminating access service charged by GTE in its tariff WN U-16, 5th Revised Sheet 346, are unlawful as alleged above, or otherwise unfair, unjust, or unreasonable, and

2. To make such other determinations and enter such orders as may be just and reasonable.

**NOTICE OF HEARING**

Hearing in this matter is being held pursuant to Part IV of chapter 34.05 RCW, Adjudicative Proceedings, including but not limited to RCW 34.05.070, RCW 34.05.413, RCW 34.05.440, RCW 34.05.449, and RCW 34.05.452. The Commission

has jurisdiction over this matter pursuant to RCW 34.05.070, RCW 80.01.040(3), RCW 80.04.110, 80.36.080, RCW 80.36.140, RCW 80.36.170, RCW 80.36.186, and RCW 80.36.610. Statutes involved, in addition to those previously cited, include those within chapters 80.04 and 80.36 RCW. The ultimate issues are as stated in the above complaint.

**NOTICE IS HEREBY GIVEN That a prehearing conference in this matter will be held on June 15, 1999, at 1:30 p.m., in the Commission's Hearing Room, Second Floor, Chandler Plaza Building, 1300 S. Evergreen Park Drive S.W., Olympia, Washington.** The time and place for the evidentiary hearing will be set at the prehearing conference or by later written notice. The purpose of the prehearing conference is to consider formulating the issues in the proceeding, and to determine other matters to aid in its disposition, as specified in WAC 480-09-460. Petitions to intervene should be made in writing prior to that date or made orally at that time. Appearances will be taken.

Please see the form attached to this notice which should be filled out and returned if any party or witness needs an interpreter or other assistance.

**NOTICE IS FURTHER GIVEN THAT ANY PARTY WHO FAILS TO ATTEND OR PARTICIPATE IN THE HEARING SET HEREIN, OR OTHER STAGE OF THIS PROCEEDING, MAY BE HELD IN DEFAULT IN ACCORDANCE WITH THE TERMS OF RCW 34.05.440. THE PARTIES ARE FURTHER ADVISED THAT THE SANCTION PROVISIONS OF WAC 480-09-700(4) ARE SPECIFICALLY INVOKED.**

An Administrative Law Judge from the Utilities and Transportation Commission's Legal Accounting Policy Development Section, 1300 S. Evergreen Park Drive S.W., Olympia, Washington 98504-7250, (360) 664-1139, will be designated to preside at the hearing.

The names and mailing addresses of all parties and their known representatives are as follows:

Commission: Washington Utilities and Transportation Commission  
1300 S. Evergreen Park Drive S.W.  
P. O. Box 47250  
Olympia, WA 98504-7250  
(360) 664-1160

Representatives: Shannon Smith  
Assistant Attorney General  
1400 S. Evergreen Park Drive S.W.  
P. O. Box 40128

Olympia, Washington 98504-0128  
(360) 664-1192

Company: GTE Northwest Incorporated  
1800 41st Street  
Everett, WA 98201

Representative: Lida Tong  
1800 41st Street  
Everett, WA 98201  
(425) 261-5262

Public Counsel: Simon ffitch  
Public Counsel Section  
Office of Attorney General  
900 Fourth Avenue, Suite 2000  
Seattle, WA 98164-1012  
(206) 464-6253

Notice of any other procedural phase will be given in writing or on the record as the Commission may deem appropriate during the course of this proceeding.

DATED at Olympia, Washington, and effective this 5<sup>th</sup> day of May 1999.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION



RICHARD HEMSTAD, Commissioner



WILLIAM R. GILLIS, Commissioner

Inquiries should be addressed to:

Secretary  
Washington Utilities and  
Transportation Commission  
Chandler Plaza Building  
1300 S. Evergreen Park Drive S.W.  
P. O. Box 47250  
Olympia, WA 98504-7250  
(360) 664-1160

or

Public Counsel Section  
Office of Attorney General  
900 Fourth Avenue, Suite 2000  
Seattle, WA 98164-1012  
(206) 464-6253



## NOTICE

PLEASE BE ADVISED that the hearing facilities are accessible to interested people with disabilities; that smoking is prohibited; and that if limited English-speaking or hearing impaired parties or witnesses are involved in a hearing and need an interpreter, a qualified interpreter will be appointed at no cost to the party or witness.

The information needed to provide an appropriate interpreter or other assistance should be designated below and returned to Washington Utilities and Transportation Commission, Attention: Carole J. Washburn, Secretary, 1300 S. Evergreen Park Drive S.W., P. O. Box 47250, Olympia, WA 98504-7250. (SUPPLY ALL REQUESTED INFORMATION)

Docket No.: \_\_\_\_\_

Case Name: \_\_\_\_\_

Hearing Date: \_\_\_\_\_ Hearing Location: \_\_\_\_\_

Primary Language: \_\_\_\_\_

Hearing Impaired (Yes) \_\_\_\_\_ (No) \_\_\_\_\_

Do you need a certified sign language interpreter:

Visual \_\_\_\_\_ Tactile \_\_\_\_\_

Other type of assistance needed: \_\_\_\_\_

English-speaking person who can be contacted if there are questions:

Name: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Phone No.: (\_\_\_\_) \_\_\_\_\_