

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of :) DOCKET NO. UT-990873
)
)
An Inquiry to Explore the Need for Fees for)
Commission Services Relating to Matters)
Arising Under the Federal Telecommunications)
Act of 1996 (Telecom Act), as authorized by)
Laws of 1998, Chapter 377, Section 2)
)
_____)

INITIAL COMMENTS OF U S WEST

I. INTRODUCTION AND SUMMARY

On July 10, 1999, the Washington Utilities and Transportation Commission (Commission) filed with the Code Reviser its notice of intent to conduct this inquiry. As the basis for this inquiry, the Commission stated in its Preproposal Statement of Inquiry (CR-101) that:

Exploring the need for fees for Commission services relating to matters arising under the federal Telecommunications Act of 1996 (Telecom Act), as authorized by Laws of 1998, chapter 377, Sec. 2. The Commission must explore how it might implement authority granted by the legislature to establish fees for some services relating to the Telecom Act. The Commission will (without limiting potential subjects that it may examine) explore setting fees for conducting arbitration and mediation services and for resolving disputes arising from

interconnection agreements. Mechanisms may involve a filing fee, a fee based on time spent, a fee based on the nature of the proceeding, other mechanisms, or a combination of the above. Docket No. UT-990873.

Furthermore, in describing "reasons why rules on this subject may be needed and what they may accomplish: . . ." the Commission also stated in its CR-101, that:

The Commission is facing an increased workload resulting from federal actions at a time when its resources are not expanding in pace with the workload. The goal in establishing fees is to put the burden of supporting these activities on those who require them, as opposed to other sources of funds, and to allow the Commission over time to recover the services' full costs.

In its *Notice of Opportunity to File Written Comments (7/9/99)*, the Commission specifically sought comments on certain questions listed in the notice. U S WEST believes that the Commission's questions provide sufficient opportunity to present its opening position and, as such, will limit its initial comments to responding to the listed questions.

II. COMMISSION QUESTIONS

- **Should the Commission adopt fees under the statute? What factors should the Commission consider in deciding whether to adopt fees?**

It is premature to comment on whether the Commission should adopt fees under the statute. The Commission's current revenue-based funding mechanism, authorized by chapter 80.24 RCW, envisions that "[i]n fixing the percentage rates of gross operating revenue to be paid in any year, the commission shall consider all moneys then in the public service revolving fund and the fees currently to be paid into such fund, to the end that the fees collected from the several classes of companies shall be approximately the same as the reasonable cost of supervising and regulating such classes of companies."¹ In its memorandum proposing this rulemaking, dated June 30, 1999, Staff states:

The Commission and its Staff have reviewed interconnection agreements, performed arbitration and mediation services, and have adjudicated complaints, among other things, pursuant to the Telecommunication Act. Performing these activities has consumed

¹ RCW 80.24.020 Fees to approximate reasonable cost of regulation.

considerable staff resources and imposed considerable expense upon the Commission. The statute provides specific legislative authority for performing these functions – and for charging fees for doing so.

Presumably, these activities all transpired during the timeframe between the passage of the federal Telecommunications Act, in February of 1996, and the present. As such, these activities have been funded for over three years by the current revenue-based funding mechanism that carries the legislative presumption of approximating the reasonable cost of regulating the industry. A threshold issue then becomes whether the Commission is merely seeking a more cost-based fee structure that needs to replace part, or all, of the existing revenue-based fee structure, or whether the Commission is seeking additional funding through a more cost-based fee structure. If the Commission is seeking additional funding, then the question of need arises, in light of the fact that the existing structure has funded the activities in question to date. If the Commission is seeking additional funding, then U S WEST believes that it is the legislative intent of RCW 80.36.610 that legislative approval is required to impose additional fees. U S WEST does not believe that RCW 80.36.610 is an open-ended funding mechanism for the Commission.

Focusing solely on the question of whether a different type of fee structure may be appropriate to recover costs for interconnection-related activities, U S WEST would support a funding mechanism based on cost causation if it could be administered in an efficient manner. Some other factors the Commission should consider in deciding whether to institute a new fee structure include:

- the administrative costs associated with a new structure
- the legislative authority required to implement a new fee structure and/or modify the existing fee structure
- how a revenue based fee structure and an activity-based fee structure might complement each other (for example, a revenue based structure might be used to support fixed costs, while an activity-based structure would be used to recover variable costs)
- an examination of fee structures from other states and the FCC
- an evaluation (inventory) of Commission activities, how they have recently changed and how they are expected to change in the future

- an analysis of the varying types of Act-related activities, including:
- the number of activities, by type, and whether they are recurring or nonrecurring (e.g., applications for certification, arbitrations, etc.)
- an analysis of the estimated costs of the various activities (including hours, labor rates, other resource costs, etc.)

- **What activities should be subject to fees, if fees are adopted?**

First, in order to clarify this issue, it should be noted that all the activities at the Commission are currently funded by a revenue-based fee structure. U S WEST assumes that the purpose of this question is to elicit information as to which Act-related activities should be subject to "activity-based" fees. Notwithstanding this assumption, U S WEST would encourage the Commission to consider all activities and all fee structures (including the current revenue-based structure) in determining an optimal structure for all of its funding needs. A complete analysis of all funding needs will allow the Commission to determine which fee structure is the most economically efficient funding mechanism for the various activities.

Returning to the question at hand, U S WEST believes that one option for an activity-based fee structure is to institute a time and materials charging scheme. This type of structure, however, is probably the most administratively complex in that it requires time reporting and cost accounting for all relevant activities. U S WEST believes that such complexity might render this type of structure too cumbersome for consideration.

A simpler structure would be one where the fees are based on average costs. The activities that lend themselves most readily to an average fee structure are those recurring activities that are of equal duration and require similar amounts of resources. Act-related activities that meet these criteria include applications for certification, requests for approval of negotiated agreements, and arbitration proceedings.

There are also a number of other Commission initiated nonrecurring Act-related activities that require varying amounts of time and resources. Possible funding mechanisms for these activities include a time and materials charging scheme, allocation of the costs for recovery from recurring activity fees, or a uniform "regulatory" fee, payable by all industry participants.

U S WEST favors industry funding through a uniform fee because many of these nonrecurring activities benefit all providers (e.g., cost and pricing dockets and rulemakings; number portability, collocation, carrier-to-carrier service standards, etc.).

- **If the Commission does adopt fees, how should they be structured? The law permits charging fees to persons seeking action and to parties. Should fees be apportioned among participants? What standards are appropriate to use in apportioning fees? What process is appropriate to use in apportionment?**

As discussed above, certain recurring activities of relatively equal duration and resource requirements should utilize an average cost-based fee structure that includes set fees payable by the parties that avail themselves of the Commission's services. These activities include applications, non-contested petitions for Commission approval (e.g., request for approval of negotiated agreements, amendments, etc.) and possibly arbitrations. For services which benefit more than one party (e.g., arbitrations) the fees should apply equitably to each party which avails itself of the service.

Standards to use in apportioning fees would include cost causation, cost/benefit, and ease of administration. The following general rules should apply to apportionment:

- if the parties to a particular activity/proceeding (e.g., arbitration, application) cause the cost (e.g., joint petition, file application) and solely enjoy benefits from the activity/proceeding (e.g., order resolving disputes for arbitration, notice of certification), then the parties should equally bear the cost of any fees associated with the activity/proceeding
 - if the entire industry benefits from a particular activity/proceeding (price/cost docket, rulemakings) the costs should be recovered in a uniform fee from all industry participants
 - wherever possible, fees should be developed and administered on an average basis
- **What is the relationship between the existing regulatory fee structure and any fees established in this rulemaking? How does that relationship affect setting or apportioning fees? Should the status of a person or party as one who pays existing regulatory fees affect the assessment or the level of fee under this potential rule?**

According to RCW 80.24.020, the current fees are assumed to satisfy the Commission's reasonable cost of supervising and regulating utilities. U S WEST currently pays approximately \$2 million, annually, in revenue-based fees. U S WEST generally supports the concept of moving towards activity-based funding as being more competitively neutral and economically sound (cost-based) than the current structure. However, the current funding mechanism needs to be modified to adjust for the new fee structure or the new fee structure needs to be applied in such a manner as to recognize that some parties are already providing funding through the current structure. U S WEST is mindful that the Commission would need legislative involvement to modify RCW 80.24.010, but believes that modifying the statute is preferable to adjusting the assessment or the level of fee under a new rule for parties who pay the existing regulatory fees.

- **What level of fees should be established? Should fees cover all costs or only a portion? Should fees be set on the basis of average resource costs or should they be billed individually in each proceeding based on exact costs? Should different structures and levels be adopted for different activities under the Act?**

U S WEST's previous comments address most of the questions in this category. In summary, the level of fees will be dependent on the level of averaging and/or allocations. Additionally, the level of fees and subsequent cost recovery could also be affected by the degree to which the new fee structure is integrated with the exiting fee structure.

U S WEST believes that average fees should be used wherever possible, but realizes that in certain circumstances it may not be practical (i.e., complaint proceedings). Average fees do not necessarily equate to similar fee levels for all activities. Different types of activities (e.g., arbitrations versus applications) will result in different costs, requiring different fee levels.

III. CONCLUSION

U S WEST supports an economic, cost based fee structure. As a major contributor under the current revenue-based fee structure, U S WEST favors modifications to the current fee structure if a new fee structure is introduced. If the Commission does not modify the existing fee

structure, U S WEST believes appropriate adjustments would need to be made to the new fee structure to recognize companies that are already contributing under the existing fee structure.

It is U S WEST's position that RCW 80.36.610 is not a funding mandate for the Commission and that legislative action is required to increase funding above the level contemplated by RCW 80.24.010. U S WEST favors an integrated approach to revamping the Commission's fee structure and encourages the Commission to expand this rulemaking to include funding mechanisms under both RCW 80.24.010 and RCW 80.36.010.

Regarding a new activity-based fee structure for Act-related services, U S WEST favors fees that are developed and administered on an average basis wherever possible. For nonrecurring activities that benefit all industry participants, U S WEST believes that a uniform regulatory fee may be appropriate. When apportioning of fees is required, standards to use would include cost causation, cost/benefit, and ease of administration.