

**BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION
COMMISSION**

In the Matter of the Petition of Sprint Communications
Company L.P. for Arbitration of Interconnection Rates,
Terms, Conditions and Related Arrangements with
U S WEST Communications, Inc.

Docket No. UT-003006

DIRECT TESTIMONY OF

PERRY W. HOOKS JR.

U S WEST COMMUNICATIONS

APRIL 26, 2000

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PERRY W. HOOKS JR.

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I.IDENTIFICATION OF WITNESS

3

4 **Q. PLEASE STATE YOUR NAME, OCCUPATION AND BUSINESS ADDRESS.**

5 A. My name is Perry W. Hooks, Jr. I am employed by U S WEST Communications

6 (“U S WEST”) as Director, Legal and Regulatory Affairs, Interconnection Operations.

7 My business address is 1801 California Street, Suite 2410, Denver, CO, 80202.

8

9 **Q. BRIEFLY OUTLINE YOUR EMPLOYMENT BACKGROUND.**

10 A. I have worked for U S WEST since 1984 in various legal and management positions.

11 While in the Law Department, I served as the chief counsel to the Technical Operations

12 and Network organizations for over seven years. Since moving into management for

13 U S WEST, I have served in various positions within the Strategy Development,

14 Markets-Regulatory Strategy, Network, Carrier and the Wholesale Markets

15 organizations. While in Strategy Development, my responsibilities included oversight

16 and conduct of competitive analysis. While in Marketing – Regulatory Strategy, my

17 responsibilities included supervision of company and external expert witnesses who

18 testified concerning U S WEST’s retail products and services, competition, and product

19 costs. While in Network, I served as Director of Program Management for

20 Interconnection Operations and was responsible for the coordination of wholesale local

21 services program and project management for installation and repair processes of

1 resold finished services, interconnection services and unbundled network elements. I
2 have been in my current position since January 1997. As part of my responsibilities
3 within the Carrier and the Wholesale Markets organizations, I have been responsible
4 for the development of U S WEST's positions and advocacy relating to service
5 performance related matters for wholesale customers and/or services and advocacy
6 concerning U S WEST wholesale processes and products. In this position, I have
7 primarily testified on behalf of U S WEST before federal and state regulatory bodies
8 in arbitrations, rulemakings and complaint proceedings and in courts in connection
9 with U S WEST's conformance with the requirements of state and federal
10 telecommunications laws and regulations, particularly as they relate to wholesale
11 products and services.

12

13 **Q. WHAT IS YOUR EDUCATIONAL BACKGROUND?**

14 A. I hold a Juris Doctorate degree from the University of Michigan Law School in Ann
15 Arbor, Michigan, and two bachelor degrees (Three Majors: Economics; Management;
16 and Political Science) from Washburn University in Topeka, Kansas.

17

1 **Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE THE WASHINGTON**
2 **UTILITIES AND TRANSPORTATION COMMISSION (COMMISSION)?**

3 A. Yes. I have previously appeared before this Commission in wholesale service quality
4 workshops and hearings. Most recently, I pre-filed testimony on behalf of U S WEST
5 in the Access Services Quality Complaint proceeding filed by AT&T (Docket No. UT-
6 991292).

7

8

DISCUSSION

9

10 **PLEASE SUMMARIZE THE SUBJECT MATTER OF YOUR TESTIMONY.**

11 A. I am testifying concerning the scope of U S WEST's obligation to provide CLECs such
12 as Sprint combinations of UNEs. Additionally, I testify regarding the non-recurring
13 charges U S WEST is entitled to recover when it provides UNE combinations to Sprint.

14

15 **ISSUE 2:DEFINITION OF "CURRENTLY COMBINED"**

16 **Q. WHERE IS THE PHRASE "CURRENTLY COMBINED" USED?**

17 A. The phrase "currently combined" is used in 47 C.F.R. § 51.315(b), which reads:

18 Except upon request, an incumbent LEC shall not separate requested network
19 elements that the incumbent LEC currently combines.

1

2 **Q. HOW DOES U S WEST PROPOSE TO DEFINE THE PHRASE “CURRENTLY**
3 **COMBINED?”**

4 A. U S WEST defines the phrase “currently combined” to describe UNEs that
5 correspond to finished services which are being offered by U S WEST to a particular
6 end user customer at the time Sprint orders such UNEs for that same customer at that
7 same customer location. Upon request from Sprint, U S WEST will provide Sprint
8 such UNEs in their “currently combined” form.

9

10 **Q. WHAT IS U S WEST’S OBLIGATION WITH RESPECT TO THE PROVISION**
11 **OF UNE COMBINATIONS TO SPRINT?**

12 A. U S WEST is obligated to make “currently combined” UNE combinations available
13 to Sprint. Under the current state of the law, U S WEST is only required to leave
14 existing combinations of UNEs assembled. U S WEST should not be required to
15 provide Sprint with UNE combinations when the UNE combinations requested by
16 Sprint do not exist and would therefore have to be created for Sprint. U S WEST
17 provides the capability for Sprint to combine UNEs itself on the same frames that
18 U S WEST uses for its own combinations.

19

1 **Q. HOW DOES SPRINT PROPOSE TO DEFINE THE PHRASE “CURRENTLY**
2 **COMBINED?”**

3 A. Sprint proposes to define the phrase "currently combined" to mean that “[w]herever the
4 elements are either currently combined or *normally combined*, meaning existing or
5 *new*, Sprint believes that U S WEST has an obligation to provide those elements in
6 combination.”¹(Emphasis added).

7

8 **Q. WHAT RATIONALE DOES SPRINT OFFER IN SUPPORT OF ITS POSITION?**

9 A. Sprint argues that U S WEST’s “proposed limitation of providing only ‘preexisting’
10 combinations is unreasonable and discriminatory.”² Sprint incorrectly relies upon
11 “Section 251 (c) (3) of the Act [which] requires ILECS to provide ‘nondiscriminatory
12 access to network elements on an unbundled basis at any technically feasible point on
13 rates, terms and conditions that are just, reasonable and nondiscriminatory”³

14

¹ Matrix, ISSUE NO. 2, "Sprint Proposed Language," p.2.

² Id. at "Sprint Position."

³ Id.

1 **Q. DOES THE RATIONALE WHICH SPRINT RELIES UPON SUPPORT**
2 **SPRINT’S PROPOSAL THAT U S WEST SHOULD PROVIDE “NORMALLY**
3 **COMBINED” OR “NEW” UNES IN COMBINATION?**

4 A. No. While Section 251 (c)(3) states generally where and how the incumbent local
5 exchange carrier (ILEC) should provide nondiscriminatory access to UNEs, it clearly
6 does not support Sprint’s proposal that U S WEST should provide “normally
7 combined” or “new” UNEs.

8

9 **Q. WHICH DEFINITION OF “CURRENTLY COMBINED” SHOULD THE**
10 **COMMISSION ADOPT FOR THE PROVISION OF UNES AT ISSUE IN THIS**
11 **ARBITRATION?**

12 A. Given that U S WEST’s proposed use of the phrase “currently combined” is consistent
13 with the FCC rule 47 C.F.R. 51.315 (b), the Commission should adopt U S WEST’s
14 definition.

15

16 **ISSUE 3: COMBINATIONS OF UNES THAT ARE NOT “CURRENTLY**
17 **COMBINED”**

18

1 **Q. WHAT IS U S WEST’S PROPOSAL REGARDING THE PROVISION OF UNES**
2 **WHICH ARE NOT “CURRENTLY COMBINED?”**

3 A. U S WEST proposes that it should not provide combinations of UNEs that are not
4 currently combined or pre-existing within U S WEST’s network.

5

6 **Q. WHAT DOES U S WEST RELY UPON IN CONTENDING THAT IT SHOULD**
7 **NOT BE REQUIRED TO PROVIDE SPRINT WITH UNES THAT ARE NOT**
8 **ALREADY COMBINED WITHIN U S WEST’S NETWORK?**

9 A. U S WEST believes that it is obligated to provide Sprint and other CLECs with UNEs
10 that are “currently combined” as discussed in my testimony concerning Issue 2.
11 U S WEST’s proposal is consistent with the decision of the United States Court of
12 Appeals for the Eighth Circuit in its Iowa Utilities Board decision to vacate the rules
13 set forth at Section 51.315(c) and (d).⁴ Indeed, in the FCC's Third Report and Order
14 and Fourth Notice of Proposed Rulemaking, released November 5, 1999,⁵ the FCC
15 itself did not reinstate rules 315(c)-(f), recognizing that the validity of these rules is
16 currently under question before the Eighth Circuit.

1 ⁴ Iowa Utils. Bd. v. FCC, 120 F.3d 753, 813 & n. 39 (8th Cir. 1997), aff'd in part, rev'd in part sub nom.
2 AT&T Corp. v. Iowa Utils. Bd., 525 U.S. 366 (1999) ("Iowa Utilities Board").

1 ⁵ In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of
2 1996, CC Docket No 96-98, Third Report and Order and Fourth Further Notice of Proposed
3 Rulemaking (Rel. Nov. 5, 1999).

1

2 **Q. WHAT ARE THE RULES AT SECTION 315 (c) AND (d) THAT WERE**
3 **VACATED BY THE EIGHTH CIRCUIT COURT?**

4 A. The vacated rule at 47 C.F.R. Section 51.315 (c) stated, in relevant part:

5 Upon request, an incumbent LEC shall perform the functions necessary to combine unbundled
6 network elements in any manner, even if those elements are not ordinarily combined in the
7 incumbent LEC's network

8 The vacated rule in 47 C.F.R. Section 51.315 (d) stated, in relevant part:

9 Upon request, an incumbent LEC shall perform the functions necessary to combine unbundled
10 network elements with elements possessed by the requesting telecommunications carrier in any
11 technical feasible manner.

12

13 **Q. WHAT DOES SPRINT PROPOSE WITH RESPECT TO THE PROVISION OF**
14 **UNES NOT CURRENTLY COMBINED?**

15 A. Sprint proposes that U S WEST “perform the functions necessary to combine
16 unbundled network elements in any manner, even if those elements are not currently
17 combined for a given customer”⁶

18

19 **Q. WHAT DOES SPRINT RELY UPON IN SUPPORT OF ITS PROPOSAL?**

20 A. Sprint inappropriately relies upon Section 251 (c)(3) of the Act in insisting that
21 U S WEST's proposal to provide “only ‘preexisting’ combinations is unreasonable and

¹ ⁶ Matrix, ISSUE NO. 3, “Sprint Proposed Language,” p. 4.

1 discriminatory.”⁷

2

3 **Q. IS THE AUTHORITY WHICH SPRINT RELIES UPON SOUND?**

4 A. As stated earlier in my testimony, Sprint inappropriately relies upon Section 251 (c)(3)
5 of the Act in support of its argument that U S WEST is required to combine network
6 elements.

7

8 **Q. DO THE FCC RULES SUPPORT SPRINT’S POSITION?**

9 A. No. Rule 315(b) specifically speaks to “currently combined” combinations. The other
10 FCC rules regarding combinations, Rules 315(c)-(f), were not reinstated by the FCC
11 after the Eighth Circuit Court vacated them in the Iowa Utilities Board decision. In
12 particular, Rule 315(c) provided that “[u]pon request, an incumbent LEC
13 shall...combine [UNEs] in any manner....” Thus, Sprint’s argument is based upon a
14 rule that was not reinstated by the FCC.

15

1 ⁷ Id.

1 **Q. HAS THE NINTH CIRCUIT COURT OF APPEALS ADDRESSED THESE FCC**
2 **RULES?**

3 A. Yes. In two separate cases, the Court of Appeals for the Ninth Circuit has reviewed
4 these vacated FCC Rules.

5

6 **Q. WOULD YOU PLEASE DESCRIBE THE FIRST CASE?**

7 A. Yes. In U S WEST Communications, Inc. v. MFS Intelenet, Inc., 193 F.3d 1112
8 (9th Cir. 1999), the Ninth Circuit reviewed the decision of the District Court for the
9 Western District of Washington. The District Court had affirmed a 1998 decision of
10 this Commission to approve an interconnection agreement provision that required
11 U S WEST to combine network elements “in any technically feasible manner.” The
12 Ninth Circuit acknowledged that the Eighth Circuit had invalidated Rules 315(c)-(f).
13 Id. at 1121. Nevertheless, the Ninth Circuit concluded that the Eighth Circuit erred
14 when the latter court ruled the FCC’s regulations were inconsistent with the Act.

15

16 **Q. WOULD YOU PLEASE DESCRIBE THE SECOND CASE?**

17 A. Yes. In MCI Telecommunications Corp v. U S WEST Communications, Inc., 204 F.3d
18 1262, 1268 (9th Cir. 2000), the Ninth Circuit confirmed that “[t]he Eighth Circuit’s
19 decision to vacate the FCC regulation[sic] certainly still stands, and is immune under

1 the Hobbs Act from collateral attack. See 28 U.S.C. § 2342; MFS Intelnet, 193 F.3d
2 at 1120.” The Ninth Circuit went further to state that “...this means for the purposes
3 of the present appeal...that the Act does not currently mandate a provision requiring
4 combination.” Id.

5

6 **Q. WHAT ARE THE POINTS OF SIGNIFICANCE TO THE NINTH CIRCUIT’S**
7 **OPINIONS?**

8 A. There are two. First, the Ninth Circuit affirms that the FCC rules do not mandate
9 combining separate network elements. Second, while the Act may not prohibit
10 combining network elements, contrary to Sprint’s assertion, the Act certainly does not
11 require combining network elements.

12

13 **Q. MUST SPRINT RELY UPON U S WEST ALONE TO FURNISH UNE**
14 **COMBINATIONS IN ORDER TO REACH THE END USER CUSTOMER (S)**
15 **THAT SPRINT WISHES TO SERVE?**

16 A. Certainly not. Sprint, like any other CLEC, can build facilities over which to serve
17 prospective customers. Furthermore, to the extent that U S WEST serves the end user
18 customer(s), Sprint can order the finished service from U S WEST and resell it to the
19 end user customer.

1

2 **Q. WHAT WORK WOULD BE REQUIRED OF SPRINT TO COMBINE**
3 **NETWORK ELEMENTS FOR ITSELF?**

4 A. Sprint has the ability to combine network elements itself by making cross connects on
5 Interconnection Distribution Frames (“ICDFs”), just as U S WEST has this ability.
6 Sprint can terminate its equipment on the ICDFs in the U S WEST central offices
7 where Sprint is collocated. U S WEST offers interconnection distribution frames for
8 this purpose.

9

10 **Q. PLEASE EXPLAIN HOW SPRINT WOULD COMBINE ELEMENTS USING**
11 **INTERCONNECTION DISTRIBUTION FRAMES IN U S WEST’S CENTRAL**
12 **OFFICES.**

13 A. The process for Sprint to combine elements for itself is straightforward and is a
14 standard industry practice. U S WEST will deliver the UNEs to Sprint at the ICDF
15 frame. Sprint’s technicians will then connect the UNEs at the ICDF by running
16 jumpers from the blocks on the frame where the UNE connections are located. This
17 is the same procedure that U S WEST follows to combine network elements for its own
18 finished services.

19

1 Q. HOW SHOULD THE COMMISSION DECIDE THIS ISSUE?

2 A. The Commission should follow the governing law. The two FCC rules, 315 (c) and (d),
3 that would have required U S WEST to provide, in combined form, UNEs which are
4 not currently combined or normally combined, have been vacated by the Eighth
5 Circuit. In view of the current state of the law, U S WEST urges the Commission to
6 adopt U S WEST's proposal, which is to provide Sprint with combinations of those
7 UNEs that are currently combined or pre-existing.

8

9 ISSUE 10:UNE COMBINATIONS: NONRECURRING CHARGES

10 Q. WHAT IS U S WEST'S PROPOSAL CONCERNING THE APPLICATION OF
11 NONRECURRING CHARGES FOR EXISTING UNE COMBINATIONS?

12 A. U S WEST seeks to recover a nonrecurring charge for each UNE element that it
13 provides access to as part of a UNE Combination. U S WEST maintains that it is
14 entitled to recover its costs incurred in the provision of UNEs, including costs when
15 UNE combinations are provided.

1

2 **Q. IS THE RECOVERY OF COSTS INCURRED IN THE PROVISION OF ACCESS**
3 **TO UNES RECOGNIZED BY THE ACT?**

4 A. Yes. Section 252 (d) (1) of the Act provides that “the just and reasonable rate for
5 network elements . . . shall be (i) based on the cost (determined without reference to
6 rate-of-return or other rate based-based proceeding) of providing the . . .network
7 element and (ii) nondiscriminatory, and . . .may include a reasonable profit.”

8

9 **Q. WHAT IS SPRINT’S POSITION WITH RESPECT TO THIS ISSUE?**

10 A. Sprint apparently concedes that it should pay nonrecurring charges for “new” UNE
11 combinations, if ordered by the Commission, but argues that U S WEST is not entitled
12 to recover a nonrecurring charge for each element within a preexisting UNE
13 combination. According to Sprint, U S WEST’s proposal represents an arbitrary, non-
14 cost based charge.⁸

15

16 **Q. IS SPRINT’S ASSESSMENT OF THE SITUATION ACCURATE?**

17 A. No. Sprint fails to recognize all of U S WEST’s nonrecurring costs. For example, in
18 addition to the changes which need to be made to U S WEST’s billing systems,

¹ ⁸ Matrix, “Sprint Position,” p. 4.

1 U S WEST would need to re-tag all of the circuits to be used by Sprint located within
2 the U S WEST central office in order to facilitate the provisioning, repair and ongoing
3 operations of the collocated facilities. Another type of operational cost that must be
4 recovered is the translations costs which are incurred in converting flat-rated facilities
5 to UNE combinations, the latter which require usage sensitive measuring capabilities
6 and facilities. Furthermore, U S WEST would need to change its inventory, and
7 maintenance and repair records in order to facilitate ongoing operations when UNEs
8 are provided. Nonrecurring charges are necessary to recover all of the operational and
9 systems costs which U S WEST will incur in the provision of UNEs in combination.

10

11

12 **Q. SPRINT FURTHER ARGUES THAT U S WEST'S NONRECURRING CHARGE**
13 **PROPOSAL WOULD INCREASE SPRINT'S COSTS AND THEREBY PLACE**
14 **SPRINT AT A COMPETITIVE DISADVANTAGE. HOW DOES U S WEST**
15 **RESPOND?**

16 A. The costs which Sprint would incur are no different than the costs which any other
17 CLEC would incur for the same UNE combinations ordered. Although U S WEST
18 does not offer UNE combinations to its end user retail customers, when U S WEST
19 provides finished services to its end user customers, its inventory, maintenance and
20 repair, and billing systems are also changed. Therefore, Sprint is not competitively

1 disadvantaged when compared to either U S WEST or CLECs.

2

3 **Q. HOW SHOULD THE COMMISSION DECIDE THIS ISSUE?**

4 A. Sprint erroneously asserts that when U S WEST provides Sprint with preexisting UNE
5 combinations, U S WEST only makes billing system changes. However, in addition
6 to billing system changes, other system changes are also made. Additionally, the
7 operational cost of re-tagging and translations are incurred. Therefore, the Commission
8 should adopt U S WEST's proposed contract language, which would allow U S WEST
9 to recover its incurred nonrecurring costs.

10

11

III.CONCLUSION

12

13 **Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?**

14 A. Yes it does. Thank you.

15