

**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

REBUTTAL TESTIMONY OF

PERRY W. HOOKS JR.

U S WEST COMMUNICATIONS

MAY 10, 2000

1

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1 **I.INTRODUCTION & PURPOSE**

2
3 **PLEASE STATE YOUR NAME.**

4 Perry W. Hooks Jr.

5 **ARE YOU THE SAME PERRY W. HOOKS JR. WHO PREVIOUSLY FILED**
6 **DIRECT TESTIMONY IN THIS MATTER?**

7 Yes, I am.

8 **WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?**

9 The purpose of my rebuttal testimony is to respond to the Direct Testimony of Sprint
10 witness David E. Stahly concerning Joint Matrix Issues 2, 3, and 10 which
11 concern UNE combinations, and the recovery of nonrecurring charges for the
12 provision of UNE combinations.

13 **DISCUSSION OF ISSUES**

14

15 **ISSUE 2: DEFINITION OF “CURRENTLY COMBINED”**

16
17 **PLEASE REITERATE WHERE THE PHRASE “CURRENTLY COMBINED” IS**
18 **USED.**

19 The phrase “currently combined” is used in 47 C.F.R. Section 51.315(b), which states:
20 "Except upon request, an incumbent LEC shall not separate requested network
21 elements that the incumbent LEC currently combines."

22

23 **PLEASE REITERATE U S WEST’S PROPOSED DEFINITION OF THE PHRASE**
24 **“CURRENTLY COMBINED.”**

25 U S WEST defines the phrase “currently combined” as UNEs which correspond to

1 finished services that are being offered by U S WEST to a particular customer at
2 the time Sprint orders such UNEs for that same customer at that same location.
3 Upon request from Sprint, U S WEST will provide Sprint with UNEs in their
4 “currently combined” form.

5

6 **Q. DOES SPRINT AGREE WITH U S WEST’S CONTENTION?**

7 A. In part, it does. Sprint agrees that U S WEST is required to offer UNEs to Sprint
8 where the UNEs are already combined and currently offered to an end-user
9 customer at a particular location. As discussed with regard to Issue 3, below,
10 however, Sprint contends that under Section 251(c)(3) of the Act, U S WEST is
11 also required “to provide combinations of unbundled network elements in any
12 manner in which they are ordinarily combined within U S WEST’s network.”¹

13 **Q. DOES U S WEST AGREE WITH SPRINT’S CONTENTION?**

14 A. No, it does not. As discussed in Issue 3, below, U S WEST disagrees that
15 “currently combined” is the same as “ordinarily combined.” U S WEST urges the
16 Commission to adopt U S WEST’s proposed contract language because these
17 terms are not synonymous legally or factually.

18 **ISSUE 3: COMBINATIONS OF UNES THAT ARE NOT “CURRENTLY**
19 **COMBINED”**

20

21 **HAS THE FCC TAKEN A POSITION CONCERNING WHETHER ILECS SUCH**
22 **AS U S WEST ARE REQUIRED TO PROVIDE “ORDINARILY**
23 **COMBINED” UNES?**

¹ Direct Testimony of David E. Stahly, p. 23.

1 The FCC initially took a view similar to that of Sprint when it adopted Rules 315(c)-(f)
2 interpreting the Telecommunications Act of 1996 (the “Act”). In 1996, the FCC
3 issued its Rule 315(c) which stated, in part, that:

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

8
9 This rule, amongst others, was appealed to the United States Court of Appeals for
10 the Eighth Circuit for legal review.

11 **DID RULES 315(C)-(F) WITHSTAND THE SCRUTINY OF LEGAL REVIEW?**

12 No. The Eighth Circuit vacated Rules 315(c)-(f) which, in part, would have required
13 ILECs to combine elements which are “ordinarily combined,” as well as those that
14 are not “ordinarily combined.” The FCC has not attempted to reinstate the
15 requirement that ILECs combine “ordinarily combined” unbundled network
16 elements.

17 **WHAT IS YOUR VIEW OF THE COMMISSION AND COURT DECISIONS**
18 **CITED IN BOTH SPRINT’S AND YOUR DIRECT TESTIMONY THAT**
19 **REQUIRED U S WEST TO PROVIDE “ORDINARILY COMBINED”**
20 **NETWORK ELEMENTS TO THE CLECS?**

21 The threshold fact is that none of those decisions found that U S WEST was required to
22 provide Sprint with “ordinarily combined” elements under Section 251(c)(3) of
23 the Act. Those decisions simply found that Section 251(c)(3) permits the
24 combining of “ordinarily combined” network elements. Even Judge Berg’s
25 decision in the ATTI case, quoted in footnote 8 of Mr. Stahly’s Direct Testimony,
26 did not find that U S WEST was required to combine UNEs by Section 251 (c)(3).

27

**1 IS THERE ANY MERIT TO SPRINT'S CLAIMS THAT UNLESS U S WEST
2 CREATES NEW UNE COMBINATIONS FOR SPRINT, SPRINT CANNOT
3 SERVE ITS CUSTOMER WITH NEW UNE COMBINATIONS?**

4 A. No, there is no merit to this claim. Sprint can market whatever new UNE
5 combinations it wishes to its customers and thereafter fill those orders itself. As I
6 explain in my Direct Testimony, Sprint is capable of filling its own orders for new
7 UNE combinations by building the facilities over which to provide the service, or
8 by making the cross connects on Interconnection Distribution Frames ("ICDF's")
9 that are provided by U S WEST for this purpose. Furthermore, to the extent that
10 U S WEST serves the end user customer(s), Sprint can order the finished service
11 from U S WEST and resell it to the end user customer.

**12 WHAT ABOUT SPRINT'S ASSERTIONS CONCERNING CONSTRUCTION TO
13 SUPPORT ITS ION SERVICE?**

14 Sprint implies that its ION service is "new and innovative" and requires "an xDSL-type
15 of network configuration...[that] is different than the standard network
16 configuration used to provide POTs services." What Sprint is saying is that where
17 the xDSL-type network configuration does not exist in the U S WEST network at
18 the location where Sprint desires to provide this service to a Sprint customer, this
19 Commission should order U S WEST to construct the facilities so that Sprint may
20 serve its customers. Accordingly, Sprint would have the Commission order
21 U S WEST to reconfigure its network solely for the benefit of Sprint, even though
22 Sprint could construct these facilities itself or order xDSL-type network
23 configurations from other CLECs.

24 Other U S WEST customers, including other CLECs, do not have the option of
25 turning U S WEST into their construction company to reconfigure their networks.
26 To allow Sprint this option gives Sprint an unfair advantage over other CLECs.

1 Such a requirement is contrary to the requirement of Section 253(b) of the Act
2 that any state regulatory requirements be “competitively neutral,” both to other
3 CLECs and to U S WEST.

4 **WHAT IS THE PRACTICAL EFFECT OF TURNING U S WEST INTO SPRINT'S**
5 **CONSTRUCTION COMPANY?**

6 A. The practical effect of what Sprint demands is that U S WEST network personnel
7 will have to address new demands from Sprint instead of addressing held orders
8 and other needs of U S WEST’s retail customers. Sprint should not be allowed to
9 market ION, which apparently assumes new and specific U S WEST-provided
10 UNEs and, thereafter, require U S WEST to construct the combination order.

11 **WHAT SHOULD THIS COMMISSION DECIDE?**

12 This Commission should decide that the phrase “currently combined” means
13 “preexisting,” not “ordinarily.” Certainly, the FCC which used the two phrases
14 “currently combined” and “ordinarily combined” understood the two phrases to
15 have two different meanings. Sprint should not be allowed to now assert that the
16 two phrases are synonymous. Accordingly, U S WEST urges the Commission to
17 adopt U S WEST’s proposed contract language which is based, in part, on the
18 plain meaning of the language that “currently combined” is not synonymous with
19 “ordinarily combined.”

20 **ISSUE 10: UNE COMBINATIONS: NONRECURRING CHARGES.**

21
22 **IS “U S WEST ATTEMPTING TO CHARGE SPRINT FOR A SERVICE IT IS NOT**
23 **PROVIDING” AS MR. STAHLY CLAIMS IN HIS TESTIMONY?**

24 No, it is not. When Sprint orders UNE combinations, U S WEST incurs nonrecurring
25 costs for several one-time activities in addition to the nonrecurring activity i.e.

1 billing system changes, acknowledged by Sprint. Sprint has ignored the other
2 nonrecurring costs which U S WEST stands to incur.

3 **IS IT CORRECT THAT ALLOWING U S WEST TO RECOVER ITS**
4 **NONRECURRING COSTS IS “ANTI-COMPETITIVE IN THE**
5 **EXTREME” AND AN ATTEMPT TO “COLLECT A WINDFALL?”**

6 No. As discussed above, Sprint does not supports its contention. Moreover, Sprint’s
7 claim is disingenuous. On the one hand, if Sprint orders a finished service, Sprint
8 would pay the nonrecurring costs for that service. On the other hand, if Sprint
9 separately orders unbundled network elements, it would pay for the nonrecurring
10 charges for each of those unbundled network elements. In this case, Sprint seeks
11 to order unbundled network elements, ignore the real costs, and pay as if it has
12 ordered a finished service. This, in fact, constitutes an attempt by Sprint to gain a
13 “windfall.” This Commission should reject Sprint’s position.

14 **DID THE COMMISSION REJECT IN THE GENERIC COST DOCKET A NON-**
15 **RECURRING CHARGE SUCH AS PROPOSED IN THIS ARBITRATION**
16 **BY U S WEST?**

17 A. No. The "recombination" charge identified in footnote 9 of Mr. Stahly's Direct
18 Testimony was a recurring charge representing one-half of the price differential
19 between U S WEST's shared transport charge and U S WEST's resale rate for
20 business services proposed in that docket. The non-recurring charge in this
21 arbitration has nothing to do with the difference in price between a UNE
22 combination and a resold 1FB line.

23 **IS THE COMMISSION’S PRIOR DECISION IN THE WASHINGTON GENERIC**
24 **COST DOCKET RELEVANT TO THE RECOVERY OF U S WEST'S NON-**
25 **RECURRING COSTS FOR UNE COMBINATIONS?**

1 No. What U S WEST seeks to establish in this case is the propriety of recovering its
2 incurred costs for combinations. As I discussed in my Direct Testimony, even for
3 seemingly the simplest transactions involving UNE combinations, U S WEST
4 incurs additional costs. U S WEST does not contend that the amount of these
5 additional costs should be determined anywhere but in a generic costs docket.
6 Instead, U S WEST contends that in this interconnection, it should be able to
7 preserve its rights to recover these UNE combination costs through nonrecurring
8 charges determined in a generic cost docket. Therefore, U S WEST requests that
9 the Commission adopt its proposed language.

10

CONCLUSION

11

12 **DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?**

13 A. Yes it does. Thank you.