

AUG - 9 1991

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND)	
TRANSPORTATION COMMISSION,)	
)	DOCKET NO. UT-901006
Complainant,)	
)	
v.)	SECOND SUPPLEMENTAL
)	ORDER APPROVING TARIFF
U S WEST COMMUNICATIONS,)	FOR TEMPORARY TERM
)	
Respondent.)	
.....)	

PROCEEDINGS: U S WEST Communications, Inc. ("USWC" or "company") filed tariff revisions on September 13, 1990, which would increase its rates for intrastate telephone service by introducing Call Forward-Busy Line (Expanded) and Call Forward-Busy Line/Don't Answer (Expanded) services and by increasing the rate for Call Forward-Don't Answer (Interoffice). The Commission suspended the filing on October 17, 1990.

HEARINGS: Hearings were held at Olympia, Washington before Chairman Sharon L. Nelson, Commissioner Richard D. Casad, Commissioner A. J. Pardini and Administrative Law Judge Elmer E. Canfield of the Office of Administrative Hearings on January 15, March 21 and 22, and May 28 and 30, 1991. The Commission held a special hearing session to receive evidence from members of the public on May 30, 1991.

APPEARANCES: U S WEST Communications was represented by Mark Roellig and Ed Shaw, attorneys, Seattle; the Commission staff by Donald T. Trotter, assistant attorney general, Olympia; and the public by William Garling, Jr., assistant attorney general, Seattle. Intervenors appeared as follows: TRACER, Telecommunications Ratepayers Association for Cost Effective and Equitable Rates, by Arthur A. Butler, attorney, Seattle; NTA, Northwest Telemessaging Association, by Brooks E. Harlow, attorney, Seattle; Hansen Communications, Inc. by Richard D. Hansen, president, Puyallup; and AccessPlus Communications, Inc. by William A. Broadhead, executive vice-president, operations, Bellevue.

SUMMARY: The Commission approves the filed rates to be effective only until September 1, 1992. During that period, the Commission will undertake a rulemaking proceeding to examine policies regarding the pricing, terms and conditions for open network architecture features.

MEMORANDUM

I. Introduction: ONA

Open Network Architecture, or ONA, is a term used to reflect the Federal Communications Commission's order that Bell operating companies, or BOCs, make the telephone network as accessible to their competitors as it is to themselves.¹

The ONA services at issue in this proceeding are features of call forwarding, which allows incoming calls to be transferred to another line if the called line is busy or does not answer. Call forwarding is used by enhanced service providers such as answering or "Telemessaging" services to transfer calls needing service from customers' lines to the ESP to enable it to provide answering and voice mail. Call forwarding may also be used directly by the local exchange company customer to forward calls to another line of its choice.

The availability and the pricing of ONA services can have a profound impact upon the availability of enhanced and information services, including voice mail and live answering services, to the public, and upon the viability of ESP businesses. Availability and pricing can affect which method, among alternatives, a consumer chooses to meet its needs and the identity of the business which it chooses.²

The call forwarding services at issue in this proceeding represent only a small subset of ONA features, and this proceeding addresses merely one aspect of the broader issues

¹There are two components to this open-network policy: CEI (for "Comparably Efficient Interconnection"), which means each BOC must, pending more permanent changes, provide competitors with connections to the local exchange network that are equal to the BOCs' own enhanced services, and ONA (for "Open Network Architecture"), which means each BOC must ultimately incorporate CEI concepts into the overall design of its basic service network." California v. Federal Communications Commission, 905 F.2d 1217 (9th cir., 1990). As used in this order, ONA features are features of the network which are usable by enhanced service providers to provide their services, as well as usable by the public directly.

²The local exchange company has the ability to offer to consumers directly the same services it provides to consumers through ESPs which are its own business subscribers. It thus has the ability to compete with its own customers for consumer business, and its pricing can affect consumer choice among competitors.

involving ONA.

II. Tariff Filing

On September 13, 1990, U S WEST filed tariffs with the Commission which propose to cancel two existing offerings and to rename and reprice one existing offering.

The service to be provided is interoffice call forwarding -- when a subscriber's line is busy or is not answered, call forwarding will transfer the incoming call to a number in a different central office switch. The three proposed offerings will allow a subscriber to forward a call (1) only when the line doesn't answer,³ (2) only when the line is busy, or (3) both when the line doesn't answer and when it is busy.

One existing offering is Call Forward-Don't Answer (Interoffice). The company proposes to rename this as Call Forward-Don't Answer (Expanded) and to increase its price from 75c to \$2.00 per month for residential subscribers and from \$2.00 to \$2.80 for business subscribers.

The other existing offerings are Call Forward-Busy Line (External)/Don't Answer (Interoffice), and Call Forward- Busy Line (Overflow)/Don't Answer (Interoffice). The company proposes to cancel these and replace them with Call Forward- Busy Line (Expanded), which it would price at \$1.25 residential and \$3.00 business, and Call Forward-Busy Line/Don't Answer (Expanded), combining the other two offerings, which it proposes to price at \$2.60 residential and \$4.00 business.

III. Pricing the ONA offerings.

The issue facing the Commission is whether the proposed rates for the tariff offerings meet the statutory test and are fair, just, reasonable and sufficient. An underlying issue is the extent of discretion that should be afforded the company in deciding which ONA offerings it will provide and how it will price those offerings. Related questions include the extent to which Enhanced Service Providers depend on ONA features and functions in order to provide their own enhanced offerings, and the possible or actual competition for ESP customers by U S WEST. In summary, the Commission will allow the proposed rates to be effective until September 1, 1992. During that period it will explore and answer the more general ONA questions.

³The "don't answer" option allows the subscriber a choice: answer the call within a prescribed number of rings, or allow it to forward to the designated number.

IV. The Parties' Positions

U S WEST

U S WEST urges approval of the tariff on a permanent basis. One U S WEST pricing objective is to price services above cost. To do so, it first examines the cost of the service. Here, the company began by deriving the Long Run Incremental Cost (LRIC) of the services. This includes the direct costs incurred in the office providing the feature, along with other direct costs such as Right-To-Use fees, sales compensation and non-recurring product implementation costs. Once the LRIC was determined, the company used a value-of-service, or market-based approach, to price the service. It uses the LRIC data merely as a floor below which it will not price the feature.

In pricing ONA features or services, the company uses the following guidelines:

1. The service will be priced above long run incremental costs.
2. The service will be priced at a rate designed to return a reasonable contribution toward common overhead, recognizing market conditions.
3. The service will be priced to stimulate development of enhanced service applications and at a rate that optimizes total market demand, not just Enhanced Service Provider market demand.
4. The service will be priced to minimize product revenue cross elastic implications which create/encourage tariff arbitrage for same or substitute products.

5. Pricing will be in full compliance with the FCC CI III⁴ order requirements and other state and federal requirements and will be nondiscriminatory in the application of such requirements in all cases.

In applying its ONA pricing guidelines, the company considers 1) available market research; 2) current products with an established market value (baseline products); 3) possible substitute products (competitive services); 4) what price will stimulate the development of new enhanced service offerings; and 5) public policy implications.

U S WEST market research foretold interest in the Call Forward (Expanded) services, especially from the telemessaging industry. It perceived forwarding calls to a different geographic area as having more value than forwarding within the same central office switch. According to the company, 1990 research supports pricing the busy option slightly higher than the don't answer option for business customers.

The company contends that the proposed ONA services offer increased flexibility and thus greater value than existing products such as Call Forward-Variable (CFV), Call Forward-Don't Answer and Call Forward-Busy Line.

Commission staff.

Commission staff recommends that the Commission approve the tariff revisions as filed on a temporary basis until September 1, 1992, pending development of standards for ONA offerings and tariffs. Although it does not agree with the company's position or with the company's pricing of these ONA services, staff argues that it is better to have these services available today, at the proposed rates, than to delay the offerings. Staff suggests that the Commission develop and implement a framework for setting the rates, terms and conditions of intrastate ONA services during the year in which it proposes that the tariffs be allowed effect.

⁴"Computer Inquiry III" is a label given to a series of FCC decisions: Report and Order, In re Amendment of Sections 64.702 of the Commission's Rules and Regulations (Third Computer Inquiry), (Docket No. 85-229), 104 FCC 2nd 958 (1986) (Phase I order); On reconsideration, 2 FCC Rcd 3035 (1987); On further reconsideration, 3 FCC Rcd 1135 (1988); 2 FCC Rcd 3072 (1987) (Phase II Order); on reconsideration, 3 FCC Rcd 1150 (1988) (Phase II Reconsideration). In California v. FCC, 905 F.2d 1217 (9th Cir., 1990), the court vacated the Computer III orders and remanded the case to the FCC.

Commission staff argues that market pricing should be abandoned and a cost-based system be developed for pricing these and like services. Staff asserts that accurate costs can only be determined in the context of the "product family" which includes the subject call forwarding services, and that such an analysis has not been produced by U S WEST. It urges that embedded costs should be considered in setting the rates, rather than the subjective judgments inherent in market pricing.

Public counsel.

Public counsel shares the Commission staff view that the Commission should not permanently approve the filing at this time. He urges the Commission to first adopt formal guidelines on the definition, pricing and offering of ONA services. Until guidelines are adopted, public counsel suggests, the proposed services and rates should be approved on a temporary basis if the Commission deems that conditions of extreme necessity exist; the matter could then be reviewed once the ONA guidelines are approved.

Intervenors.

Intervenor AccessPlus argues that the company has not met its burden of proof to show that the tariff revisions are just and reasonable. It recommends that the Commission reject the tariff filing. In the alternative, it proposes that the Commission require the company to modify its tariff to eliminate the distinctions between intraswitch and interswitch call forwarding services. Its alternative would price call forwarding services, where available, without regard to whether calls are forwarded within or between switches. AccessPlus argues that the proposed rates should not be approved as permanent rates.⁵

Intervenor TRACER argues that the company failed to carry its burden of proof. It recommends, however, that the Commission approve the expanded call forwarding services on a one-year interim basis. TRACER argues that the company failed to

⁵U S WEST moved to strike portions of the briefs of AccessPlus, NTA and Hansen, contending that argument in the briefs was inconsistent with the intervenor's responses or failures to respond to data requests about their positions. No legal basis is presented for the motion, and the Commission finds none. The motion appears to be a reply to intervenor's answer, submitted without permission. See, Order M. V. No. 143056, In re D & D ICS Group, Inc., App. No. P-73119 (Apr., 1991). The motion is denied. The Commission discourages unnecessary pleadings, which increase the costs of administrative proceedings for the participants, for the Commission and ultimately, for the public.

demonstrate that its proposed prices are fair, just and reasonable. It further argues that the Commission should order the company to reduce prices to 10% to 20% above its estimates of cost, with no difference between prices charged to business and residential customers.

Intervenor Northwest Teleessaging Association argues that the proposed services are urgently needed by ESPs and should be offered on an interim basis -- but at rates lower than filed, at or slightly above their cost. NTA argues that the company's proposed rates are excessive and should not be permitted to go into effect, even on an interim basis. It urges the Commission to reject the company's value-of-service pricing methodology as inappropriate for ONA services. NTA argues that it is essential that pricing be cost-based when services such as these are monopoly services that are needed by ESPs that are in direct competition with U S WEST. It urges the Commission to order the company to offer the services at prices at or slightly above the purported LRIC figures listed in Exhibit No. 3.

Intervenor Hansen Communications, Inc., acknowledges that the proposed ONA services are needed, but argues that U S WEST failed to meet its burden of proof to show that the proposed rates are just and reasonable. Hansen Communications urges the Commission to reject the company's value of service pricing method, referring to it as an "arbitrary 'what the market will bear' pricing strategy that shows no consistency." It supports using cost-based rates for these services and suggests that the rate should be the same for residential and business customers. It urges the Commission to review the rate within twelve months. It also requests the Commission to bar U S WEST from selling the services bundled with other products, such as voice mail, unless those products are offered by separate subsidiaries.

U S WEST response.

On rebuttal, the company stated that it would accept a "sunset" tariff with a one-year expiration date, although the company does not believe that such a provision is necessary.

V. Public Hearing

At the hearing held on May 30, 1991, to receive public testimony, only one witness testified. Don Kelley, President of Kelley's Telephone Answering Service, Inc., spoke in favor of the proposed services, but urged the Commission to use cost-based rather than value-of-service pricing for ONA services. Mr. Kelley would like to see the services offered at the proposed prices rather than have the offering of the services delayed further while prices are set.

VI. Conclusion

The Commission will accept the recommendation of Commission staff, public counsel and TRACER -- agreed to by the company -- that the filed rates be approved for operation until September 1, 1992, during which time the Commission will explore in a rulemaking proceeding the policies which should be adopted to guide the pricing, terms, and conditions for the offering of ONA services.

We have set out the company's methodology in pricing its ONA features at some length from the testimony of Ms. Marilyn J. Thomson, its ONA Product Implementation Manager. The Commission finds that the proposed pricing can be accepted, in the absence of alternative acceptable guidelines.

The Commission reserves its right to determine principles or guidelines on a case-by-case basis, based on a complete factual record and extensive comments from involved parties. Here, however, we believe that there is merit in gaining participation from a broad range of interest groups, with a broad range of experience, in an attempt to explore pertinent pricing policies, as well as the terms and conditions under which ONA services should be offered. The company stated its willingness to participate in a Commission rulemaking proceeding addressing ONA principles.

We have not set out the alternative pricing proposals contained in the testimony of Commission Staff witness Thomas Spinks, Public Counsel witness W. G. Bolter or AccessPlus witness William A. Broadhead, nor have we set out at length their specific criticisms of the company's methodology. We have considered all of the evidence, but agree with the multiparty recommendation that the Company's proposal is acceptable for temporary application, under present policies. We agree with the parties that the service is needed and that it should be made available on a temporary basis. We establish September 1, 1992, as the termination date for the refiled tariff.

We also agree that the Commission should focus in a rulemaking forum during the coming year on the policy issues affecting ONA pricing, terms and conditions. We thank the parties for their presentations, which assisted in highlighting the policy issues underlying the different approaches.

The Commission will initiate a rulemaking proceeding to develop principles for pricing and providing ONA services. A rule may be feasible to set the parameters under which future ONA filings would be judged; it may guide Commission decisions if future complaint actions are necessary; and it may address the provision of ONA services by Local Exchange Companies (LECs).

The Commission directs its Policy Planning and Research Section, in cooperation with the Regulatory Affairs Section and Utilities Division, to present a specific proposal no later than November 22, 1991, to complete a rulemaking proceeding prior to September 1, 1992. Commission personnel shall consult with a full range of affected interest groups regarding possible proposals.

FINDINGS OF FACT

Having discussed in detail all material matters inquired into, and having stated findings and conclusions, the Commission now makes the following summary of those facts. Those portions of the preceding detailed findings pertaining to the ultimate findings are incorporated by this reference.

1. The Washington Utilities and Transportation Commission is an agency of the State of Washington vested by statute with authority to regulate rates, rules, regulations, practices, accounts, securities, and transfers of public service companies, including telecommunications companies.

2. Respondent U S WEST Communications is a telecommunications company engaged in the business of furnishing telephone services within the State of Washington, and, as such, is a public service company subject to regulation by the Washington Utilities and Transportation Commission.

3. On September 13, 1990, the company filed tariff revisions which would effect a statewide increase in its rates for intrastate telephone service by introducing Call Forward-Busy Line (Expanded) and Call Forward-Busy Line/Don't Answer (Expanded) services and by increasing the rate for Call Forward-Don't Answer (Interoffice). The Commission suspended the filing by order entered October 17, 1990.

4. Rates stated in the filed tariff revisions are fair, just, reasonable and sufficient for the provision of the service identified therein, provided that the tariff revisions bear a stated expiration date of September 1, 1992. Allowing the proposed rates on a temporary basis, as stated, will afford the Commission the opportunity to review information and comment, to determine feasibility, and to establish guidelines for the availability and pricing of open network architecture features.

CONCLUSIONS OF LAW

1. The Washington Utilities and Transportation Commission has jurisdiction over the parties and subject matter of this proceeding.

2. The proposed tariffs state rates which are fair, just, reasonable and sufficient for the provision of the services identified, provided the rates are refiled to expire on September 1, 1992.

3. The tariff filing which is the subject of this proceeding should be rejected. Respondent U S WEST should be authorized to refile tariffs, as specified herein, bearing an effective date allowing the Commission staff no fewer than two working days to review them, and bearing an expiration date of September 1, 1992.

4. All motions made in the course of this proceeding which are consistent with findings and conclusions made in this order should be granted, and those which are inconsistent should be denied.

On the basis of its analysis of the evidence, and the above findings and conclusions, the Washington Utilities and Transportation Commission makes and enters the following order.

O R D E R

The Commission approves the tariff rate levels filed by the company in this proceeding, upon the following terms and conditions:

- 1. The tariffs filed with the Commission are rejected.
- 2. The respondent is authorized to refile tariffs, so long as:
 - a. The refiled tariffs must bear the proper company name and tariff number.
 - b. The refiled tariffs must reflect the service names and the rates contained in the suspended filing.
 - c. The refiled tariffs must bear an effective date which allows the Commission at least two working days to review the filing.
 - d. The refiled tariffs must bear an expiration date of September 1, 1992.
- 3. All motions consistent with this order are granted. Those inconsistent with it are denied.

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4. The Commission retains jurisdiction to effectuate the provisions of this order.

DATED at Olympia, Washington and effective this *OK* day of August, 1991.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION



SHARON L. NELSON, Chairman



RICHARD D. CASAD, Commissioner



A. J. PARDINI, Commissioner

NOTICE TO PARTIES:

This is a final order of the Commission. In addition to judicial review, administrative relief may be available through a petition for reconsideration, filed within 10 days of the service of this order pursuant to RCW 34.05.470 and WAC 480-09-810, or a petition for rehearing pursuant to RCW 80.04.200 or RCW 81.04.200 and WAC 480-09-820(1).