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

PUBLIC
SURREBUTTAL TESTIMONY OF DAVID E. STAHLY
ON BEHALF OF SPRINT COMMUNICATIONS COMPANY L. P.

Submitted May 26, 2000

Q. Are you the same David Stahly who filed direct and reply testimony in this case on April 26, 2000 and May 10, 2000, respectively?

A. Yes, I am.

Q. What is the purpose of your surrebuttal testimony?

A. I will review the arguments set forth in U S WEST's pre-filed rebuttal testimony of May 26, 2000. I will identify areas of agreement and disagreement with the case presented by, U S WEST witnesss Taylor and Brotherson. Specifically, I will discuss the weaknesses in their arguments on cost causation as well as the ability and necessity to separate ISP local traffic from other local traffic.

Q. Has your conclusion changed after reading the rebuttal testimony of U S WEST's witnesses?

A. No. I still conclude that the Commission should order the payment of reciprocal compensation for local traffic terminating to an ISP. The commission has already decided this issue in previous proceedings in accordance with Washington law. There is absolutely no need for the Commission to expend its time and resources on an issue that U S WEST has lost several times before in Washington State and elsewhere. Nonetheless, I will again address U S WEST's arguments as set forth in its rebuttal testimony.

ISSUE NUMBER ONE: RECIPROCAL COMPENSATION ON ISP-BOUND TRAFFIC

Q. Do you agree with Mr. Brotherson that the record in this docket is different from previous dockets where this issue was considered and therefore the WUTC should revisit the issue of reciprocal compensation?

A. No. The Commission has heard this exact same issue in other dockets and developed full records, and despite this Commission having clearly established the law in this area, U S WEST is trying yet again to put forth its case.

Q. Mr. Brotherson argues that an imbalance in traffic suggests that the WUTC should order "bill and keep" the same as the Colorado PUC. Do you agree?

A. No. While I do not disagree that an imbalance of traffic may exist; "bill and keep" is precisely the wrong solution for out of balance traffic. "Bill and keep" is most appropriate when traffic between two LECs is roughly in balance and the costs of terminating the traffic to each other is roughly the same. However, if traffic is out of balance, then it stands to reason that the LEC with the greater amount of terminating traffic will incur greater aggregate costs to terminate that traffic and should be compensated.[1]

[1] Although the per unit cost of terminating the traffic may be lower for the LEC with the greater amount of terminating traffic, the aggregate cost to that LEC will be larger because of the greater volume of

Q. Mr. Brotherson states that U S WEST will pay $45 million this year for reciprocal compensation and implies that U S WEST cannot afford to pay that much money. Do you agree?

A. No, I do not. In essence, U S WEST is already incurring that cost for terminating ISP traffic. Assuming *arguendo*, that U S WEST's reciprocal compensation rates are cost-based, then U S WEST would be incurring a cost of $45 million annually to terminate ISP traffic to ISPs on its own network if CLEC's had not won the ISP's business. Instead, U S WEST must pay this money to CLECs rather than keep it for itself. It appears that U S WEST's problem really has more to do with paying for the growing network usage caused by the growth of the Internet than it is a problem with paying just and reasonable compensation for terminating local traffic.

Q. Do you agree with Mr. Brotherson that U S WEST can identify ISP traffic?

[PROPRIETARY DATA BEGINS]

traffic.

[PROPRIETARY DATA ENDS]

Q. Do you agree with Mr. Brotherson on page five of his rebuttal testimony that ISP traffic should be separated from other similar traffic and paid a lower rate?

A. No, I do not. I find it curious that Mr. Brotherson feels there are "sound economic and policy reasons to exclude this (ISP) traffic from reciprocal compensation," yet those same sound economic and policy reasons do not exist for other types of local traffic that exhibit

the same type of high terminating volume characteristics. Clearly, many large employers are implementing LANs and allowing employees to dial in to the LANs from home to work from home. This traffic and other local traffic exhibits the same economics as ISP traffic. The only reason I can surmise as to why U S WEST seeks different treatment for similar local traffic is because it has apparently lost a sizeable portion of the ISP business to CLECs and has yet to lose LAN business to CLECs.

Q. Do you agree with Dr. Taylor's unique perspective on cost causation and cost recovery as explained on page twelve of his rebuttal testimony?

A. No, I do not. Dr. Taylor's "theory" of cost causation only appears to apply when it benefits U S WEST. In short, Dr. Taylor's unique "cost causation principle" "leads to a regime in which the ILEC and CLEC share the revenues earned by the CLEC from the lines and local exchange usage that it (the CLEC) sells to the ISP"[2] However, this principle apparently only applies to ISP local traffic. Any other type of local traffic is exempt. In fact, if Dr. Taylor's theory is applied consistently to other types of traffic, then some amazing results occur. For example, on a typical local call where a Sprint CLEC customer calls a U S WEST local customer, rather than Sprint paying U S WEST reciprocal compensation for terminating the call, U S WEST should be paying Sprint for originating the call. And, U S WEST will use the revenues it collects from its own local customers to pay Sprint. Likewise, under Dr. Taylor's cost causation theory, when a Sprint long distance customer terminates a call to a U S WEST customer, U S WEST

should pay Sprint for originating the call.

Q. Dr. Taylor and you both agree that economic efficiency demands that the cost causer must pay for the costs they cause. However, do you agree with Dr. Taylor that economic efficiency also means that access charges are the appropriate collecting mechanism?

A. No. Although Dr. Taylor and I both agree that the cost causer is responsible for bearing the costs they cause, we differ in the manner in which those costs should be collected from the cost causer. Dr. Taylor opines that access charges are the appropriate paradigm. However, access charges, even if they were allowed by law, are an inefficient way of collecting costs from the end user. The most direct method is to collect the money directly from the end user via the local rates the end user already pays to U S WEST. In effect, that is happening today. When a U S WEST customer places a call to an ISP on U S WEST's network, U S WEST must consider the costs of terminating that local call to the ISP and factor that into the rates that the U S WEST end user pays for local access. When the local call terminates to an ISP on a CLEC's network, U S WEST now must pay the CLEC rather than paying itself for the cost of terminating that call. However, those costs should already be included in U S WEST's local access rates.

Even with access charges, the trend has been to shift those costs directly to the end user, placing the IXC in the function of a billing agent for the ILEC. For example, on the

[2] See Rebuttal Testimony of Dr. William Taylor at p. 12.

interstate side, IXCs were historically required to pay CCL on a per minute basis to the ILEC. Those charges were recovered by burying them in the IXC's retail rates to the end user customer. The FCC recognized the inefficiency of such a collection mechanism and moved a large portion of the CCL charge to a flat-rated SLC that is billed directly to the end user's local bill. Recently, the FCC has started to move the rest of the CCL (which had been moved to the PICC charged the IXC) charge into the SLC to be billed directly to the end user customer.

Q. Do you agree with Dr. Taylor that there is a need to create a separate category for ISP traffic?

A. No. There is no need to create a separate class of local traffic. Dr. Taylor argues that it costs less to terminate ISP traffic than it does voice traffic, therefore ISP traffic should be segregated and billed at a different rate. However, Dr. Taylor produces no cost studies to show that there is a significant cost difference between terminating voice traffic versus ISP traffic. While I will not disagree that ISP traffic generally has a longer hold times than voice traffic, I do not agree that segregation of ISP traffic from voice traffic is the necessary solution. As I stated in my direct and rebuttal testimony, the problem is the current rate structure for reciprocal compensation. If the rate structure is fixed, then the problem goes away.

As Dr. Taylor acknowledges on pp. 29 - 31 of his direct testimony, switching costs are not recovered in the manner in which they are incurred. Specifically, the call setup charge

occurs the instant the call is "setup" or established, yet the cost is spread out over the duration of an average call. Thus, if a call, such as a call to an ISP, has a longer duration than that which was used to set the switching charge, the cost of call setup will be over-recovered. The correct solution to the problem is not to establish a separate class of traffic, but to bifurcate the switching charge into a call setup charge and a call duration charge. Thus, regardless of the length of the call or type of call, the charges match the underlying costs and are the costs recovered appropriately.

A correctly structured switching charge eliminates several problems that would occur with Dr. Taylor's proposal. First, companies would not have to expend resources trying to measure ISP traffic, which as discussed above, is still difficult to accurately measure. Second, a bifurcated rate structure also resolves the problem of other high usage in-bound calling traffic such as employees dialing in to their employers' LANs, call-in radio talk shows, and local help lines provided by companies, government, and community organizations. There is no need to segregate ISP traffic, only a need to bifurcate U S WEST's switching/reciprocal compensation rate structure.

Q. Does this conclude your testimony?

A. Yes.