

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

IN THE MATTER OF THE CONTINUED
COSTING AND PRICING OF UNBUNDLED
NETWORK ELEMENTS, TRANSPORT,
TERMINATION, AND RESALE

Docket No. UT-003013

ANSWER OF COVAD
COMMUNICATIONS COMPANY TO
PUBLIC COUNSEL'S PETITION FOR
RECONSIDERATION OF 13th
SUPPLEMENTAL ORDER

Covad Communications Company ("Covad") agrees with Public Counsel that the Commission erred in its treatment of the HUNE in its 13th Supplemental Order. Covad also agrees with Public Counsel that the 13th Supplemental Order gives Qwest and Verizon an undue windfall in the form of double recovery for a portion of the costs of the loop. There, Covad's agreement with Public Counsel ends. Public Counsel's "solution" of creating a tracking account is unlikely to eliminate the double recovery problem. More importantly, it would provide a public interest mask to justify a HUNE rate that is inherently arbitrary and in violation of applicable federal law regarding UNE pricing.

Public Counsel's continued reliance on Section 254(k) for an offset account to a non-zero HUNE rate in this docket is misplaced because Section 254(k) has nothing to do with this docket. The subsection provides: "A telecommunications carrier may not use services that are not competitive to subsidized services that are subject to competition." (emphasis added). The purpose of this docket is to establish costs and prices for UNEs, not "services" which are the subject of Section 254(k).

ANSWER OF COVAD TO PUBLIC COUNSEL'S PETITION FOR
RECONSIDERATION - 1

1 Even under the Commission's approach (with which Covad strenuously disagrees)
2 of trying to allocate the cost of the UNE loop between the low frequency and high frequency
3 portions, the Commission in this docket is still dealing only with the UNE loop. A UNE loop
4 does not fall under the provision of Section 254(k) for two reasons. First, it is not a "service."
5 Second, even assuming for sake of argument it were a service, neither portion of the loop is
6 competitive.

7 Third, Section 254(k) does not apply in this docket because its prohibition of
8 cross-subsidies applies to a single telecommunications carrier. Thus, an ILEC cannot use its
9 noncompetitive services to subsidize its own competitive services. For example, under
10 Section 254(k) the Commission might—in an appropriate docket relating to pricing of Qwest's
11 retail services—act to ensure that Qwest's voice services are not subsidizing Qwest's DSL
12 services. In contrast, Public Counsel's argument is based on the premise that Qwest's voice
13 services should not "subsidize" Covad's DSL services. Section 254(k) says nothing of the sort.

14 Finally, as Covad has noted previously, there is no incremental cost to the HUNE.
15 Accordingly, there can be no cross-subsidy. Covad will not belabor this point, as it was
16 addressed extensively in Covad's post-hearing briefs.

17 Covad does not see how any meaningful benefit to the public interest can flow
18 from Public Counsel's request to establish a tracking account for the HUNE rate established by
19 the Commission in its 13th Supplemental Order. The only beneficiaries of the 13th Supplemental
20 Order are the ILECs, who reap a \$4 windfall for every HUNE that their competitors sell at the
21 expense of the competitors. The offset account would be too remote, attenuated, and amorphous
22 to have any meaningful and certain public interest benefits. Weighed against the clear
23 competitive advantage that the \$4 HUNE gives to the ILECs, who do not bear this cost, over
24 their competitors, who do, a tracking offset is not a solution. The solution, rather, is to set the
25 HUNE at \$0. Any other rate for the HUNE based on the record in this docket is arbitrary and
26 clearly erroneous as a matter of law.

ANSWER OF COVAD TO PUBLIC COUNSEL'S PETITION FOR
RECONSIDERATION - 2

SEADOCS:96550. 1

MILLER NASH LLP
ATTORNEYS AND COUNSELORS AT LAW
TELEPHONE (206) 622-8484
4400 TWO UNION SQUARE
601 UNION STREET, SEATTLE, WASHINGTON 98101-2352

1 **CONCLUSION**

2 For the foregoing reasons, as well as the reasons set forth in the post-hearing
3 briefs of Covad, Public Counsel's request to modify the 13th Supplemental Order to establish a
4 tracking account to offset the \$4 HUNE rate should be denied. To resolve the double recovery
5 issue raised in Public Counsel's petition, the Commission should instead set the HUNE rate at \$0,
6 consistent with federal law and state policy favoring promotion of competition on a level playing
7 field.

8 Respectfully submitted this 28th day of February, 2001.

9 MILLER NASH, LLP

10
11 _____
12 Brooks E. Harlow
13 WSB No. 11843

14 Attorneys for Respondent
15 Covad Communications Company

16 Of Counsel:

17 K. Megan Doberneck
18 Covad Communications Company
19 7901 Lowry Blvd.
20 Denver, CO 80230
21 Phone: (720) 208-3636
22 E-mail: mdoberne@covad.com
23
24
25
26

ANSWER OF COVAD TO PUBLIC COUNSEL'S PETITION FOR
RECONSIDERATION - 3

SEADOCS:96550. 1

MILLER NASH LLP
ATTORNEYS AND COUNSELORS AT LAW
TELEPHONE (206) 622-8484
4400 TWO UNION SQUARE
601 UNION STREET, SEATTLE, WASHINGTON 98101-2352