

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

U S WEST Communications, Inc.
Interconnection/Wholesale Price
Investigation

Case No. PU-314-97-12

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

April 27, 2000

In August 1996, the Federal Communications Commission (FCC) adopted its Local Competition Order (Order) to implement section 251 of the Communications Act of 1934, as amended. Code of Federal Regulations, Part 47, Section 51.507(f) promulgated by that order requires that each state commission "establish different rates for [interconnection and unbundled network elements (UNEs)] in at least three defined geographic areas within the state to reflect geographic cost differences. In its order in FCC Docket No. 99-306, released November 2, 1999, the FCC stated that by May 1, 2000, states are required to comply with the requirements of section 51.507(f).

On January 12, 2000, the Commission issued a Notice of Opportunity to File Written Comments regarding the matter.

On February 14, 2000, comments were filed by U S WEST Communications, Inc. (U S WEST). On February 15, 2000, AT&T Communications of the Midwest, Inc. (AT&T) filed comments suggesting that the Commission not seek a waiver, but adopt interim deaveraged prices.

On February 23, 2000, the Commission issued a Notice of Workshop and Hearing. The Commission ordered that U S WEST file a proposal for the deaveraging of unbundled network element prices by March 10, 2000, and serve copies of its proposal on all parties with which U S WEST has an interconnection agreement for the purchase of unbundled network elements. Interested parties were given until March 21, 2000, to file comments or to file their own proposals for deaveraging unbundled network element prices. A workshop was scheduled for March 28, 2000, for parties to discuss the proposals.

The issues to be determined in this proceeding are:

1. How many defined geographic areas are appropriate for deaveraged pricing of U S WEST unbundled network elements in North Dakota?
2. What methodology should be used to determine the defined geographic areas for deaveraged pricing?

3. Are there unbundled network elements that do not need to be priced on a deaveraged basis? Why?
4. What methodology should be used to determine the deaveraged prices?
5. What are the deaveraged prices?
6. Should the deaveraged prices be considered interim prices pending the Commission's cost investigation in this proceeding?

On March 10, 2000, U S WEST filed an application to amend and deaverage the interim prices in its interconnection agreements for unbundled network elements, with prices to be effective May 1, 2000. A copy of the proposal was served on all companies with which U S WEST currently has interconnection agreements.

On March 21, 2000, AT&T filed comments in reply to U S WEST's proposal for deaveraging.

On March 28, 2000, Consolidated Communications Networks, Inc. (CCNI) filed comments at workshop in reply to both U S WEST and AT&T. On March 30, 2000, the workshop was continued by telephone conference call.

On April 3, 2000, Integra Telecom of North Dakota, Inc. (Integra) filed a petition to intervene. Intervention was granted on April 12, 2000.

On April 5, 2000, U S WEST prefiled testimony with an attached copy of a stipulation entered into between U S WEST, AT&T and CCNI. Copies of the prefiled testimony and stipulation were served on all companies with which U S WEST currently has interconnection agreements.

On April 5, 2000, AT&T prefiled testimony in support of the stipulation.

On April 5, 2000, CCNI filed comments in support of the stipulation.

On April 12, Integra filed a letter in support of the stipulation.

A technical hearing was held on April 13, 2000, as scheduled.

Findings of Fact

1. The FCC required that rates for interconnection and unbundled network elements be deaveraged in at least three defined geographic areas within the state to reflect geographic cost differences. These prices are paid by Competitive Local Exchange Companies (CLECs) for use of U S WEST's local telecommunications facilities.

2. In its February 14 comments, U S WEST stated that it did not believe a waiver of the FCC requirements for the deaveraging of UNEs in North Dakota was necessary and that U S WEST would file a proposal to deaverage its existing interim prices of unbundled local loops. The new deaveraged prices would amend the terms of existing interconnection agreements between U S WEST and CLECs pursuant to Paragraph 1.1 of the agreements. U S WEST stated that its proposed procedure would avoid an unnecessary waste of resources by the Commission and the CLECs by allowing compliance with FCC deaveraging requirements while avoiding further expensive cost investigation until such investigation is continued.

3. In its February 15 comments, AT&T proposed to assign wire centers to one of three cost zones based on the relative cost differences between wire centers for the unbundled loop. AT&T stated that the loop is the most appropriate element to use for establishing zones since it is the most significant portion of the total cost of providing local telephone service and because it is the UNE with the most significant variance in cost. AT&T proposed to determine zones by plotting the UNE loop costs by wire center and then group the wire centers into low, median, and high cost zones. AT&T advocated the use of the HAI model to determine the relative cost difference between wire centers which would be applied to the established statewide average loop cost to determine UNE loop prices for three deaveraged zones. Wire centers with similar costs would be aggregated into each zone. The statewide average loop price was established at \$19.75 per month in the arbitrated interconnection between AT&T and U S WEST.

4. AT&T stated that the purpose of deaveraging is to facilitate efficient competition by allowing the prices of unbundled network elements to more closely represent their underlying cost. Accurately priced UNEs will allow CLECs to make economical and efficient decisions on where to purchase UNEs versus where to build its own facilities. AT&T mentioned that there are a variety of different methodologies for defining the zones for deaveraging. Some of the methods are: density zones, distance from wire center (known as a doughnut approach), central office size, communities of interest and wire center cost zones. AT&T advocated the use of cost by wire center to determine three price zones as a practical and simple method to start the deaveraging process.

5. U S WEST's March 10 application stated that the geographic deaveraging should be limited to the unbundled loop UNE because costs for other UNEs do not vary in a significant cost-causative manner between geographic areas. U S WEST proposed three deaveraged price zones consisting of wire centers grouped by community of interest. Zone 1 unbundled loops were priced at \$17.88 per month for the Fargo, West Fargo, Grand Forks, Bismarck, Mandan, Emerado, Casselton, Kindred, Reynolds, Thompson, Gardner, Manvel, and Leonard wire centers. Zone 2 unbundled loops were priced at \$21.46 per month for the Dickinson, Williston, Jamestown, Wahpeton, Valley City, Belfield, Watford City and Alexander wire centers. Zone 3 unbundled loops were priced at \$35.10 per month for the Grafton, Mayville, Lisbon, Hillsboro, Larimore, Northwood, Minto, Pembina, Hatton, Wyndmere, Gwinner, and Fairmount wire centers.

6. AT&T, in its March 21 comments, stated that geographic deaveraging should be limited to the unbundled loop UNE because costs for other UNEs do not vary in a significant cost-causative manner between geographic areas. AT&T disagreed with U S WEST on the methodology for aggregating wire centers into zones. AT&T reiterated the proposal from its February 15 comments. AT&T stated that a pure cost methodology sends appropriate signals to the competitive marketplace and is more consistent with the deaveraging rule adopted by the FCC. AT&T's March 21 proposal for Zone 1 unbundled loop price is \$10.96 per month for the Fargo, West Fargo, Grand Forks, and Bismarck. wire centers. Zone 2 unbundled loops were priced at \$19.34 per month for the Jamestown and Williston wire centers. Zone 3 unbundled loops were priced at \$46.29 per month for the Wahpeton, Mandan, Dickinson, Valley City, Grafton, Mayville, Emerado, Pembina, Hatton, Larimore, Lisbon, Casselton, Belfield, Minto, Watford City, Hillsboro, Kindred, Thompson, Northwood, Gwinner, Reynolds, Gardner, Manvel, Fairmount, Wyndmere, Leonard, and Alexander wire centers.

7. CCNI expressed its concern that AT&T's proposal would literally drive them out of business while U S WEST's proposal would increase CCNI's rates to customers by 8.5% and would stifle growth as the increase is passed along. According to CCNI, with either proposal, "competition will be limited to business customers only, outside of the three large cities." CCNI requested the Commission reject both proposals and request a waiver from the FCC on the ground that there is no need to deaverage rates in North Dakota.

8. At the hearing on April 13, 2000, U S WEST witness, Scott A. Macintosh, offered a stipulation between U S WEST, AT&T and CCNI for the establishment of interim deaveraged unbundled network element prices for U S WEST in North Dakota. The parties agreed that only the unbundled 2 wire local loop price should be deaveraged at this time. Under the terms of the agreement, the interim deaveraged local loop price for Zone 1 is \$16.41 per month for the Fargo, Grand Forks, Bismarck, West Fargo, Jamestown, Williston, Wahpeton, Mandan and Dickinson wire centers. The interim deaveraged local loop price for Zone 2 is \$27.66 per month for the Valley City, Grafton, Mayville, Larimore, Lisbon and Casselton wire centers. The interim deaveraged local loop price for Zone 3 is \$62.66 per month for the Emerado, Pembina, Hatton, Belfield, Minto, Watford City, Kindred, Thompson, Northwood, Gwinner, Reynolds, Gardner, Manville, Fairmount, Wyndmere, Leonard and Alexander wire centers.

9. The stipulation does not adopt or recognize any particular costing methodology or price deaveraging mechanism. The stipulated interim deaveraged interim prices would become effective May 1, 2000.

10. AT&T witness, Arleen M Starr, and CCNI witness, Paul Schuetzler, testified in support of the stipulation, and Integra filed a letter in support of the stipulation.

11. The Commission finds that it is in the best interest of the public and of the parties involved in this proceeding that deaveraged prices be set at this time only for the unbundled 2 wire local loop and only on an interim basis. We find that the stipulation

between the parties for the deaveraged prices of the unbundled 2 wire local loop on an interim basis is reasonable and should be accepted.

12. The Commission finds that additional investigation is needed to determine the appropriate methodology for geographic deaveraging of unbundled network elements. The Commission believes that workshops between staff and interested parties can facilitate the investigation of various alternatives that should be considered to develop a permanent price deaveraging plan. Some factors to be considered in workshops include a determination of the UNEs that should be deaveraged, factors that cause variations in cost of the loop and other UNEs (such as population density and distance from the switch), the number and size of geographic units used for setting deaveraged UNE prices, and other factors which may affect the number and size of geographic units.

From the foregoing Findings of Fact, the Commission issues its:

Conclusions of Law

1. The Commission has jurisdiction of the parties and of the subject matter in this proceeding.
2. The stipulation entered into between U S WEST, AT&T and CCNI for the interim deaveraging of the price for unbundled 2 wire local loop is reasonable and should be accepted.
3. Further investigation and hearing is required to determine the appropriate methodology for permanent geographic deaveraging of unbundled network elements.

From the foregoing Findings of Fact and Conclusions of Law, the Commission makes issues its:

Order

The Commission orders that:

1. The stipulation entered into between U S WEST, AT&T and CCNI for the interim deaveraging of the price for unbundled 2 wire local loop is accepted.
2. A further investigation and hearing shall be conducted to determine the appropriate methodology for permanent geographic deaveraging of unbundled network elements.
3. The Commission staff facilitated one or more workshops with U S WEST, AT&T, CCNI, Integra and any other interested parties to consider geographic deaveraging alternatives, and that a report of the results and recommendations of the workshop(s) be prepared by the parties and filed with the Commission on or before August 15, 2000.

4. A further **hearing** in this proceeding will be held on **September 11, 2000, beginning 9 a.m. (CDT), in the Commission Hearing Room, 12th Floor, State Capitol**, Bismarck, North Dakota. The Commission shall issue a Notice of Further Hearing.

PUBLIC SERVICE COMMISSION

**Susan E. Wefald
Commissioner**

**Bruce Hagen
President**

**Leo M. Reinbold
Commissioner**