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BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON

UM 974

In the Matter of the Petition to Open an)
Investigation Regarding cost Models for) ORDER
Deaveraging Loop Rates)

DISPOSITION: PETITION DISMISSED WITHOUT PREJUDICE

On May 17, 2000, pursuant to OAR-860-013-0020, the Western States Competitive Telecommunications Coalition (WSCTC) and MGC Communications, Inc., d/b/a/ Mpower communications Corp., (Mpower) jointly filed a petition (Petition) with this Commission to open a generic investigation regarding cost models for deaveraging loop rates. On April 5, 2001, WSCTC and Mpower filed a letter (Letter) withdrawing the Petition, stating that they "specifically reserve the right to resubmit the Petition when the Oregon Public Utility Commission ("Commission") takes further action with respect to examining ILEC costs and establishing permanent deaveraged loop rates." (Letter, p. 1). In light of the participation of other parties in this proceeding and actions of the Commission, described below, we treat the Letter as a motion filed pursuant to OAR 860-013-0031.

Background. In 1996, the Federal Communications Commission (FCC) promulgated rules implementing and interpreting Section 251 of the Telecommunications Act of 1996 (the Act). One of those rules, 47 C.F.R. 51.507(f), requires the Commission to establish deaveraged rates for Unbundled Network Elements (UNEs) in order to reflect geographic cost differences. The rule has had a contentious legal history since its inception, having first been stayed and then vacated by the Court of Appeals for the Eighth Circuit (Eighth Circuit), and then reinstated by the Supreme Court. On remand, the Eighth Circuit again vacated the rule, *Iowa Utilities Bd. v. FCC*, No. 96-3321, ___F.3d___,2000, WL 979117 (8th Cir. July 18, 2000), and it has now been taken up again by the Supreme Court on *certiorari* (Notice of January 22, 2001), and scheduled for oral argument in October, 2001. This continuing regulatory uncertainty has made management of the Commission's obligations under the Act more difficult.

The Commission combined dockets UM 963, UNE Geographic Rate Deaveraging, and UT 148, Qwest's Network Access Channel (NAC) tariff, because of time constraints set by the FCC rules with respect to having deaveraged rates in place and the maximum statutory time limit for which the Commission could suspend and

investigate Qwest's tariffs. In order to meet both state and federal deadlines, the Administrative Law Judge presiding in those combined dockets issued Rulings on March 10, 2000 and April 5, 2000 that, due to those time constraints, alternative methodologies would not be considered in determining deaveraged loop costs and rates.

As a direct consequence of those rulings, WSCTC and Mpower filed the Petition, so that the Commission could ultimately adopt a cost methodology using Total Element Long Run Incremental Cost (TELRIC) principles. On May 25, 2000, the Commission issued a Notice of Opportunity to Comment on the Petition. Comments were filed by the Association for Local Telecommunications Services (ALTS), U S WEST Communications, Inc., now known as Qwest Corporation (Qwest), AT&T, WorldCom, Inc. (WorldCom) and GTE Northwest Incorporated, now known as Verizon Corporation (Verizon). ALTS, AT&T and WorldCom supported the Petition; Qwest and Verizon opposed it.

In our Order No. 00-481, entered August 30, 2000, we deaveraged loop rates based on existing statewide average loop prices but noted that the "issues that were brought before the 8th Circuit are far from settled" and that we would "resume our examination of ILEC cost model methodologies and inputs at the earliest practical opportunity." *See* Order No. 00-481. In light of our statements and the pending consideration by the Supreme Court of 51.507(f) and the TELRIC principles, WSCTC and Mpower believed that the Petition should be withdrawn without prejudice and their right to resubmit a similar petition at a later date retained. None of the parties who had previously commented on the original Petition submitted comments with respect to the Letter.

CONCLUSION

The Commission concludes that there is no reason to pursue this matter further until the status of 51.507(f) has been determined with finality. The motion contained in the letter withdrawing the Petition without prejudice should be granted.

ORDER

IT IS ORDERED that: the Petition for Generic Docket to Deaverage Loop Rates filed by WSCTC and Mpower is dismissed without prejudice.

Made, entered, and effective _____.

Ron Eachus
Chairman

Roger Hamilton
Commissioner

Joan H. Smith
Commissioner

A party may request rehearing or reconsideration of this order pursuant to ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-014-0095. A copy of any such request must also be served on each party to the proceeding as provided by OAR 860-013-0070(2). A party may appeal this order to a court pursuant to applicable law.