

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA**

IN THE MATTER OF THE ESTABLISHMENT)	FINDINGS OF FACT AND
OF DIFFERENT RATES FOR)	CONCLUSIONS OF LAW;
INTERCONNECTION AND UNBUNDLED)	NOTICE OF ENTRY OF
NETWORK ELEMENTS IN AT LEAST THREE)	ORDER
GEOGRAPHIC AREAS FOR NONRURAL)	
TELECOMMUNICATIONS COMPANIES)	TC99-106

In August of 1996, the Federal Communications Commission (FCC) issued its Local Competition Order implementing section 251 of the federal Telecommunications Act of 1996. Section 51.507(f) required each state commission to establish different rates for interconnection and unbundled network elements (UNEs) in at least three geographic areas within the state to reflect geographic cost differences. The Eighth Circuit subsequently stayed and then vacated the deaveraging rule. Based on those decisions, the Public Utilities Commission (Commission) did not establish different rates for different geographic areas. However, in January of 1999, the U. S. Supreme Court reversed the Eighth Circuit's decision. On May 7, 1999, the FCC stayed the effectiveness of the rule in order to allow states additional time to comply with the rule. By order released November 2, 1999, the FCC ruled that the stay will be lifted on May 1, 2000. *In the Matter of the Federal-State Joint Board on Universal Service*, CC Docket 96-45, Ninth Report and Order and Eighteenth Order on Reconsideration, FCC 99-306, paragraph 120 (rel. Nov. 2, 1999). The order provides that by May 1, 2000, "states are required to establish different rates for interconnection and UNEs in at least three geographic areas pursuant to section 51.507(f) of the Commission's rules." *Id.*

At its November 15, 1999, meeting, the Commission considered how to proceed in this matter. After listening to comments from interested persons, the Commission decided to request written comments on how to proceed from interested persons or entities. The Commission received comments from AT&T Communications of the Midwest, Inc. (AT&T), U S WEST Communications, Inc. (U S WEST), and the South Dakota Independent Telephone Coalition, Inc. (SDITC).

At its February 2, 2000, meeting, the Commission again considered how to proceed with this docket. The Commission decided as follows: (1) that this proceeding be limited to nonrural companies since the rural companies in South Dakota are currently exempt from 47 U.S.C. § 251(c) requirements; (2) that the Commission proceed with a contested case type proceeding as opposed to a rulemaking; and (3) that the Commission use the rates as established in the U S WEST/AT&T interconnection agreement as the bases for the setting of deaveraged rates. Although AT&T proposed, and U S WEST agreed, that geographic deaveraging need only be applied to the UNE loop at this time, the Commission left it open to the parties as to whether they will advocate that other rates be subject to geographic deaveraging as well. By Order dated February 4, 2000, the Commission set a procedural schedule and intervention deadline. By order dated March 6, 2000, intervention was granted to U S WEST, McLeodUSA Telecommunications Services, Inc., Sprint Communications Company L.P., and AT&T.

The hearing was held as scheduled on March 15, 2000, beginning at 8:30 A.M., in Room 412 of the State Capitol Building, 500 E. Capitol, Pierre, South Dakota. Additional information was requested by the Commission at the hearing. U S WEST and AT&T provided the additional information following the hearing.

At its March 28, 2000, meeting, the Commission denied AT&T's Motion to Compel Discovery which it had taken under advisement at the hearing. The Commission then asked the parties whether any party desired an additional hearing based on the information filed after the hearing. No party requested an additional hearing. The Commission set the following briefing schedule: simultaneous initial briefs to be filed with the Commission on or before April 11, 2000, and simultaneous rebuttal briefs to be filed with the Commission on or before April 18, 2000.

On April 10, 2000, the Commission received a Motion for Extension of Time to File Briefs from AT&T. AT&T requested an additional two days for all parties to file initial briefs and an additional two days for all parties to file rebuttal briefs. AT&T stated U S WEST had no objection. The Commission granted the motion and set the following revised briefing schedule: simultaneous initial briefs to be filed with the Commission on or before April 13, 2000, and simultaneous rebuttal briefs to be filed with the Commission on or before April 20, 2000.

At its April 27, 2000, meeting, the Commission voted unanimously to adopt U S WEST's proposal for deaveraged unbundled loop rates.

Based on the evidence of record, the Commission makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. In August of 1996, the Federal Communications Commission (FCC) issued its Local Competition Order implementing section 251 of the federal Telecommunications Act of 1996. Section 51.507(f) required each state commission to establish different rates for interconnection and unbundled network elements (UNEs) in at least three geographic areas within the state to reflect geographic cost differences. 47 C.F.R. § 51.507(f). The rule further provided that the zones be cost related. *Id.* The Eighth Circuit Court of Appeals subsequently stayed and then vacated this rule. *Iowa Utilities Board v. FCC*, 120 F.3d 753 (8th Cir. 1997), *petitions for reconsideration vacated in part*, *People of the State of California v. FCC*, 124 F.3d 934 (8th Cir. 1997), *reversed AT&T Corp. v. Iowa Utilities Board*, 200 U.S. 321, 119 Sup.Ct. 721 (1999). Based on those decisions, the Commission did not establish different rates for different geographic areas. However, in January of 1999, the U. S. Supreme Court reversed the Eighth Circuit's decision. *AT&T Corp. v. Iowa Utilities Board*, 200 U.S. 321, 119 Sup.Ct. 721 (1999). On May 7, 1999, the FCC stayed the effectiveness of the rule in order to allow states additional time to comply with the rule. By order released November 2, 1999, the FCC ruled that the stay will be lifted on May 1, 2000. *In the Matter of the Federal-State Joint Board on Universal Service*, CC Docket 96-45, Ninth Report and Order and Eighteenth Order on Reconsideration, FCC 99-306, paragraph 120 (rel. Nov. 2, 1999). The order provides that by May 1, 2000, "states are required to establish different rates for interconnection and UNEs in at least three geographic areas pursuant to section 51.507(f) of the Commission's rules." *Id.*

2. After considering written comments filed by U S WEST, AT&T, and SDITC, the Commission decided as follows: (1) that this proceeding be limited to nonrural companies since the rural companies in South Dakota are currently exempt from 47 U.S.C. § 251(c) requirements; (2) that the Commission proceed with a contested case type proceeding as opposed to a rulemaking; and (3) that the Commission use the rates as established in the U S WEST/AT&T interconnection agreement as the bases for the setting of deaveraged rates. Although AT&T proposed, and U S WEST agreed, that geographic deaveraging need only be applied to the UNE loop at this time, the Commission left it open to the parties as to whether they would advocate that other rates be subject to geographic deaveraging as well.

3. The only two parties who submitted proposals for geographic deaveraging were AT&T and U S WEST.

4. Both AT&T and U S WEST proposed that only three deaveraged zones be established at this time. Exhibit 1 at 9; Exhibit 3 at 5. AT&T stated that "[w]hile it is feasible to deaverage to virtually any conceivable level, given the state of competition in South Dakota, the inability to foresee the precise shape of competition in the near future, and the infancy of the deaveraging process at this time, three deaveraged zones is a practical place for this Commission to start." Exhibit 3 at 5.

5. Both AT&T and U S WEST proposed that only the unbundled loop be deaveraged at this time. Exhibit 1 at 3-4; Exhibit 3 at 3-5. AT&T stated that "[a]t this time, only the unbundled loop has all of the following characteristics: it is the most significant cost in providing local service, it has a high degree of cost variability between zones, and the cost is easily assigned to individual customers. . . through the use of a cost proxy model." Exhibit 3 at 4-5.

6. AT&T proposed that wire centers with similar costs be grouped together to create three zones. AT&T stated that the preferred model to determine unbundled loop costs by wire center would be U S WEST's RLCAP since that was the model used to set the unbundled loop rate in the U S WEST/AT&T arbitration proceeding. Exhibit 3 at 9. The statewide average for an unbundled loop as determined in the AT&T/U S WEST arbitration was \$21.09. *Id.* at 10. However, AT&T did not use RLCAP because it does not produce costs for individual wire centers. *Id.* at 9. AT&T used the HAI Model, version 5.0a, to produce costs by wire center. *Tr.* at 106; Exhibit 3 at 9. AT&T also provided unbundled loop costs by wire center using the FCC's model for universal service, the Synthesis Model. *Id.*

7. After using the HAI Model to produce costs for individual wire centers, AT&T scaled the results by a factor equal to the ratio of the ordered loop rate to the cost model loop estimate to maintain a statewide average loop price of \$21.09. Exhibit 3 at 10. AT&T then grouped the wire centers into three different zones. Exhibit 3, Attachment A. Zone 1 consisted of two wire centers, Sioux Falls Main and Sioux Falls Southwest for an average rate of \$10.34. *Id.* Zone 2 consisted of 11 wire centers for an average rate of \$15.74. *Id.* Zone 3 consisted of the remaining 30 wire centers for an average rate of \$65.07. *Id.* AT&T's proposal produced costs per wire center ranging from a low of \$10.25 to a high of \$521.82. *Id.* The Sioux Falls Southeast wire center was included in zone 3 with an HAI scaled cost of \$179.10, which was the sixth highest loop cost in the state. *Id.*

8. AT&T's proposal contained an incorrect line count for the McIntosh wire center. It showed the wire center as having only one line. *Tr.* at 121; Exhibit 3, Attachment A.

9. At the request of the Commission, AT&T submitted additional computations of deaveraged loop costs after the hearing. Late-filed Exhibit 10. Attachment 1 was the same as its original Attachment A presented at the hearing except for the corrected line count for the McIntosh wire center. *Id.* at Attachment 1. Attachment 2 used 1998 line counts on a pair equivalent basis as opposed to counting each channel. *Id.* at Attachment 2. Attachment 3 used 1998 line counts on a DSO equivalent basis, which counts channels. *Id.* at Attachment 3. Attachment 4 used U S WEST's RLCAP line counts. *Id.* at Attachment 4. The proposals contained in Attachments 2 through 4 did not use the HAI Model 1996 wire center estimate line counts to calculate costs. *Id.* at 1.

10. AT&T changed its recommendation from that made at the hearing and requested that the Commission adopt the deaveraged rates as shown in Attachment 2. *Id.* at 3. According to this proposal, the Sioux Falls Southeast wire center showed a scaled cost of \$23.22 per unbundled loop. *Id.* at Attachment 2. AT&T then placed the Sioux Falls Southeast wire center in zone 2. *Id.*

11. U S WEST's proposal for geographic deaveraging was based on grouping communities that roughly equate to the Metropolitan Statistical Areas used by the United States Census Bureau. Exhibit 1 at 9. The result was the grouping of communities as follows: (1) Zone 1 -- Sioux Falls area, largest community; Zone 2 -- Rapid City area, medium sized community; (3) Zone 3 -- all other communities. Exhibit 1 at 9. Zone 1 contained the following wire centers: Sioux Falls Main, Sioux Falls Southeast, Sioux Falls Southwest, Tea, and Harrisburg. Tr. at 77. Zone 2 contained the following wire centers: Rapid City, Rapid Valley, Black Hawk, and Warwick. *Id.* Zone 3 contained all of the remaining wire centers. *Id.*

12. After determining these zones, U S WEST then developed the costs as follows:

The statewide average data was segregated into separate files according to the three zones. Three separate runs of the loop model were made, one for each zone The investment components for the unbundled loop were determined for each zone separately by the loop model. The loop (feeder, distribution, and drop) investment was summed to achieve three levels of total investment, one for each zone. Each zone investment was then compared to the statewide investment data. A percentage was determined by dividing each zone investment by the statewide average investment. These percentages were multiplied by the statewide average unbundled loop price of \$21.09, as established in the U S WEST/AT&T interconnection agreement, to determine the deaveraged price for each zone.

Id. at 13.

13. The investments and percentages for the three zones were as follows: Zone 1 -- \$736.29, 80.6%; Zone 2 -- \$802.87, 87.9%; and Zone 3 -- \$1,055.17, 115.6%. *Id.* at 13-14. The resulting rates were: Zone 1 -- \$17.01; Zone 2 -- \$18.54; and Zone 3 -- \$24.37. *Id.* at 14.

14. Although this proceeding is commonly referred to as geographic deaveraging of rates, both the U S WEST proposal and the AT&T proposals necessarily still result in averaged rates. Under the U S WEST proposal, the grouping of wire centers is the first step and then costs are used to determine different rates for the three zones. Under the AT&T proposals, the costs are developed for individual wire centers and then the wire centers are grouped into zones.

15. The Commission finds that it will establish three deaveraged zones at this time. Although additional zones would result in less averaging, both U S WEST and AT&T agreed that only three zones should be created at this time. The Commission notes that, if necessary, it may revisit this decision if it can be shown that additional zones are needed.

16. The Commission finds that it will require that only the unbundled loop be deaveraged at this time. The Commission finds that the purchase of an unbundled loop is the most significant cost in providing competitive local exchange service. In addition, the cost of an unbundled loop may vary significantly depending on loop distances and the density of the service area. The Commission notes that, if necessary, it may revisit this decision if it can be shown that additional UNEs should be deaveraged.

17. The Commission finds that AT&T's proposals produce some inexplicable results. For example, AT&T's original proposal resulted in Sioux Falls Southeast falling into zone 3 with an HAI scaled cost of \$179.10. The Commission cannot understand how a part of Sioux Falls can have an unbundled loop cost of \$179.10 while the cost for unbundled loops for the rest of Sioux Falls ranges from \$10.25 to \$11.25. The Commission would certainly expect that Sioux Falls should have the lowest unbundled loop costs in the state since it is the most densely populated city in the state. But it makes no sense that a part of Sioux Falls would have the sixth highest loop cost in the state.

18. It appears that part of the reason for this obviously erroneous result, is that, for some reason, the HAI Model uses an estimated line count of 31 lines for the Sioux Falls Southeast wire center to calculate costs. Tr. at 123; Exhibit 9. In addition, although AT&T then used a line count of 4,284 lines for the Sioux Falls Southeast wire center to weight the costs together, that line count number counted channels for DS1s and DS3s. Tr. at 123, 127; Exhibit 3, Attachment A; Exhibit 7. By counting channels, the total line count for South Dakota was 419,468. Exhibit 3, Attachment A. In the AT&T/U S WEST arbitration proceeding, the Commission rejected the use of an earlier version of the HAI model due to its use of line counts that included channels. Tr. at 128.

19. When, at the request of the Commission, the model was run with a line count that did not count channels and did not use the HAI Model's 1996 wire center line counts to calculate costs, the Sioux Falls Southeast wire center went from a \$179.10 cost per unbundled loop to a \$23.22 cost per loop. Exhibit 3, Attachment A; Late-filed Exhibit 10, Attachment 2. But even with this lower cost, the Sioux Falls Southeast wire center was still in a different zone from the rest of Sioux Falls. Late-filed Exhibit 10, Attachment 2.

20. In addition to the problems with the line counts, the Commission finds that AT&T failed to address other concerns the Commission had with an earlier version of the HAI Model used in the AT&T/U S WEST arbitration. Exhibit 2 at 8-9; *See In the Matter of the Interconnection Contract Negotiations Between AT&T Communications of the Midwest, Inc. and U S WEST Communications, Inc. Pursuant to 47 U.S.C. Section 252, Findings of Fact and Conclusions of Law; Order and Notice of Entry of Order*, Docket TC96-184, ¶¶ 94-98, at 13. It is possible that this latest version of the HAI Model addressed those concerns or those concerns were not valid in this proceeding. However, by not addressing those questions, the Commission has no idea whether its earlier misgivings about the HAI Model still exist or are relevant. Given these uncertainties and questionable data inputs, the Commission finds it must reject AT&T's proposals for deaveraged unbundled loop rates.

21. The Commission finds that it will accept U S WEST's proposal for deaveraging rates for the unbundled loop. The Commission finds that it makes sense to stay with the RLCAP Model since the Commission, at AT&T's request, decided to use the rates as established in the interconnection agreement as the bases for the setting of deaveraged rates. The Commission used the RLCAP method to establish rates in the arbitration docket involving U S WEST and AT&T.

22. The Commission further finds that the results of U S WEST's proposal are consistent with the assumption behind deaveraged rates: namely, that costs in more densely populated areas will be lower than costs in less densely populated areas. Thus, given the fact that Sioux Falls and Rapid City are South Dakota's most densely populated areas, it makes sense that there would be a zone comprising the wire centers located in and near Sioux Falls and another zone comprising the wire centers located in and near Rapid City.

23. The resulting zones and rates will be as follows: Zone 1 -- \$17.01 (Sioux Falls Main, Sioux Falls Southeast, Sioux Falls Southwest, Tea, and Harrisburg wire centers); Zone 2 -- \$18.54 (Rapid City, Rapid Valley, Black Hawk, and Warwick wire centers); and Zone 3 -- \$24.37 (all remaining wire centers).

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to SDCL Chapters 1-26 and 49-31, specifically 49-31-3 and 49-31-81, and the Telecommunications Act of 1996, specifically 47 U.S.C. §§ 251 and 252.

2. In August of 1996, the Federal Communications Commission (FCC) issued its Local Competition Order implementing section 251 of the federal Telecommunications Act of 1996. Section 51.507(f) required each state commission to establish different rates for interconnection and unbundled network elements (UNEs) in at least three geographic areas within the state to reflect geographic cost differences. 47 C.F.R. § 51.507(f). The rule further provided that the zones be cost related. *Id.* The Eighth Circuit Court of Appeals subsequently stayed and then vacated this rule. *Iowa Utilities Board v. FCC*, 120 F.3d 753 (8th Cir. 1997), *petitions for reconsideration vacated in part, People of the State of California v. FCC*, 124 F.3d 934 (8th Cir. 1997), *reversed AT&T Corp. v. Iowa Utilities Board*, 200 U.S. 321, 119 Sup.Ct. 721 (1999). Based on those decisions, the Commission did not establish different rates for different geographic areas. However, in January of 1999, the U. S. Supreme Court reversed the Eighth Circuit's decision. *AT&T Corp. v. Iowa Utilities Board*, 200 U.S. 321, 119 Sup.Ct. 721 (1999). On May 7, 1999, the FCC stayed the effectiveness of the rule in order to allow states additional time to comply with the rule. By order released November 2, 1999, the FCC ruled that the stay will be lifted on May 1, 2000. *In the Matter of the Federal-State Joint Board on Universal Service*, CC Docket 96-45, Ninth Report and Order and Eighteenth Order on Reconsideration, FCC 99-306, paragraph 120 (rel. Nov. 2, 1999). The order provides that by May 1, 2000, "states are required to establish different rates for interconnection and UNEs in at least three geographic areas pursuant to section 51.507(f) of the Commission's rules." *Id.*

3. The Commission adopts U S WEST's proposal for deaveraging rates for its unbundled loops. The resulting zones and rates will be as follows: Zone 1 -- \$17.01 (Sioux Falls Main, Sioux Falls Southeast, Sioux Falls Southwest, Tea, and Harrisburg wire centers); Zone 2 -- \$18.54 (Rapid City, Rapid Valley, Black Hawk, and Warwick wire centers); and Zone 3 -- \$24.37 (all remaining wire centers).

It is therefore

ORDERED, that U S WEST shall implement the zones and rates for unbundled loops as stated above.

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that this Order was duly entered on the 1st day of May, 2000. Pursuant to SDCL 1-26-32, this Order will take effect 10 days after the date of receipt or failure to accept delivery of the decision by the parties.

Dated at Pierre, South Dakota, this 1st day of May, 2000.

<p>CERTIFICATE OF SERVICE</p> <p>The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.</p> <p>By: _____</p> <p>Date: _____</p> <p style="text-align: center;">(OFFICIAL SEAL)</p>

BY ORDER OF THE COMMISSION:

 JAMES A. BURG, Chairman

 PAM NELSON, Commissioner

 LASKA SCHOENFELDER, Commissioner

