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September 9, 2003

Ms. Blanca Bayo, Director
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Re: Docket No. 020129-TP

Dear Ms. Bayo:

Enclosed for filing in the above-referenced docket are the original and fifteen copies of US LEC of Florida Inc.'s ("US LEC") Notice of Supplemental Authority.

Please acknowledge receipt of these documents by stamping the extra copy of this letter "filed" and returning the copy to me.

Thank you for your assistance with this filing.

Sincerely,



Martin P. McDonnell

MPM/rl

Enclosures

cc: All Parties of Record

USLECbayo.909ltr

DOCUMENT NUMBER-DATE

08504 SEP-98

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Joint Petition of US LEC of Florida)
Inc., Time Warner Telecom of Florida, LP)
and ITC^DeltaCom Communications)
objecting to and requesting)
suspension of proposed CCS7)
Access Arrangement Tariff filed by)
BellSouth Telecommunications, Inc.)
_____)
)

Docket No. 020129-TP

Filed: September 9, 2003

NOTICE OF SUPPLEMENTAL AUTHORITY

US LEC of Florida Inc., by and through undersigned counsel hereby files this Notice of Supplemental Authority.

1. On October 8, 2002, all parties filed their Joint Posthearing Briefs in the instant docket. The Posthearing Briefs were the last briefs that the parties filed with the Commission in the cause.

2. The Commission has traditionally allowed parties to file supplemental authority. For example, in Order No. PSC-97-0283-FOF-WS issued March 12, 1997, the Commission stated:

We have no ruling allow for the filing of a Notice of Supplemental Authority in the post-hearing stage. However, we have stated that it might be appropriate to recognize... receiving supplemental authority after the last brief [has been filed].

3. On April 15, 2003, in *Idaho Telephone Association v. Qwest Corporation, Inc.*, Case No. QWE-T-02-11, 2003 WL 21051086, the Idaho Public Utilities Commission directed the withdrawal of Qwest's SS7 per message signalling charges. The Idaho Commission concluded that Qwest's SS7 per message signalling charges resulted in double recovery to the company at the expense of CLECs and the CLECs' customers.

DOCUMENT NUMBER-DATE
08504 SEP-98

Respectfully submitted,

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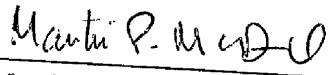
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Complainants or their customers. The Commission therefore directs the withdrawal of the June 1, 2001 Access Catalog revisions.

THE COMPLAINT

Complainants allege that **Qwest**, since June 1, 2001 when it revised its Access Catalog, has 'billed Illuminet certain **charges** for the origination and termination of intraLATA telecommunications traffic that are contrary to tariff provisions and contractual obligations and in violation of the settled policy and precedents of the Commission.' The Complainants also allege **Qwest** improperly assessed **SS7** message **charges** on ILECs and CLECs for the origination and termination of non-toll telecommunications traffic. As a result, the Complainants contend **Qwest** improperly and unlawfully acted contrary to several long-standing Commission policies and standard industry practices without any investigation or opportunity for comment. More specifically, the Complainants allege **Qwest's** new **charges** do the following:

- *2 a. Contravene the Commission's traditional practice of bill and keep treatment for local and EAS calls;
- b. Substitute an access catalog filing for the statutory requirement to negotiate interconnection agreements between **Qwest** and CLECs;
- c. Implement new access **charges** on ILECs and CLECs for jointly provided access in violation of traditional 'meet point billing' arrangements;
- d. Unilaterally shift costs from interexchange carriers to **Qwest's** local competitors;
- e. Effectively re-price residential and small business basic local exchange service without Commission review or approval.

Complainants requested an Order requiring **Qwest** to refund unlawful **charges** previously collected or **charged**, and to cease from making further unlawful payment demands. Specifically, the Complainants requested the Commission require **Qwest** 'to cease and desist from levying the new **SS7** signaling **charges** added to its Southern Idaho Access Service Catalog filed on May 17, 2001 except for **SS7** signaling associated with toll traffic originated and carried by ILECs and CLECs.' Complaint p. 13.

QWEST'S ANSWER

In its Answer, **Qwest** asserted that Illuminet purchases **SS7** signaling from **Qwest's** service catalog, and that **Qwest** continues to bill and demand payment for the services used by Illuminet. **Qwest** admitted that it filed revisions to its Access Catalog for the pricing of **SS7** as a finished service, that it introduced five message rate elements that had been approved by the Federal Communications Commission, and that the revision of the pricing structure was revenue neutral to **Qwest**. **Qwest** stated that **SS7** signaling is an independent service developed and offered separately from the transport and termination of local exchange service,

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and that an ILEC has the option of purchasing signaling as a finished service through the Access Catalog or from a third party provider such as Illuminet. Qwest bills purchasers of its SS7 service on a per message basis as provided in the catalog. Qwest affirmatively alleged 'that there is no relationship between the billing for the origination and termination of traffic and the billing for the generation of SS7 messages.' Qwest denied it had wrongfully collected any SS7 charges and asked that the Complaint be dismissed and all relief denied to the Complainants.

The Commission scheduled a hearing on the Complaint to convene December 10, 2002. Despite its denials of any improper pricing of SS7 services, Qwest nonetheless pre-filed supplemental testimony on December 6, 2002, four days before the hearing, revising its position. The supplemental testimony stated that 'Qwest is willing to modify its current SS7 catalog offering so that Illuminet and other entities purchasing out of the catalog would not be charged for messages associated with local traffic.' Tr. p. 460.

THE COMMISSION HAS JURISDICTION OVER THE COMPLAINT

Complainants alleged Commission jurisdiction over their Complaint under Idaho Code § 62-614 and Idaho Code § 62-605(5). Qwest in its Answer denied that the Commission has jurisdiction over Complainants' cause of action, and the parties argued jurisdiction at some length in their post-hearing briefs. We conclude that jurisdiction for the Complaint does lie with the Commission.

*3 Idaho Code § 62-614 is a broad grant of authority to the Commission to resolve disputes between incumbent telephone companies, like Qwest, and any other telephone service provider. Section 62-614 permits a telephone corporation that has elected regulation under Title 62, Idaho Code, or any other telephone corporation, including any mutual, nonprofit or cooperative corporation over which the Commission normally has no authority, to apply to the Commission for resolution of their disputes. The subject matters of dispute that may be brought to the Commission are broadly defined: the Commission's authority is properly invoked whenever the parties 'are unable to agree on any matter relating to telecommunication issues between such companies, then either telephone corporation may apply to the commission for determination of the matter.' Idaho Code § 62-614(1) (*italics added*). The Commission has jurisdiction to 'issue its findings and order determining such dispute in accordance with applicable provisions of law and in a manner which shall best serve the public interest.' Idaho Code § 62-614(2).

Qwest's arguments against the Commission's jurisdiction are premised on its own narrow characterization of the dispute between the companies. First, Qwest claims Illuminet is the only party purchasing signaling services from the Access Catalog and therefore is the only party with a complaint against Qwest. Qwest contends Illuminet does not meet the definition of a 'telephone corporation' set forth in Idaho Code § 62-603(14), and so is not entitled to file a complaint under Section 62-614. Qwest thus concludes this is not a dispute between 'telecommunications corporations' which the Commission is authorized to resolve pursuant to Section 62-614.

Second, Qwest notes even if Illuminet were not the only Complainant and the other telephone companies' complaint was filed under Section 62-614, the Commission's

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authority is to grant relief 'in accordance with applicable provisions of law.' By offering to remove SS7 message charges on local traffic, Qwest argues the charges remaining at issue are associated only with toll traffic, a Title 62 service that is not price regulated by the Commission. Because, according to Qwest, Title 62 statutes 'prevent the Commission from regulating Qwest's provision of SS7 signaling associated with toll traffic, ' Qwest concludes the Commission does not have authority under applicable provisions of law to provide relief to the Complainants. Qwest Post Hearing Memorandum, p. 6.

The Commission need not address each argument on jurisdiction made by Qwest because it seems clear this case is precisely the type of dispute the legislature intended be brought to the Commission for resolution under Idaho Code § 62-614. This case was filed by several telecommunication companies in Idaho--some of them ILECs and some of them CLECs--as well as a company providing telecommunications services to those companies in competition with Qwest. The Complainants' case was not transformed into a dispute solely between Qwest and Illuminet merely by Qwest's offer to withdraw future charges for SS7 messages associated with local traffic. The remaining Complainants have not withdrawn, nor has Qwest filed a motion to dismiss, their claims.

*4 In addition, when it offered to discontinue SS7 message charges on local traffic, Qwest specifically did not offer to forego past charges for local traffic signaling, leaving that issue involving all the Complainants for resolution by the Commission. Tr. p. 104. Even if no issues remained regarding SS7 message charges on local traffic, it is clear the parties disagree on and leave to the Commission resolution of SS7 charges on traffic subject to meet point billing and intraLATA toll traffic initiated by Qwest's end user customers. Tr. pp. 103-04, 228, 461. All the Complainants, not just Illuminet, are disputing those SS7 charges, and all of them potentially are obligated to pay them under Qwest's Access Catalog. It is clear in the record Illuminet's service agreements allows it to pass those charges on to its ILEC and CLEC customers, making them liable for SS7 charges claimed by Qwest under its Access Catalog. Tr. p. 227. There can be little doubt that the Complainants, including Illuminet, are proper parties able to file a Complaint under Idaho Code § 62-614.

Nor are we persuaded by Qwest's argument that applicable provisions of law prevent the Commission from granting relief to the Complainants merely because the Commission does not price regulate toll related services subject to Title 62 regulation. [FN1] First, as already noted, a large part of the Complainants' issues relate to Qwest's pricing and billing for signaling separately from the local calls with which they are associated. The Commission in its review of those issues is not constrained by statute.

Second, if Qwest's argument were valid, the Commission would be unable to review any challenged implementation of new charges for telecommunication services subject to Title 62 regulation, potentially leaving injured parties with no remedy. It is one thing to say the Commission cannot set prices for a particular service, and quite another to conclude an improper application of those charges can never be challenged. That conclusion is directly at odds with the broadly stated purpose of Section 62-614, which provides a forum for resolution of disputes 'on any matter relating to telecommunication issues ' between Qwest and other companies. In this relatively new, considerably less regulated telecommunications environment, Qwest has increased ability to make adjustments in

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prices and services without review by the Commission. But when other telecommunication companies are affected and challenge the application of those charges, Section 62-614 provides the means for them to bring their complaint to the Commission for resolution.

Idaho Code § 62-614 confers jurisdiction on the Commission to resolve the issues raised in the Complaint. The legislature intended when it enacted the Idaho Telecommunications Act of 1988, of which Section 62-614 is a part, 'to encourage innovation within the industry by a balanced program of regulation and competition.' Idaho Code § 62-602(1). The legislature stated in 1997 amendments to the Act that 'the telecommunications industry is in a state of transition from a regulated public utility industry to a competitive industry.' Idaho Code § 62-602(4). In this environment, the legislature anticipated disputes would arise between companies as they attempted both to work together as necessary and also to compete with one another. Thus, when telecommunication companies 'are unable to agree on any matter relating to telecommunication issues between such companies,' Section 62-614 establishes the Commission as the forum to resolve the dispute.

*5 It is also possible to conclude the Commission has jurisdiction over most if not all the claims pursued by Complainants under Idaho Code § 62- 605(5), referred to as the 'claw-back' provision. Under that section, any telecommunication service that was subject to regulation under Title 61 before July 1, 1988, can be reviewed by the Commission, including the 'terms and conditions under which it is offered.' Upon complaint to the Commission, the Commission 'shall have authority to negotiate or require changes in how such telecommunication services are provided.' If the Commission finds the corrective action it has ordered to be inadequate, it can require that such services again be subject to regulation under Title 61 rather than Title 62, Idaho Code.

Qwest argued the Commission does not have jurisdiction under Section 62- 605(5) because that section authorizes Commission action over certain 'telecommunication services,' and SS7 signaling does not meet the definition of 'telecommunication service.' Qwest also argues that SS7 signaling could not have been offered as a service prior to July 1, 1988, because it was only recently unbundled from switched access services. Prior to the June 2001 revisions to Qwest's Access Catalog, SS7 signaling was not sold on a per message basis, and Qwest contends cost recovery was borne by interexchange carriers and paid to Qwest through inter and intra state access charges. Tr. pp. 393-94; Qwest's Post Hearing Memorandum, p. 9.

As with its argument on Section 62-614, Qwest's argument regarding Section 62-605(5) amounts to little more than its own labeling of Complainants' claims in order to make a jurisdictional argument. The basis for most of the issues in the Complaint is the allegation that 'since June 1, 2001, Qwest has applied the SS7 signaling message elements from the Access Catalog to all, or virtually all, intrastate telecommunication traffic, rather than confining the SS7 message charges to intrastate toll traffic covered by Qwest's Access Catalog.' Complaint, p. 8. Until Qwest filed its revised Access Catalog, SS7 signaling was not separated from the traffic with which it was associated, including local traffic. Even under Title 62 regulation, the Commission regulates the price, terms and conditions by which Qwest offers basic local exchange service. Qwest's unilateral decision to unbundle signaling from local traffic did not by itself convert that component of local services into an unregulated Title 62 service outside the reach of the

Commission. It is possible Qwest erred in its approach to creating new SS7 message charges and offsetting anticipated signaling revenue with access charge reductions. That is the very essence of the Complaint.

DISCUSSION

Qwest's Implementation of New Signaling Charges Was Fundamentally Flawed

When Qwest determined to revise its Access Catalog and create new signaling charges, it assumed the approach it used successfully at the Federal Communications Commission (FCC) for its interstate Access Tariff would also apply without change to the intrastate telecommunications domain. To better understand the problems arising when Qwest initiated SS7 message charges for intrastate traffic, a brief review of events leading to the June 2001 catalog changes is helpful.

*6 In 1999, Qwest (then U S WEST) petitioned the FCC for authority to restructure its federal Access Tariff to recover charges for SS7 signaling on a per message basis for interstate, interLATA toll traffic. According to Qwest, most of the out-of-band network signaling messages were generated by interexchange carriers (IXCs), and those costs were recovered in the switched access rates, charged on a per minute basis, paid by IXCs. Tr. p. 472. The FCC approved Qwest's petition to change its federal Access Tariff and the Company implemented separate SS7 message charges and reduced correspondingly its switched access rates for interLATA calls paid by IXCs, effective May 30, 2000.

Qwest subsequently began to implement the same revised rate structure for use of the SS7 network at the state level, filing its revisions to the Southern Idaho Access Service Catalog with the Commission, which became effective June 1, 2001. Mirroring the approach it used with its federal tariff, Qwest reduced its switched access rates for in-state, intraLATA toll calls to make the revisions to the Access Catalog revenue neutral. Because '[t]he FCC defined SS7 as an access service ...it was therefore implemented in Idaho in that manner.' Tr. p. 409. On cross examination, Qwest's witness summarized the logic it used to revise its Access Catalog:

Well, first of all, our intent in this was to unbundle signaling because signaling is used differently by different people and purchased by different customers. And the underlying philosophy is that ...the payment should be proportional to the use and it was inappropriate to recover that through a minutes - on a minutes basis because minutes of use don't translate well to signaling, which is event oriented rather than time oriented, we unbundled signaling from the switched access rate element.

Following that philosophy to the next step which says a signal is signal and regardless of whether that's jurisdictionally a local call or jurisdictionally an intrastate call or jurisdictionally an interstate call, the signaling is essentially the same and everybody who uses those signals should pay and they should pay at an equal rate. So we approached it from an all-encompassing a signal is a signal, everybody should pay for the signals they use regardless of the jurisdictional issues that may be in place.

Tr. pp. 521-22.

Prior to the change, the Access Catalog included only charges 'for access to the Qwest SS7 network through link and port charges,' but did not include per message charges for each message crossing the network. Tr. pp. 396-97. With the June 2001 revisions, the Access Catalog 'includes flat-rated and port charges for accessing the network and five usage sensitive rate elements (per-message charges) for utilizing the network.' Tr. p. 396. Qwest began charging for all messages crossing its SS7 network, regardless of the origin of the call or traffic associated with the message, because '[s]ignaling messaging is charged on a per-message basis without regard to the nature of the underlying voice/data traffic.' Tr. p. 408. This is because, according to Qwest, 'In the signaling world, a message is a message -- every call requires signaling in order for the call to be completed. It makes no difference whether the call is local, EAS, wireless or toll in nature.' Tr. pp. 412-13.

*7 The problem with using the same approach to SS7 charges at the state level as at the federal level is that the calling traffic, and the traditional arrangements for paying signaling costs associated with the traffic, are not the same. On the interstate side regulated by the FCC, the traffic predominately if not exclusively has been toll traffic carried by interexchange carriers. Prior to enactment of the federal Telecommunications Act in 1996, the IXCs were barred from carrying local, non-toll traffic. In order to access the local networks so their customers could complete their long distance calls, the IXCs paid access fees on each call to the local companies that own the networks. Tr. pp. 393 - 94. The intrastate telecommunications sector is much more complex, involving a wider variety of traffic, cost recovery and inter-carrier compensation arrangements than at the federal level. For example, '[i]ntraLATA traffic contains distinct sub-classifications of local/EAS, toll calls exchanged between Qwest and other local carriers, and jointly-provided exchange access that must be taken into consideration.' Tr. p. 30. In addition, most of the intrastate traffic, such as local calls and jointly provided exchange access, has not been subject to access charges between carriers. Tr. pp. 25, 30.

The approach by Qwest at the federal level when it implemented signaling charges and reduced access charges was a logical result of the existing arrangement. Because signaling is a necessary part of each call provided by the local companies to the IXCs, and signaling costs were recovered in the access fees paid by the IXCs, it made sense that Qwest could charge separately for signaling service and offset those charges with reduced switched access fees. In that comparatively simple environment, the FCC was primarily concerned that Qwest was able to identify interLATA toll traffic so that its FCC approved access and signaling charges were applied only to the traffic regulated by the FCC. Tr. pp. 224, 431. The FCC required carriers unbundling SS7 signaling messages from access services to acquire the appropriate measuring equipment or otherwise identify interstate traffic to ensure that the unbundled charges are confined to the appropriate scope. Thus the access tariff changes approved by the FCC include a percentage interstate usage factor (PIU) as the means for Qwest to identify and bill access and signaling charges only to the toll traffic carried by IXCs. Tr. pp. 53, 431. Because Qwest was able to implement its Idaho Access Catalog revisions without any oversight by the Commission, however, no similar conditions or safeguards were placed on the Company's new signaling charge structure at the state level.

Finally, Qwest improperly assumed that all signaling charges at the state level may be offset by reductions in switched access charges. The basis for this assumption was Qwest's conclusion that 'the FCC defined SS7 as an access service.' Tr. p. 409. Qwest applied the assumption even though it knew access charges do not apply to much of the intrastate telecommunications traffic, and even though it understood its signaling network is not an access network. Qwest's witness testified that '[a]ccess to the SS7 network is not exchange access. Access in terms of the Access Catalog simply means access to the SS7 network for the purpose of exchanging SS7 messages, while exchange access refers to offering access to the Public Switched Telephone Network for purposes of exchanging toll traffic ...SS7 messages for all types of calls access the SS7 network.' Tr. pp. 311-12. Because switched access charges do not apply to most of the intrastate traffic, there was no basis to impose SS7 message charges on all intrastate traffic and offset those charges with reductions in switched access fees.

*8 The approach approved by the FCC for Qwest to create new SS7 message charges associated with interstate traffic, offset by access fee reductions, is not appropriate for intrastate traffic. By using that approach for its Idaho Access Catalog revisions, Qwest 'ignored the relevant federal and state jurisdictional differences between interstate toll traffic, which is a single category of traffic, and intrastate traffic in general, which includes the categories of intraLATA toll, local/EAS, intraMTA wireless and jointly-provided exchange access.' Tr.p. 34. The simple logic Qwest used to implement its Access Catalog revisions was fundamentally flawed, resulting in SS7 message charges that are unfair and unreasonable. Qwest did not consider the different payment structures in place for the different types of traffic (and the signaling that is a necessary part of it) involved in the intrastate domain, nor did it consider that a variety of arrangements were already in place that were intended to compensate Qwest for its signaling costs. The result is that Qwest implemented SS7 message charges that are already recovered in customer rates on local traffic, including EAS traffic, or pursuant to existing inter-carrier traffic arrangements.

Qwest Improperly Applied SS7 Message Charges to Local Traffic

Despite Qwest's offer to discontinue SS7 message charges on local traffic, the Complainants do not agree the issues relating to local traffic are fully resolved, nor does the record establish full resolution. The supplemental testimony of Qwest's witness states that 'Qwest is willing to modify its current SS7 catalog offering so that Illuminet and other entities purchasing out of the catalog would not be charged for messages associated with local traffic.' Tr. p. 460. The supplemental testimony only states the Company is willing to accept removal of message charges on local traffic if the Commission so orders. Qwest nonetheless asserts in its post-hearing brief that the change to eliminate per message signaling charges on local traffic is 'now being implemented,' and that the complaint 'as it relates to local traffic is now completely irrelevant.' Qwest's Post-Hearing Memorandum, p. 30 and p. 14.

During the hearing, a Qwest witness explained the Company's proposal to discontinue message charges on local traffic, stating 'that while we still believe we are originally right, [Complainants] may have a point on local, including EAS.' Tr. p. 523. To adopt the change proposed by Qwest, the Complainants would need to provide a 'percentage local usage factor' to Qwest to identify an amount of traffic that is local and thus exempt from SS7 charges. Tr. p. 523. At the time of

the hearing, the Complainants had not provided a local usage factor to Qwest. Tr. p. 532. On cross-examination regarding removal of charges on local traffic, the Qwest witness reiterated that the change would be made if the Commission ordered it, stating 'If the Commission were to order us to change our catalog, we would comply with that Commission's [sic] Order.' Tr. p. 528. Qwest has not filed a revision to its Access Catalog removing charges from local traffic with the Commission. It is also clear in the record and the parties' post hearing memoranda that the parties do not agree on whether Qwest can collect for local traffic message charges already billed by the Company. Tr. p. 104.

*9 On this record, we find that the Complaint as it relates to local traffic is not 'completely irrelevant.' The record indicates Qwest has not changed its Access Catalog to eliminate SS7 message charges on local traffic, but has stated its agreement to do so based on a Commission order. In addition, and because the errors made by Qwest in its approach to the June 2001 Access Catalog changes are exemplified in its application to local traffic, the Commission will next discuss Qwest's application of message charges to local/EAS traffic.

Qwest correctly conceded that Complainants 'may have a point' regarding SS7 message charges on local traffic. As noted in the previous section of this Order, access charges are not applicable to local traffic, and thus there is no logical basis for implementing new signaling charges on local calls and offsetting those charges with access fee reductions. Qwest does not receive access fees from other companies for local calls, nor do customers pay separate fees for signaling service in their rates. Instead, the Commission establishes 'just and reasonable rates' for local services and, as part of that process, determines an allocation of costs between Title 61 and Title 62 services that jointly use the same facilities. Idaho Code § 61-622A. As Complainants' witness correctly noted, 'the Idaho Commission has been able to spread the recovery for SS7 expenses across all intrastate services, including basic local rates, intraLATA toll, enhanced features and intrastate access in the same manner as switching and transmission expenses.' Tr. p. 86. In other words, unlike interstate traffic, Qwest receives compensation for its switching costs in a variety of ways. For local calls, the rates approved by the Commission and paid by customers were designed to cover all associated costs incurred by Qwest, including the signaling costs necessary to complete each call. Qwest improperly separated signaling from local traffic, imposed new charges for those signals, and reduced access fees that do not apply to local traffic as an offset.

Qwest Improperly Applied SS7 Message Charges to EAS Traffic Exchanged Under a Bill and Keep Arrangement

As with other local calls, the rates paid by customers in extended area service (EAS) local calling areas were designed to include the signaling component. For purposes of this case, the phrase 'bill and keep' refers to an arrangement between two local exchange providers, usually with adjacent service areas, to handle non-toll traffic between their service areas. The result for the companies' customers is a large local calling area, or EAS, in which calls can be made that are not subject to toll charges. The bill and keep arrangement refers to the practice between the companies where each hands off calls to the other; neither company charges access fees to the other, and each bills its customers the local rate approved by the Commission. Tr. p. 403. The Commission approves each EAS area and also approves new local rates charged by each company after reviewing the

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costs associated with implementing the extended calling area. In this case, bill and keep applies to Citizens' and other ILECs' EAS traffic with Qwest. Tr. p. 399.

*10 The logic Qwest applied in explaining why new signaling charges are appropriate in the bill and keep arrangement is the same it used in implementing its new Access Catalog. Qwest assumed it could create new signaling charges simply because signaling is on a separate network and because it is technically feasible to separate signaling from the associated voice and data traffic. When asked about the bill and keep arrangement for the EAS traffic between Qwest and Citizens, Qwest's witness stated that 'signaling messages associated with that EAS voice/data traffic are handled separately because the signaling messages are on a completely separate network.' Tr. p. 399. The following exchange occurred when the witness was asked about pre-existing traffic arrangements between carriers for EAS calls:

Question: Now, if the Commission won't let you charge the other company for the entirety of switching costs for an EAS call, why would it allow you to charge the other company for the SS7 component?

Answer: Well, because the SS7 network is entirely a separate network, first of all...And the last Order that I read that discussed EAS and the costs associated with the EAS said nothing about SS7, ... and there were no SS7 costs included in that EAS --as -- EAS component. So the Signaling System Seven signals are outside the scope of the bill and keep arrangement that occurs for the traffic that is transmitted between those [EAS] companies.

Tr.pp. 476-77.

Qwest apparently assumed the Commission's failure to mention signaling costs in the last EAS orders meant the signaling costs were 'outside the bill and keep arrangement.' That assumption is unsound. First, it is clear in the record that SS7 signaling was not created as an 'unbundled' component until Qwest filed its Access Catalog revision in June 2001, and the last Qwest EAS cases were completed in 1998. Tr. p. 397; Qwest's Reply Brief, p. 37, footnote 84. When the Commission reviewed the costs associated with implementing the EAS calling areas and approved rates to cover those costs, signaling costs were not separately identified from the other costs required to transmit the EAS traffic. In other words, as with other local traffic, signaling costs were not separately identified and priced. They were considered one with the traffic with which they were associated. It is not surprising, then, that the Commission's EAS orders do not specifically mention SS7 costs involved in the traffic to be exchanged between the implementing companies.

Second, simply because SS7 messages are now physically separate is not justification for creating new signaling charges without regard to pre-existing compensation arrangements between carriers. Qwest started with a conclusion that it is appropriate to apply signaling charges for every message generated simply because the SS7 network is separate from the voice/data network that carries traffic. Qwest's witness asserted on cross-examination that under its revised Access Catalog it was authorized 'to charge SS7 costs, these SS7 pricing components, on any message that touches its system, whether Qwest originated or terminated or however it got there.' Tr. p. 481. By Qwest's circular logic, 'there is no reason to separate messages by call type because signaling charges apply to

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all types of calls.' Tr. p. 436. That conclusion, of course, does not answer the question of whether existing inter-carrier arrangements or customer rates approved by the Commission are already intended to compensate for the signaling components of traffic exchanged between the companies.

*11 The local rates approved by the Commission, including customer rates established when the Commission approves an EAS calling area, always were established to provide compensation to Qwest for all aspects of providing the service. Signaling charges were not separated from the pricing of the underlying local traffic until Qwest filed its revised Access Catalog and created new charges related to local/EAS traffic. Qwest's new SS7 message charges on EAS related calls are contrary to existing Commission approved arrangements through which companies recover their EAS costs in the rates paid by customers.

Qwest Improperly Imposed SS7 Charges on Traffic Exchanged Under Meet Point Billing Arrangements

The same concerns raised by Qwest's imposition of SS7 charges to bill and keep EAS traffic occur with traffic subject to 'meet point billing.' Meet point billing arrangements exist where two different LECs provide access to their networks to an interexchange carrier. Tr. p. 47. In that arrangement, each LEC agrees to recover its portion of revenue from IXCs that pay access charges to each LEC. The other LEC involved is not charged for terminating or originating the call without its exchanges. Tr. pp. 50,216. According to the Complainants, '[a]ll of Qwest's costs associated with the exchange of access traffic between the LECs and IXCs should be (and likely are) recovered by Qwest's application of its Access Catalog charges (including SS7 rate elements) to the associated IXCs.' Tr. p. 43.

Qwest does not dispute the existence of meet point billing arrangements with the ILEC Complainants, but as with EAS traffic, contends it can implement SS7 charges simply because the SS7 network is separate from the voice/data network. Qwest recognized the ILECs and Qwest provide joint network access to IXCs, but asserted 'Meet point billing has to do with how network 'traffic' is exchanged between companies at negotiated locations known as 'meet-points.' The SS7 network is an entirely separate network with different signaling interfaces.' Tr. p. 404. The witness asserted that 'Qwest's restructure of signaling does not affect meet-point-billing arrangements.' Tr. p. 404. Later, however, the witness discussed the importance of clarifying recovery for SS7 costs in the meet point bill domain, testifying

if you're talking about any compensation between companies in terms of exchanging traffic, you better also address what the signaling issues are. If you're not and if one party is talking about meet-point-billing assuming that that includes all signaling issues and the other party is not assuming that includes all signaling issues, you've got a miscommunication.

Tr. p. 502. That's because

you can't complete calls even in a meet-point-billing environment without some signaling arrangements. But you can't just assume that it's included because the words - the meaning of the words have changed over time and the signaling system has been separated over time, and you're leaving out a major portion of what's going on.

*12 Tr. p. 504.

It was Qwest, however, that created the miscommunication. Until Qwest revised its Access Catalog and attempted to apply separate signaling charges to the ILECs for meet point billed traffic, everyone assumed traffic exchanged between LECs by that arrangement included the associated signaling. Qwest attempted to unilaterally change the arrangement by creating and implementing signaling charges separate from the calls associated with the SS7 messages. As demonstrated by the fact there is a complaint, all other parties that bill and keep still believe signaling is included in the existing arrangement. Qwest's own witness implied as much by testifying that if 'the ILECs in this case wish to return to an arrangement that is more similar in expense to what they experienced when EAS was originally implemented, the ISA [Infrastructure Sharing Agreement] may be the answer.' Tr. p. 442. Qwest should have done what its witness recommended: 'regardless of the method of exchanging traffic, you need to discuss the signaling issues that revolve around that exchange of traffic.' Tr. p. 502. Because Qwest is the one attempting to change existing arrangements, that discussion should have occurred prior to Qwest's implementation of new signaling charges. [FN2]

The evidence regarding Qwest's approach to implementing the new SS7 charges to local traffic, EAS traffic exchanged by bill and keep arrangements, and LEC exchanged traffic by meet point bill arrangements, demonstrate that Qwest improperly implemented signaling charges in its Access Catalog revision. Qwest failed to consider the various types of traffic comprising the intrastate domain and the effects of different rate and inter-carrier compensation agreements. Other evidence demonstrates Qwest's implementation of the new charges was hasty and in disregard of existing arrangements that previously controlled compensation for traffic and the signaling associated with it.

Qwest Improperly Applied SS7 Charges to Third Party SS7 Providers

Because Qwest created SS7 message charges to be separate from the calls that generated the messages, Qwest's application of its revised Access Catalog also imposed new charges on third-party SS7 signaling providers. Illuminet and a company called Syringa Networks LLC (Syringa) are independent providers of SS7 signaling services to LECs and other telecommunication companies. Syringa was created by eleven members of the ITA to provide, among other services, SS7 signaling to members of the ITA. Tr.p. 171. In June 2001, Syringa acquired System Seven, Inc., a company created earlier by six ITA members to provide signaling service to the LECs that created it. System Seven executed a contract with U S WEST, Qwest's predecessor, in February 1995 providing terms for interconnection and traffic exchange between the companies. Tr. p. 174. According to Syringa's witness, System Seven was created and operated consistently with the traditional understanding that signaling 'has always been deemed part and parcel of the PSN [public switched network] and subject to the normal industry rules regarding the pricing of underlying traffic.' Tr. p. 176. Syringa assumed the terms of the contract between System Seven and Qwest, and was unaware of the new SS7 charges in Qwest's Access Catalog until a few weeks before the Complaint was filed. Tr.pp. 175, 185.

*13 It appears that Qwest was unaware when it began assessing message charges that ITA members were accessing Qwest's SS7 network according to the provisions of a pre-existing contract with Syringa's predecessor, System Seven. When Qwest was

contacted by a Syringa representative in March 2002 regarding SS7 signaling, Qwest informed him that 'Syringa needed to purchase SS7 services out of Qwest's tariff/catalog because Syringa was not a telecommunications carrier.' Tr.p. 356. Qwest nonetheless allowed Syringa to continue under the terms of the 1995 agreement because Qwest did not yet have its Infrastructure Sharing Agreement (ISA) ready to offer to ILECs as an alternative to purchasing from the Access Catalog. Tr. p. 356. The ISA is available pursuant to Section 259 of the 1996 Telecommunications Act, which requires an ILEC to provide access to its public switched network to other carriers that meet certain conditions. Qwest subsequently notified Syringa in October 2002 that it was canceling the contract originally signed by U S WEST and System Seven, 'now that alternatives [the ISA] are available to ILECs.' Tr.pp. 196, 362. According to Qwest, once it became aware of the existing contract, 'Qwest chose to maintain the old SS7 contract with Syringa for an interim period of time only while it assessed what options were available to entities (and particularly ILECs) under the new SS7 regime instead of unilaterally and immediately cutting off service to Syringa.' Qwest Reply Brief, p. 49.

The events between Qwest and Syringa demonstrate errors by Qwest that are unique to Syringa and also ones similar to errors between Qwest and Illuminet. First, even though the arrangement between Qwest and Syringa had been in place since 1995 through each company's predecessor, Qwest made no effort to discuss new contract terms with Syringa prior to implementing the Access Catalog and imposing new SS7 message charges. Instead, when learning of the existence of the contract after implementing its new charges, Qwest informed Syringa its only option was to purchase from the catalog, and later canceled the contract after it developed its ISA. It is also clear, however, that Qwest does not consider the ISA to be an option for either Syringa or Illuminet because neither company qualifies as a 'telecommunications carrier' for application of Section 259 of the Telecommunications Act. Tr. p. 403. The record establishes that neither Syringa nor Illuminet asked to receive the new SS7 message services under Qwest's Access Catalog. Tr. p. 129. Instead, Qwest unilaterally imposed new charges on those companies after filing its revised Access Catalog.

The fundamental problem with Qwest's application of SS7 message charges to Illuminet and Syringa, however, is that Qwest unilaterally separated signaling charges from the calls using the signaling messages. As with the situations already discussed, that unilateral action contravened existing arrangements and pricing for inter-carrier traffic exchange. One example of Qwest's misapplication of signaling charges occurs with intraLATA toll calls originated by Qwest's own customers. Complainants testified a telecommunications carrier is never allowed under existing arrangements to charge other companies for the costs associated with the origination of that carrier's own intrastate toll traffic. Tr.pp. 75, 103. Complainants point out that 'traditional pricing principles dictate that the carrier whose retail end user customer originates a call collects the revenue for that call from the end user customer and then compensates any other carriers involved for their costs of transporting or terminating that end user traffic.' Complainants' Post Hearing Brief, p. 8.

*14 Under its Access Catalog, Qwest charges third party SS7 providers (and their carrier/customers) for Qwest's own SS7 costs associated with its customer originated inter-carrier toll calls, notwithstanding that Qwest and its end user customer initiated the cost associated with the SS7 message. Tr.pp. 429, 465.

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Qwest does not dispute Complainants' characterization of the pre-existing arrangement for exchanging intraLATA toll traffic, and again justified its unilateral change to that arrangement by stating that signaling is not the same as traffic. Tr.p. 412. Merely because every call requires signaling in order for the call to be completed, 'signaling is assessed and billed by Qwest to Illuminet regardless of the underlying nature of the call or the relationship between Illuminet and its carrier customers.' Tr. p. 414.

Finally, the way **SS7 charges** apply under Qwest's Access Catalog to Illuminet and Syringa present significant issues of discriminatory or anti-competitive conduct. Because all traffic now requires **SS7** signaling, it is necessary for all local telecommunication providers (ILECs and CLECs) to have **SS7** capability. The LECs can invest in their own **SS7** network, they can acquire network services from a third party **SS7** provider, or from Qwest. Regardless, Qwest's application of its Access Catalog now **charges** for every **SS7** message that crosses its network, even when the other LEC has its own network or has **SS7** capability provided by a third party. Tr. p. 481. Thus Qwest's witness stated that 'Qwest receives [**SS7**] messages from Syringa even though Syringa has not executed a contract with Qwest for the purchase of **SS7** services.' Tr.p.358.

Under its infrastructure sharing agreement now available only to ILECs, Qwest would not impose any signaling **charges** on ILECs that enter into an ISA with Qwest, even if the ILEC does not have its own **SS7** system. Tr. pp. 360, 433, 490. ILECs (or CLECs) that purchase **SS7** signaling from third party providers, however, would be subject to all signaling **charges** under the Access Catalog. CLECs could be treated differently from ILECs by seeking an interconnection agreement with Qwest providing negotiated **SS7** signaling terms, but would not be eligible for the favorable treatment accorded ILECs under an ISA. Tr.p. 485.

Qwest gave inadequate regard to existing arrangements by which carriers exchange traffic prior to imposing new **charges** on LECs and their **SS7** providers. Until Qwest revised its Access Catalog, signaling was not **charged** for separately from the underlying traffic, so the existing arrangements for accessing each company's **SS7** services, whether by a network owned by the LEC or a third party, did not provide for per message signaling **charges**. Those arrangements were in place long before Qwest field its revised Access Catalog. Qwest also failed to consider adequately in what way, if any, **SS7 charges** could be imposed on LECs that provide their own **SS7** capability, whether owned by the LEC or a third party. Qwest did not develop its ISA until long after it filed its Access Catalog, and then said it would make the benefits of that agreement available only to ILECs that do not use a third party **SS7** provider. The effect is that some are granted favorable access to Qwest's **SS7** services on terms not available to others. Tr.pp.490-92.

*15 In addition to unilaterally changing existing traffic and signaling arrangements, Qwest's application of its **SS7** message **charges** may violate its obligation to provide nondiscriminatory access to network elements under Section 251(c) of the Telecommunications Act and Idaho Code § 62-609(2). Qwest should have made these assessments prior to implementing and demanding new **SS7** message **charges**. The burden was on Qwest in implementing new **SS7 charges** to consider existing inter-company arrangements that control the exchange of traffic, including the signaling necessarily associated with that traffic.

Qwest May Not Collect for **SS7 Charges** That Were Improperly Applied

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The Commission concludes that **Qwest** improperly implemented its Access Catalog revisions in June 2001. Not all the signaling **charges** set forth in the Access Catalog are erroneous. The Complainants do not dispute the application of the Access Catalog **charges** to intraLATA toll calls originated by other LEC customers and terminated to a **Qwest** customer. Tr. p. 39. According to Complainants, consistent with the long-standing industry practice concerning the mutual exchange of intraLATA toll traffic, 'LECs and **Qwest** have agreed to exchange such traffic and to compensate each another [sic] for the termination of such traffic according to each carrier's access tariff.' (Italics added). Tr.p.46. Under that arrangement, the originating LEC pays access **charges** to the terminating LEC for the toll traffic. Tr.p.46.

There being no dispute between the parties regarding application of the Access Catalog to intraLATA toll calls terminating to a **Qwest** customer, **Qwest** may bill for SS7 message **charges** for that traffic. Of course, **Qwest** must identify to a reasonable degree of certainty the toll traffic for which the **charges** are appropriate to insure it is only collecting for signaling messages associated with that traffic.

Qwest may not collect for SS7 message **charges** it imposed on local/EAS traffic, on joint network access provided under a meet-point-bill arrangement, or to intraLATA toll traffic originated by a **Qwest** end user customer. Because the **charges** were wrong in their implementation, **Qwest** may not collect for improper SS7 message **charges** it sought to impose as of June 1, 2001. It is clear from the record, however, that it is not necessary for the Commission to order **Qwest** to pay a refund to Complainants because the Complainants have not paid the disputed SS7 message **charges** billed by **Qwest**, or **Qwest** has not actually billed for the **charges**. The ITA companies obtain SS7 services from either Illuminet or Syringa; Citizens and ELI use SS7 signaling provided by Illuminet. Tr.pp. 414, 430. Syringa's SS7 messages are received by **Qwest** through a point code identified to Project Mutual, an ITA member. Tr.p.358. **Qwest** has not billed or has not received payment on the disputed SS7 message **charges** from ELI, Citizens, Project Mutual or Syringa. Tr. pp. 186-87, 424, 430. Finally, to date Illuminet 'has not and is not paying **Qwest** for SS7 services rendered.' Tr. p. 455.

*16 **Qwest** argued that even preventing it from collecting for past SS7 **charges** or requiring it to grant a credit for past, unpaid SS7 **charges** would violate the filed rate doctrine and constitute unlawful retroactive ratemaking. According to the filed rate doctrine, a utility provider may **charge** only the rate on file that has been duly approved by the Commission. **Qwest** quotes from a Commission Order issued in 1990 stating that 'the rule further prohibits the refunding or remitting of any rates, tolls, rentals, or **charges** specified in the rates on file with the Commission.' In the Matter of Hayden Pines Water Company, IPUC Case No. HPN-W-89-1, Order No. 23362 (1990). See also Idaho Code § 61-313. **Qwest** concedes that its Access Catalog did not undergo the same scrutiny as a regulated tariff prior to becoming effective, but argues the filed rate doctrine nonetheless applies to prohibit the Commission from ordering relief for past due **charges**.

The filed rate doctrine does not prohibit the Commission from denying recovery to **Qwest** for **charges** it improperly imposed by its revised Access Catalog. The Access Catalog **Qwest** filed with the Commission provides terms by which **Qwest** offers access services to other telecommunication companies. Those services are not price regulated by the Commission, and in fact, **Qwest** filed its Access Catalog without a

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formal review by the Commission. The Commission in previous orders has stated that price lists voluntarily filed by public utilities are not given the same regulatory effect as tariffs filed after formal review and approval by the Commission. See, e.g., Idaho Local Exchange Telephone Companies v. Upper Valley Communications, Inc., IPUC Order No. 25933 issued March 16, 1995, p. 14. ('Title 61 tariffs are 'approved' by the Commission but Title 62 price lists are merely 'accepted for filing' once they meet the minimum filing qualifications such as form, public notice requirements, or averaging requirements for MTS. Idaho Code § 62-606 and -607. 'Accepting' price lists for filing is a ministerial function that should not and does not imply Commission approval of the service or rates.') The strict requirements of the filed rate doctrine, which are applicable to regulated tariffed rates that the Commission has determined are just and reasonable, do not prevent the Commission from prohibiting Qwest's collection of charges it improperly imposed in a catalog it voluntarily filed. [FN3]

CONCLUSION

The Commission finds that the application of the Access Catalog charges to local/EAS traffic, to joint access traffic subject to meet-point-bill arrangements, and to intraLATA toll traffic originated by a Qwest customer, was improper and in violation of existing rates or inter-carrier arrangements. By implementing new SS7 charges the same way it did at the interstate level, Qwest 'ignored the relevant federal and state jurisdictional differences between interstate toll traffic, which is a single category of traffic, and intrastate traffic in general, which includes the categories of intraLATA toll, local/EAS, intraMTA wireless and jointly-provided exchange access.' Tr. p. 34. Qwest unilaterally imposed message charges on traffic for which it was already being fully compensated, including for the signaling component. In addition, Qwest (1) unilaterally changed payment terms by which companies traditionally and by agreement exchange telecommunications traffic, (2) implemented charges without regard to whether it was being fully compensated under existing rate structures, and (3) did not consider the underlying nature of the intrastate traffic to assess whether SS7 message charges could be offset by reductions in existing access charges. Qwest may not apply the per message signaling charges to the traffic subject to pre-existing rates and arrangements, nor may Qwest recover any improperly imposed SS7 message charges accrued since June 1, 2001.

*17 In addition, because the way Qwest implemented its new SS7 message charges is fundamentally flawed, the Commission orders the Access Catalog revisions withdrawn. Should Qwest seek to restructure its Access Catalog, Qwest must carefully consider the existing rates and arrangements that traditionally have provided compensation for SS7 signaling service. Traditionally, inter-carrier compensation for intrastate SS7 messages has followed the same rules that govern inter-carrier compensation for the underlying end user traffic such SS7 messages support. Tr. pp. 219-20. The burden is on Qwest to determine the traffic properly subject to the per message signaling charges consistent with this Order, and refile it if it so desires. Complainants identified different options available to Qwest to limit its SS7 message charges to the appropriate underlying intraLATA toll traffic. Tr. pp. 56-57, 221-23.

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ORDER

IT IS HEREBY ORDERED that the **SS7** per message signaling **charges** imposed in the June 1, 2001 Access Catalog on local/EAS traffic, on joint access traffic subject to a meet-point-bill arrangements, and on intraLATA toll traffic originated by a **Qwest** customer, are invalid. **Qwest** may not collect from Complainants for those **charges**. **Qwest** may collect **SS7** signaling **charges** on intraLATA toll terminating to a **Qwest** end user customer if it is adequately identified by **Qwest**.

IT IS FURTHER ORDERED that **Qwest** withdraw the revisions it made to its Access Catalog effective June 1, 2001, and refile it only after providing the means to identify the intraLATA toll traffic properly subject to the **SS7** per message **charges** consistent with this Order.

THIS IS A FINAL ORDER. Any person interested in this Order (or in issues finally decided by this Order) or in interlocutory Orders previously issued in this Case No. QWE-T-02-11 may petition for reconsideration within twenty- one (21) days of the service date of this Order with regard to any matter decided in this Order or in interlocutory Orders previously issued in this Case No. QWE-T-02-11. Within seven (7) days after any person has petitioned for reconsideration, any other person may cross-petition for reconsideration. See Idaho Code § 61-626.

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 15th day of April 2003.

FOOTNOTES

FN1 The Commission is authorized by provisions of the federal Telecommunications Act and state law to establish prices for Qwest's unbundled network elements (UNEs). Idaho Code § 62-615(1) gives the Commission 'full power and authority to implement the federal telecommunications act of 1996, including, but not limited to, the power to establish unbundled network element charges in accordance with the act.' The Nebraska Commission relied on a similar statute--'the commission is authorized to do all things reasonably necessary and appropriate to implement the federal Telecommunications Act of 1996'--as a basis for jurisdiction in its SS7 complaint case. Reference is made throughout Qwest's testimony to its 'unbundling' of signaling, and Qwest's decision to revise its Access Catalog to offer SS7 signaling as a discrete network component. It is reasonable to conclude the Commission's jurisdiction over UNE charges under the Telecommunications Act goes beyond merely accepting a price proposed by Qwest, and is broad enough to reach questions of reasonable implementation. Other requirements of the Telecommunications Act also may be implicated by the allegations and issues raised by Complainants, including terms of an interconnection agreement between Qwest and ELI, and Qwest's obligation to provide nondiscriminatory access to its services and facilities under sections 251(c)(2)(D) and 251(c)(3) of the Act.

FN2 The Complainants also contend Qwest violated meet point billing terms in an interconnection agreement between Qwest and ELI. The Commission concludes Qwest improperly applied SS7 charges to ILEC traffic subject to meet point billing arrangements, and Qwest does not dispute that the ILECs, including ELI, provide

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joint network access by meet point billing arrangements with Qwest. It is not necessary to discuss the particular terms of the interconnection agreement between Qwest and ELI.

FN3 Even regarding services fully regulated under Title 61, Idaho Code, to which the filed rate doctrine would apply, the Commission is specifically authorized by statute to correct excessive or discriminatory charges. Idaho Code § 61-641 authorizes the Commission to order a public utility to make reparations if the Commission finds the utility 'has charged an excessive or discriminatory amount for [a] product, commodity or service.' The effect of the Commission's determination in this case is that the SS7 message charges Qwest improperly imposed by its Access Catalog are excessive and discriminatory. Section 61-641 specifically authorizes the Commission to require Qwest to make reparations, notwithstanding the filed rate doctrine.

END OF DOCUMENT