

None of the objections have merit. All of the information is relevant to a determination of the fair value of U S WEST's investment and revenue requirement and a determination of the appropriateness of U S WEST's cost studies, which will be used as a basis of determining the appropriateness of U S WEST's proposed rates and rate design.

II. ARGUMENTS

A. AT&T Data Requests Nos. 15-18

AT&T Data Requests Nos. 15-18 ask for information regarding the sale of exchanges in the last 10 years: a description of the exchange sold, the book value of the property sold, the date of the sale, the number of customers transferred, the sale price and the amount of any gain or loss resulting from the sale (AT&T-15); whether the sale of exchanges generated a gain and, if so, how the gain was treated for accounting and ratemaking purposes (AT&T-16); whether in lieu of any proceeding to determine what should be done to account for the gain, U S WEST had an understanding to upgrade facilities in Arizona (AT&T-17); and, the nature of any upgrades to facilities after the gains realized on the sale of exchanges (AT&T-18). U S WEST objected to these requests, "on the grounds that these requests call for information that is either no longer available or a matter of public record." U S WEST's Objections, ¶1. U S WEST also objects to Data Request 18 on the grounds that it would be unduly burdensome. *Id.*

AT&T has reviewed the public record. On July 15, 1993, U S WEST filed an application for a permanent increase in rates. In its application, U S WEST "included a ratemaking adjustment to remove certain rural exchanges which the company was in the *process* of selling." Docket No. E-1051-93-183, Decision No. 58927, at 8 (emphasis added). The adjustments reduced rate base by \$10,601,000. The Commission approved the sale of

the rural exchanges in Docket Nos. E-1051-93-189, E-1051-93-190 and E-1051-93-191. The sale, although approved by the Commission, was not approved by the FCC at the time of the rate order. Therefore, the Commission did not remove the investment in the sold exchanges and increased rate base by \$10,601,000.

By approving the sale of exchanges, the Commission approved the Settlement Agreement between the Staff and U S WEST. *See* Exhibit 1, Decision No. 58763. Per the terms of the Settlement Agreement, Staff agreed that U S WEST would retain the gain from the sales of the exchanges. Ratepayers would receive no benefits from the gain on the sale. *Id.* ¶¶2 and 6. In exchange, U S WEST was required to invest in Arizona an amount equal to the gain to eliminate held orders and upgrade rural facilities. *Id.* ¶6. Finally, U S WEST was also required to invest an amount equal to the revenue requirement reduction as a result of the sale of the rural exchanges.¹ *Id.* ¶5.

The Settlement Agreement also contained a clause that the provisions were not severable “and shall become effective only after the Commission shall have entered an order approving this Agreement without modification.” *Id.* ¶12. However, in the order approving the sale, the Commission concluded that “[t]his order does not bind the Commission to either U S WEST or Staff’s position on the revenue requirement associated with the sales transaction as it relates to Docket No. E-1051-93-183.” Decision No. 58763, Conclusions of Law, ¶18. Docket No. E-1051-93-183 was the 1993 U S WEST rate case proceeding.

¹ According to RUCO, the revenue requirement associated with the sale of exchanges was \$1.3 million. Decision No. 58927 at 24. Per ¶6.3 of Exhibit 1 to Decision No. 58763, the total to be spent by U S WEST was \$8.5 million. It is unclear whether the \$8.5 million includes the \$1.3 million revenue requirement figure.

In the rate case, the Commission confirmed that it had made “no finding on the issue concerning treatment of the revenue requirement association with the sales transaction.” Decision No. 58927 at 24. However, because final approval from the FCC had not been received, the Commission elected not to make an adjustment in the 1993 rate proceeding (*Id.*), although the Commission “share[d] RUCO’s concerns that the Company will continue to collect a revenue level based upon inclusion of plant and operating expenses associated with the exchanges that are no longer owned by the Company, while at the same time, the company’s shareholders will keep the entire gain on the sales transaction.” *Id.* To AT&T’s knowledge and based on a review of the Commission’s orders, U S WEST apparently has not reduced its rates to reflect the sale of the exchanges in 1993.

AT&T-15 through AT&T-18 are all relevant. AT&T-15 asks for the sales information for the exchanges sold in 1993 in order to determine the amount to be removed from rate base. It is apparent this amount must be removed from the test year as a known and measurable change. U S WEST cannot recover a return on sold investment indefinitely. AT&T-16 asks how the gain from the sales in 1993 were treated. Because the Commission did not adopt the Settlement Agreement in its entirety, there is some question whether U S WEST is entitled to recognize the gain below the line.² It is reasonable to ask how U S WEST treated the gain.

AT&T-17 requires U S WEST to confirm whether it believed it had an obligation to upgrade facilities in Arizona in lieu of sharing the gain with the ratepayers. Considering the language in the Settlement Agreement and in Decision Nos. 58763 and 58927, this question is relevant. Finally, AT&T-18 asks for an itemization of the upgrades U S WEST undertook

² Paragraph 12 of the Settlement Agreement stated that if the agreement is not approved as submitted it shall be deemed withdrawn and “the stipulations contained herein shall be void.”

as part of the Settlement Agreement. If U S WEST elected not to withdraw the Settlement Agreement, it is entirely reasonable to determine if U S WEST abided by the terms of the Agreement. If U S WEST did not make the investments it agreed to then it is reasonable to recommend that the ratepayers share in the gain from the sale of exchanges, not U S WEST, because U S WEST was permitted to retain the gain from the sale of exchanges in exchange for an equal amount of facility investment. AT&T-18 should not be burdensome. The Settlement Agreement (at ¶¶6 and 6.5) required U S WEST to identify the investments it was going to make and provide a detailed accounting to Staff (at ¶7). Therefore, the information should be readily available to U S WEST.

U S WEST suggests the information is in the public record. AT&T disagrees. Considering U S WEST is treating the information regarding the present sales of exchange as confidential, it is unlikely there is a public record for the information requested. If there is, U S WEST should be obligated, at a minimum, to identify the public source of the information.

U S WEST also alleges the information is no longer available. This is distressing, considering the Commission did not remove the plant investment in the last rate case and, apparently as a result, the investment is still in rate base. It is also hard to imagine U S WEST did not retain a copy of the purchase agreement, which would provide some of the information requested.

The information regarding the sale of exchanges is relevant to this rate case. U S WEST must remove the investment and expenses for the sold exchanges from its rate base. AT&T is entitled to the information requested to determine if this has been done, and done properly.

B. AT&T Data Requests Nos. 19-22

AT&T-19 seeks information regarding the recent sale of exchanges to Citizens Utilities. U S WEST sold 530,000 access lines in nine states, including Arizona, for approximately \$1.65 billion. This information would permit AT&T to determine the gain on the sale of the exchanges and the investment to be removed from rate base.³

AT&T-20 asks U S WEST to adjust rate base and revenue requirement to reflect the removal of the investment and associated expenses from the proposed sale. This would permit AT&T to propose, and the Commission to adopt, rates to reflect the recent sale of exchanges.

AT&T-21 asks U S WEST to adjust its cost studies to reflect the sale of exchanges. There is no question that U S WEST cost studies would be effected by the sale of exchanges. By amending the cost studies, the Commission would have the tools to determine rates based on the incremental costs of U S WEST services without the inclusion of the rural exchanges.

AT&T-22 simply asks U S WEST if it intends to modify its rate proposal to reflect the reduction in cost expected from the pending sale of exchanges. This is a straightforward question.

U S WEST raises two objections: 1) the requests ask “for highly confidential competitively sensitive information concerning transactions that have not yet taken place,” and 2) the requests “are not reasonably calculated to lead to the discovery of admissible evidence since they concern matters that are well outside the test year in this matter.”

Objections, ¶2. U S WEST is mistaken on both counts.

³ It should be noted that in the 1993 rate case U S WEST removed the investment and expenses for the sold exchanges although the sale was not complete.

First, U S WEST will be required to disclose all the information in AT&T-19 to obtain approval of its agreement to sell the exchanges to the Citizens Utilities. In a press release, U S WEST has indicated that filings will be made this summer, so it should already be in the process of compiling the information. If it wants to obtain approval, it will have to disclose the information. In fact, AT&T-15 asks for the same information for the past sale of exchanges. U S WEST did not argue the information was confidential; to the contrary, it said it was publicly available. U S WEST cannot hide behind claims of confidentiality because there is a signed Protective Order, and U S WEST will have to disclose the information to obtain Commission approval of the sale.

Second, U S WEST argues the information will not lead to the discovery of admissible evidence since the questions concerns matters outside the test year. The Rules of Civil Procedure permit discovery of relevant information. Rule 26(b)(1) AZ R.Civ.Pro. The information requested will lead to the discovery of admissible evidence.

AT&T-20 requires U S WEST to adjust rate base and revenue requirement for the proposed sale. Unlike the last rate case, where it appears U S WEST received an extra \$1.3 million annually for over the last 5 years, and continues to receive the revenue, the parties may wish to propose, and the Commission may wish to adopt, a mechanism to reflect the sale of exchanges. It could approve initial rates based on a rate base and revenue requirement that does not reflect the sale of exchanges with the proviso that U S WEST reduce rates to reflect the rate base and revenue requirement with the sale of exchanges after the sale is closed. If the Commission does not obtain the information, it is foreclosed from this option. If some method is not adopted to recognize the sale of exchanges, U S WEST

will continue to receive a revenue requirement based on investment, expenses and income of the sold exchanges for years to come.

AT&T-21 asks U S WEST to adjust the cost studies to reflect the sale of exchanges. This request has nothing to do with the test year. Cost studies are a tool for establishing rates. Cost studies that reflect the removal of the sale of the exchanges will eliminate high cost exchanges, thereby reducing the incremental costs of U S WEST's services. The Commission should not be denied this tool when setting rates. U S WEST announced the sale of exchanges on June 16, 1999. It has had plenty of time to start adjusting its cost studies to reflect the sale of exchanges. At a minimum, U S WEST should be required to redo its cost studies for basic exchange service, DS3 switched transport, voice grade switched transport, DS1 switched transport and switched access service.⁴

Finally, AT&T-22 asks if U S WEST intends to modify its rates to reflect the sale of exchanges to Citizens Utilities. If it does not, a simple "no" will answer the question. The parties are entitled to find out up-front whether U S WEST intends to alter its rate proposal, not when U S WEST files its rebuttal testimony. This is a reasonable request.

C. AT&T Data Request No. 38

AT&T-38 asks U S WEST to identify for the years ending December 31, 1996, 1997 and 1998, all projects by name, number, and code, together with a description of each which resulted in an increase in Telephone Plant in Service, the amount of increase in investment for each projects and the date the investment was entered on U S WEST's accounting ledger. U S WEST has objected on the grounds that the request is unduly burdensome and not reasonably calculated to lead to the discovery of relevant information.

⁴ See Testimony of Jerrold Thompson, Ex. JLT-27, page 1 of 50, Summary, for a list of the cost studies U S WEST submitted.

Arguably, the information is relevant going back to the last rate case. The information requested is extremely relevant, because it will permit AT&T to determine if the investment added in Plant in Service account is used and useful in the provision of regulated services, or whether the investment should be excluded because the investment was made to provide deregulated services or should be allocated to the interstate jurisdiction. Since Plant in Service is a cumulative account, limiting review to the test year could allow substantial investment in rate base that is inappropriate. AT&T has not asked U S WEST to provide the information going back to 1993, but has limited this request to the most recent three years.

It is very relevant to ask that U S WEST identify the investments in Plant in Service. U S WEST should be ordered to respond to AT&T-38. There is no question the information is reasonably calculated to lead to admissible evidence.

D. Definitions

U S WEST objects to a number of definitions in AT&T's First Set of Data Requests; "on the grounds that they lead to confusing, overly-broad and unduly burdensome requests." U S WEST objections are meritless. Discovery requests submitted to AT&T by U S WEST in Docket No. T-01051B-99-0044 contain similar definitions of "list," "identify," "to state the basis," "relates to" or "relating to." U S WEST cannot have it both ways. It cannot object to definitions that it also uses.

U S WEST's objections are meritless and should be disregarded.

III. CONCLUSION

AT&T has determined that the data requests identified herein and submitted to U S WEST are relevant and reasonably calculated to lead to admissible evidence. The requests are not unduly burdensome. To the extent any information is proprietary or confidential, the parties have executed a Protective Agreement.

U S WEST's objections should be overruled.

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