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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Local Exchange Carriers')
Rates, Terms, and)
Conditions for Expanded)
Interconnection for)
Special Access)

CC Docket No. 93-162

**SUPPLEMENTAL DIRECT CASE AND
ANSWER TO ORDER TO SHOW CAUSE**

The United and Central Telephone companies ("United") submit this Supplemental Direct Case in support of the tariff for special access expanded interconnection¹ and Answer to Order to Show Cause as directed by the Common Carrier Bureau ("Bureau") in the Designation Order.²

I. Supplemental Direct Case

In the Designation Order, the Bureau directed United to respond to four issues relating to whether United's time and materials charges for central office construction are reasonable.

1. United and Central Companies, Tariff F.C.C. No. 1, Transmittal No. 1 (filed Feb. 15, 1994; effective March 2, 1994) ("Interconnection Tariff")

2. In the Matter of Local Exchange Carriers' Rates, Terms, and Conditions for Expanded Interconnection for Special Access, CC Docket No. 93-162, Supplemental Designation Order and Order to Show Cause, DA 94-556, released May 31, 1994 ("Designation Order").

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1. United/Central should explain how their approach to time and materials charges differs from the use of individual case basis rates.

The precise role and meaning of individual case basis ("ICB") rates in the tariffing of communications common carrier services has not always been particularly clear.³ However, the U.S. Court of Appeals for the District of Columbia Circuit recently held in the Dark Fiber decision that an ICB offering is not a common carrier offering.⁴ In so doing, the Court cited the Commission's LEC Price Cap order as follows:

ICB offerings are those offered on a contract-type basis. While ICB offerings appear in LEC tariffs, they are not tariffed as generally-available, common carrier services. In some cases, ICB services feature new technology for which little demand exists. As demand for the service grows the ICB offering can evolve into a generally-available offering, In other applications, ICB offerings are simply unique service arrangements to meet the needs of specific customers that will never evolve into generally-available offerings.⁵

In contrast, United's time and material charges for central office construction are common carrier services that are

3. United acknowledges that its use of the term "individual case basis filing" in its Tariff F.C.C. No. 1, Transmittal No. 244 for Teleport Communications' Group's request for collocation was in error. See, Section II below.

4. Southwestern Bell Telephone Company v. Federal Communications Commission, 19 F.3d 1475 (D.C. Cir. 1994) ("Dark Fiber" decision.)

5. In the Matter of Policy and Rules Concerning Rates for Dominant Carriers, CC Docket No. 87-313, Second Report and Order, 5 FCC Rcd 6786 (1990) at par. 193.

available to all those entities authorized by Commission Order to collocate in the central office on a nondiscriminatory, just and reasonable basis.

United's time and material charges represent a pass through of actual construction costs which vary, even within a single central office, due to the cage configuration requested by the customer and the construction rates available when the request is made. Unlike an ICB arrangement, time and material quotes do not involve negotiation over price, termination liabilities, profits or other factors.

United believes that per-unit rates would unfairly cause collocation customers to bear the risk of changes in outside labor and material charges. The fact that market labor and material costs can vary widely over time (even within a single locality), coupled with the fact that United has little experience in providing cage construction, eliminates the ability to create just and reasonable averaged per-unit rates that would not discriminate.

Finally, United's tariff provides the customer the option to refuse United's time and material quote, and utilize a contractor that is mutually acceptable to the customer and United. This option ensures the availability of just and reasonable construction charges to any customer requesting collocation space.

2. United/Central should explain why they should not be required to provide time and materials charges through a "menu" of specific prices for different service components (such as rates for wire mesh cages; rates for wallboard cages; cages with/without air conditioning, etc.).

Menu driven, unbundled specific prices or per-unit prices would be directly counter to United's intent of presenting a simplified approach for a tariffed construction offering; the interests of the customer would not be well served. The potential number of differing materials and combinations of same would require an exhaustive list to be published. Even were such a list or menu established, new materials or customer requested configurations would render it obsolete. Such an exhaustive list, in need of repeated updating and revising, would significantly and needlessly complicate United's tariff.

Furthermore, United believes that the menu approach will not produce just and reasonable rates. Such rates would reflect prices at a particular point in time and could not reflect potentially dramatic changes in labor and material construction costs.

3.(a) United should describe their procedure for developing pre-construction estimates and submitting these estimates to interconnectors.

United's Interconnection Tariff, at Section 17.6(A) requires the customer to provide a written application to United with details including, but not limited to, floor space requirements, power requirements, and environmental conditioning needs. United will obtain a quote for the work from an approved United vendor and will then provide the customer with a written, itemized estimate of time and material construction charges based on the details outlined in the application.

The written, itemized estimate shall specify how long the customer has to accept the estimate. This time period shall be the same as that provided to United by its vendor.

3.(b) United/Central should address whether LECs should be required to limit the amount they may charge interconnectors to the pre-construction estimate. Alternatively, parties should address whether LECs should be required to cap the amount they may charge interconnectors over the pre-construction estimate, e.g., 10 percent.

United does not agree that the amount charged customers should be limited to the pre-construction estimate, but has no objection to a 10 percent cap over the pre-construction estimate, subject to any changes in configuration or requirements requested by the customer after the estimate is provided and accepted. The estimate should be adjusted by the amount of any agreed upon change, whether an increase or a decrease, before the cap is applied.

4. United/Central's tariff permits a "mutually agreed upon contractor selected by the Interconnector" to construct the cage. Parties should comment on the usefulness of this option in keeping LECs' cage construction charges just and reasonable. United/Central should provide details regarding its arrangement, such as the criteria it uses to approve contractors selected by interconnectors.

The criteria that United shall use in approving contractors selected by customers is the same used for contract work performed for United and includes whether the contractor is fully licensed, carries all required insurance (e.g., workers' compensation) and is otherwise adequately insured. Additionally, the contractor will be required to explain the circumstances of any outstanding mechanic's liens, default judgments and claims of incomplete contracts; to provide a detailed list of relevant telecommunications construction experience; and to provide the names and experience of any subcontractors that will work on the project. If United determines that a proposed contractor is unacceptable, United shall provide the customer with a written explanation of such rejection.

As explained above, United believes that the customer's ability to select an outside contractor ensures the availability of just and reasonable construction charges. However, a requirement to abandon tariffed time and materials pricing in

favor of averaged bundled or menu construction rates, will force United to withdraw the customer's option of securing its own contractor. If United must offer averaged cage construction rates in its publicly available tariff, as well as provide an option to choose an outside contractor bid, United will be left with only the high cost construction jobs, the costs of which will not be recoverable through tariffed, average rates.

II. Answer to Order to Show Cause

The Designation Order directs United to explain why it should not be required to delete all references to ICB pricing in its expanded interconnection tariff.⁶ As explained above, United's time and material pricing provisions do not transform United's interconnection offering into an ICB offering, and therefore will not be changed. However, the Bureau is correct that United's tariffs should not contain the "individual case basis" phrase and United will not use that phrase in its interconnection tariffs and will remove the phrase from its filed tariffs.

III. Conclusion

Accordingly, United's time and material charges for construction do not render United's Interconnection Tariff an ICB offering. United should not be required to tariff a "menu" of specific prices for different service components because such pricing would be an administrative burden and would not produce

6. Designation Order at par. 21.

just and reasonable rates. United believes that its procedures for developing pre-construction estimates and approving the customer's chosen contractor, as described above, are fair and reasonable and that the latter procedure ensures that customers will be able to obtain just and reasonable construction rates. United does not agree that the amount charged should be limited to pre-construction estimates, but has no objection to a 10 percent cap over pre-construction estimates, subject to any customer initiated changes or new requirements. Accordingly, United's Interconnection Tariff is fair and reasonable and should be approved.

Finally, United agrees that it should not use the phrase "individual case basis filing" in connection with its interconnection tariffs.

Respectively submitted,

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July 15, 1994

CERTIFICATE OF SERVICE

I, Melinda L. Mills, hereby certify that I have on this 15th day of July, 1994, sent via U.S. First Class Mail, postage prepaid, or Hand Delivery, a copy of the foregoing "Supplemental Direct Case and Answer to Order to Show Cause" in the Matter of Local Exchange Carriers' Rates, Terms, and Conditions for Expanded Interconnection for Special Access, CC Docket No. 93-162 filed this date with the Acting Secretary, Federal Communications Commission, to the persons on the attached service list.


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