

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of)
)
Investigation of Special Access) CC Docket No. 85-166, Phase I
Tariffs of Local Exchange Carriers)
)

ORDER

Adopted: December 1, 1997; Released: December 1, 1997

By the Chief, Competitive Pricing Division, Common Carrier Bureau:

1. On September 5, 1997, the Commission addressed issues remanded by the U.S. Court of Appeals for the District of Columbia Circuit in *Western Union v. FCC*, concerning whether certain costs were properly allocated to rates for interstate special access services provided by local exchange carriers (LECs) to Western Union during a six-month period in 1985.¹ The Commission reversed its previous decisions on two of the three remanded issues, and required each LEC to file a report no later than November 4, 1997, calculating its refund liability to Western Union, or explaining with particularity why it should not bear any refund liability.² Western Union was permitted to file oppositions to one or more of the refund reports no later than December 4, 1997.³

2. Four sets of LECs filed their refund reports after November 4, 1997.⁴ Those LECs also filed motions for extension of time seeking permission to file their reports after November 4.⁵ Citizens, Orchard Farm, and Rochester argue that, because they did not provide the services at issue to Western Union during the period under investigation, no party will be prejudiced by their late filings.⁶ TUECA maintains that, after a diligent search of its records, it was unable to determine

¹ *Western Union v. FCC*, 856 F.2d 315 (D.C. Cir., 1988) (*Western Union v. FCC*). In 1991, Western Union Corporation changed its name to New Valley Corporation. For purposes of this Order, we will refer to this company as "Western Union."

² See Investigation of Special Access Tariffs of Local Exchange Carriers, CC Docket No. 85-166, Phase I, 12 FCC Rcd 13667 (1997) (*Western Union Remand Order*).

³ *Western Union Remand Order*, 12 FCC Rcd at 13694 (para. 46).

⁴ Those LECs, and the abbreviations by which we refer to them in this Order, are listed in the Appendix.

⁵ Citizens and TUECA did not file separate motions and refund reports, but rather combined both filings into one document.

⁶ Citizens Motion at 1-2; Orchard Farm Motion at 1-2; Rochester Motion at 1-2.

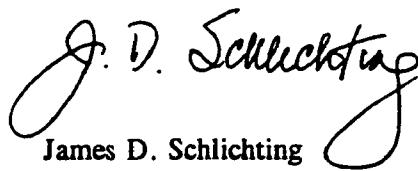
whether it ever provided the services at issue to Western Union between April and September 1985, and therefore unable to determine the amount of any potential refund liability.⁷

3. We have reviewed the LECs' motions. It is the policy of the Commission that motions for extension of time shall not be routinely granted.⁸ Nevertheless, we find the LECs have shown that their failure to submit the required refund reports as scheduled was not a result of lack of due diligence. We also conclude that Western Union will not suffer any disadvantage in this proceeding if we reschedule the date by which Western Union may comment on the refund reports listed in the Appendix. Accordingly, we grant the LECs' motions. In addition, on our own motion, we grant Western Union permission to comment on the refund reports listed in the Appendix, no later than January 5, 1998. Western Union is still required to submit any comments regarding the timely filed refund reports no later than December 4, 1997.

4. Accordingly, IT IS ORDERED that the motions for extension of time filed by the local exchange carriers listed in the Appendix to this Order ARE GRANTED.

5. IT IS FURTHER ORDERED that the Western Union Telegraph Company may file an opposition to one or more refund report listed in the Appendix to this Order, no later than January 5, 1998.

FEDERAL COMMUNICATIONS COMMISSION



James D. Schlichting
Chief, Competitive Pricing Division
Common Carrier Bureau

⁷ TUECA Motion at 1-2.

⁸ Section 1.46(a) of the Commission's Rules, 47 C.F.R. § 1.46(a).