BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Investigation Into U S WEST Communications, Inc.'s Compliance with Section 271 of the Telecommunications Act of 1996	)))))	Docket No. UT-003022
In the Matter of U S WEST Communications, Inc.'s Statement of Generally Available Terms Pursuant to Section 252(f) of the Telecommunications Act of 1996.	))))	Docket No. UT-003040 **U S WEST'S AMENDED LEGAL BRIEF REGARDING ACCESS TO U S WEST'S ICNAM DATABASE**

INTRODUCTION

Pursuant to the procedural schedule set forth at the workshop proceedings on June 21-23, 2000, U S WEST, soon to be known as Qwest Corporation (hereinafter "Qwest") submits its legal brief regarding the claim of MCI WorldCom ("WCom") that Qwest should provide WCom with Qwest's entire InterNetwork Calling Name ("ICNAM") database in its Washington Statement of Generally Available Terms and Conditions ("SGAT").

WCom's request has no basis in the law. The Federal Communication Commission ("FCC") UNE Remand Order[1] and its unbundling rules[2] make clear that incumbent local exchange carriers ("incumbent LECs") must provide access to their calling name databases on a "per query" basis only. Incumbent LECs are not required to turn over their entire calling name database to their competitors. WCom has identified no valid legal basis for its request, and has identified no provision of the SGAT that conflicts with the FCC's requirements. Indeed, it admitted that it could identify no provision that conflicted with the FCC's rules. Accordingly, the Commission should reject WCom's request for global access to ICNAM on something other than a "per query" basis and find that Qwest provides access to ICNAM consistent with the FCC's rules and the

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[1] Third Report and Order and Fourth Further Notice of Proposed Rulemaking, *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, FCC 99-238 (rel. Nov. 5, 1999) ("UNE Remand Order").

[2] 47 C.F.R. § 51.319(e)(2).

requirements of 47 U.S.C. § 271(c)(2)(B)(x).

Moreover, if WCom wishes to argue for a change in the FCC's rules on access to the ICNAM database, that argument must also be rejected. Such an argument is just the sort of broad policy issue that the FCC has stated is improper in section 271 proceedings. Such proceedings are reserved for determining compliance with rules existing at the time of the application. Thus, WCom's request for access to the entire ICNAM database should be rejected on this independent basis as well.

ARGUMENT

A. Qwest Currently Complies with the Existing Rule Regarding Access to the ICNAM Database.

In the UNE Remand Order, the FCC required incumbent LECs to provide access to their call-related databases under 47 U.S.C. §§ 251(c)(3) and 251(d)(2).[3] The FCC further stated that competitive local exchange carriers ("CLECs") must be able to obtain access to incumbent LEC calling-name databases, such as ICNAM.[4] However, the FCC explicitly defined the access to calling-name databases that incumbent LECs must provide as access on a "per query" basis. No provision of the UNE Remand Order supports WCom's claim that incumbent LECs must turn over their *entire* calling-name databases to CLECs. For example, in paragraph 402, the FCC stated:

> we require incumbent LECs, upon request, to provide nondiscriminatory access to their call-related databases on an unbundled basis, *for the purpose of switch query and database response* through the SS7 network.[5]

Similarly, Rule 51.319(e)(2)(A) provides that access is on a "per query" basis through signaling transfer points:

> *For purposes of switch query and database response through the signaling network*, an incumbent LEC shall provide access to its call-related databases, including but not limited to, the Calling Name Database . . . *by means of physical access at the signaling transfer point linked to the unbundled databases*.[6]

This is also consistent with the FCC's original conclusions in the first Local Competition Order.[7]

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[3] UNE Remand Order ¶ 402.

[4] *Id.* ¶ 406.

[5] *Id.* ¶ 402 (emphasis added).

[6] 47 C.F.R. § 51.319(e)(2)(A) (emphasis added).

[7] First Report and Order, *Implemenation of Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket Nos. 96-98, 95-185, 11 FCC Rcd 15499 ¶ 484 (1996) ("We conclude that incumbent LECs, upon request, must provide nondiscriminatory access on an unbundled basis to their call-related databases for the purposes of switch query and database response through the SS7 network . . . . We require incumbent LECs to provide this access to their call-related databases by means

Thus, the provisions of the UNE Remand Order and the FCC's unbundling rules provide that access to ICNAM is only on a "per query" basis by means of physical access through the STP. There is simply no rule requiring Qwest to provide WCom its "entire" ICNAM database.

At the workshop, WCom claimed that Qwest must provide its entire ICNAM database to WCom because it is "technically feasible" to do so. This argument, however, has been resoundingly rejected by both the United States Court of Appeals for the Eighth Circuit and the United States Supreme Court.[8] Both of these courts unambiguously held that "technical feasibility" as used in 47 U.S.C. § 251(c)(3) determines only *where* access to unbundled elements must be provided not *what* must be provided.[9] Applying this test, the FCC determined that it is technically feasible to provide access at the STP, and the SGAT incorporates this conclusion.[10]

In addition, WCom appeared to claim at the workshop that, because the FCC required incumbent LECs to provide unbundled access to their calling-name databases, Qwest must provide access to its *entire* database. Again, WCom misreads the Act and the FCC rules, confusing the duty to provide an unbundled network element with the *access* to the element an incumbent LEC must provide. The FCC concluded that incumbent LECs must provide unbundled access to their calling-name databases, meaning that a CLEC could request access to this database on an unbundled basis. Qwest provides such access in Sections 9.13.1 and 9.17. The FCC further concluded, as discussed above, that *access* to a calling-name database is on a "switch query and database response" basis by means of physical access through the STP.[11] Again, the SGAT provides this access in Section 9.17.

Finally, to the extent WCom claims that global access to ICNAM is "necessary" or the failure to provide such access would "impair" WCom's ability to provide service, that argument has (1) already been addressed and rejected by the FCC and (2) has no support in the record. In determining which network elements incumbent LECs must unbundle, the FCC conducted the "necessary" and "impair" analysis under 47 U.S.C. § 251(d)(2) and determined that incumbent LECs must provide access to calling-name databases on a "per query" basis only. Thus, the FCC has decided this matter, and this Commission cannot revisit that determination.[12] Regardless, WCom presented no evidence whatsoever to support a claim that global access to ICNAM is "necessary" or the failure to provide

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of physical access at the STP linked to the unbundled database") ("Local Competition Order").

[8] *Iowa Utils. Bd. v. FCC*, 120 F.3d 753 (8th Cir. 1997), *aff'd in part, rev'd in part sub nom.*, *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366 (1999); *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366 (1999).

[9] *AT&T Corp.*, 525 U.S. at 391; *Iowa Utils. Bd.*, 120 F.3d at 810;

[10] SGAT § 9.17.

[11] UNE Remand Order ¶ 402; 47 C.F.R. § 51.319(e)(2)(A).

[12] Finally, if the FCC's rules regarding access to the ICNAM database were to change in the future, the SGAT's change-of-law provision (section 2.2) would operate to adapt the SGAT to the new rules.

such access would "impair" its ability to provide service within the meaning of the FCC's rules and the Act. Thus, the Commission should reject any claim that Qwest must provide global access to its entire ICNAM database.

WCom's Argument for a Rule Change is Not Properly Placed in a 271 Docket.

Because Qwest is complying with current rules, WCom may wish to argue (although it has not so argued in this proceeding thus far) that the FCC rules regarding access to the ICNAM database should be changed. On the possibility WCom may choose to raise such an argument here, Qwest will address it. Even if this Commission had jurisdiction to change those rules (which it does not),[13] the FCC has unequivocally stated in its SBC Texas Order[14] that such broad policy arguments do not belong in the 271 process.

Section 271 proceedings are to be streamlined examinations of whether the BOC has complied with the existing rules regarding the checklist items and other 271 requirements. They are not to be used for making new policy changes or interpretations. This clearly was not intended by Congress when it established the expeditious statutory procedure for interLATA relief in section 271. As the FCC put it,

> [T]he section 271 process simply could not function as Congress intended if we were generally required to resolve all such disputes as a precondition to granting a section 271 application. …Congress designed section 271 proceedings as highly specialized, 90-day proceedings for examining the performance of a particular carrier in a particular State at a particular time. Such fast-track, narrowly focused adjudications -- generally dominated by extremely fact-intensive disputes about an individual BOC's empirical performance -- are often inappropriate forums for the considered resolution of industry-wide local competition questions of general applicability. If Congress had intended to compel us to use section 271 proceedings for that purpose, it would not have confined our already intensive review to an extraordinarily compressed 90-day timetable.[15]

Also, if such policy disputes were handled in 271 dockets, the public's interest in local and interLATA competition would be irretrievably harmed. Section 271 was intended to provide an incentive to Qwest to comply with the checklist items in order to be able to enter the interLATA toll market. The FCC found "[t]hat hope would largely vanish if a BOC's opponents could effectively doom any section 271 application by freighting their comments with novel interpretive disputes and demand that authorization be denied unless each one of those disputes is resolved in the BOC's favor."[16]

Finally, the central, narrow issue in a 271 docket is compliance with the rules existing at the time of the applications. Those rules arising thereafter are irrelevant:

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[13] As noted previously, WCom's argument that the FCC's rules should be changed should not even be brought before this Commission in any docket because only the FCC or the federal courts can change the FCC's rules.

[14] Memorandum Opinion and Order, Application by SBC Communications Inc et al for Provision of In-Region, InterLATA Services in Texas, FCC 00-238 (June 30, 2000) ("SBC Texas Order").

[15] Id. ¶¶24-5.

[16] Id. ¶26.

> Just as our long-standing approach to the procedural framework for section 271 applications focuses our factual inquiry on a BOC's performance at the time of its application, so too may we fix at that same point the local competition obligations against which the BOC's performance is generally measured for purposes of deciding whether to grant the application. Nothing in section 271 or any other provision of the Act compels us to require a BOC applicant to demonstrate compliance with new local competition obligations that were unrecognized at the time the application was filed.[17]

Consequently, any WCom argument for a change in the rules regarding access to the ICNAM database does not belong in a 271 docket or even a Commission docket and should be rejected for that independent reason as well.

CONCLUSION

WCom has raised no basis for its claim that Qwest must provide access to entire ICNAM database in its SGAT to satisfy the requirements of 47 U.S.C. §§ 251 or 271. In essence, WCom's request boils down to an assertion that it wants such global access, so Qwest must provide it. The Act and the FCC's rules, however, do not require incumbent LECs to meet every demand of their competitors. Although Qwest and WCom may agree in separate negotiations on terms that would permit WCom the access it provides while protecting Qwest's business and proprietary interests, this proceeding is not the proper one in which to explore that possibility. The SGAT is Qwest's standard offering to *all* CLECs, and nothing in the Act or the FCC's rules requires Qwest to provide the global access WCom requests. Finally, if WCom argues for a change in the FCC rules, such an argument does not belong in a 271 docket or even before this Commission at all.

DATED this ___ day of July, 2000

Respectfully submitted,

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[17] Id. ¶27.

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CERTIFICATE OF SERVICE
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I hereby certify that I have this 6th day of July 2000, caused the foregoing **U S WEST's Amended Legal Brief Regarding Access to U S WEST's ICNAM Database** to be served upon all parties of record in this proceeding, via first class mail.

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