

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION
COMMISSION

In the Matter of the Petition of)	DOCKET NO. UT-990022
)	
U S WEST COMMUNICATIONS, INC.)	
)	MOTION TO COMPEL
for Competitive Classification of its)	RESPONSES TO
High Capacity Circuits in Selected)	DATA REQUESTS
Geographical Locations)	

Pursuant to the discovery conference held in this docket on June 24, 1999, and the Administrative Law Judge's ruling on the record at the discovery conference, AT&T Communications of the Pacific Northwest, Inc. ("AT&T") hereby moves to compel U S WEST Communications, Inc. ("U S WEST"), pursuant to WAC 480-09-480 (7), to respond to Data Requests 15-18 issued by AT&T on June 25, 1999. Based on counsel for U S WEST's good faith representations, made orally to counsel for AT&T on June 30, 1999 and again in writing on July 2, 1999, that U S WEST intends to fully answer Data Requests 1-14, AT&T does not move to compel at this time on those Data Requests. AT&T, however, reserves its right to move to compel those answers as well if answers received from U S WEST are either non-responsive or incomplete. The rationale for AT&T's Motion to Compel Responses to Data Requests 15-18 is as follows:

I. Data Request 15

Please provide for each of the six wire center areas the number of DS1 and DS3 customers U S WEST has whose contracts contain a termination penalty provision that would be imposed if they moved their service from U S WEST to a competitor.

This Data Request is intended to directly seek information necessary for the Commission to answer factors (b) and (d) under WAC 480-120-022(7) and RCW 80.36.330 governing U S WEST's burden of proof in competitive classification proceedings, i.e., "the extent to which services are available from alternative providers in the relevant market" and other indicators of market power, including "ease of entry."

Until very recently, U S WEST was the only provider of local telecommunications services in Washington. Any customers that have migrated to a Competitive Local Exchange Carrier ("CLEC"), therefore, or may in the future migrate to a CLEC for DS-1 or DS-3 facility-based service, were previously customers of U S WEST. The ability of a customer to migrate and the extent to which an alternative provider's service is practically available to those customers, as well as the ease of potential entry by those CLECs, is, in part, directly dependent upon the types of termination or cancellation penalties that those customers face in their current contracts with U S WEST. Even if alternative facilities and providers are physically available in the marketplace, if U S WEST has sufficiently tied up its current customer base by imposing excessive and anti-competitive penalties upon those customers who transfer to another provider, alternatives are not truly and practically available to those customers. This inquiry, therefore, bears directly upon the statutory factors which U S WEST must prove to satisfy its case in this docket and AT&T respectfully requests that U S WEST be compelled to answer such inquiry.

Although U S WEST claims that this Data Request is unduly burdensome and would be time-consuming to answer, U S WEST bears the burden upon initiating this action and cannot protect such relevant information simply by claiming burden. In addition, the Data Request asks only for the **number** of customers' contracts in the six

wire centers containing a termination penalty provision; it does not ask that each of those customers be identified or that U S WEST produce the actual language of each type of provision that is in use. AT&T fails to see how this Data Request can possibly be determined to be burdensome to respond to.

II. Data Requests 16 and 17

For every instance where a provisioning request for a DS1 and DS3 wholesale and retail customer in each of the six named wire center areas has been escalated due to U S WEST missing requested customers' desired due dates for the following years: 1996, 1997, 1998 and 1999, please provide the number of circuits, description and status of the circuit(s).

Please provide the number of all DS1 and DS3 provisioning requests for both wholesale and retail customers in each of the six named wire center areas that were "not completed," e.g., a reason of "FUND" in U S WEST's Held Escalated and Expedited Tools (HEET) database, and the reasons why for the following years: 1996, 1997, 1998 and 1999.

U S WEST claims that both of these Requests are irrelevant to the inquiry in this case, and that U S WEST already provided a response regarding AT&T's provisioning requests in this case. The latter part of this objection is disingenuous. U S WEST has not fully answered either of these Requests previously, and has not yet answered either of them as they relate to the scope of U S WEST's Amended Petition filed on June 11, 1999.

Again, both of these data requests are intended to elicit relevant information directly related to factors which form U S WEST's burden of proof in this case under

WAC 480-120-022(7). First of all, the information is directly relevant to the third factor that the Commission will consider in connection with U S WEST's Petition, i.e., "the ability of alternative providers to make **functionally equivalent or substitute services readily available at competitive rates, terms and conditions** (emphasis added)."

Additionally, the requested information also bears on the second and fourth factors the Commission will consider, i.e., "the extent to which services are available from alternative providers in the relevant market," and other indicators of market power, such as "ease of entry."

Data Requests 16 and 17 request information regarding how many times customers who have attempted to migrate from U S WEST DS-1 and DS-3 based facilities service, a move that U S WEST evidently wants the Commission to believe is inherently easy to make given the nature of its Petition, have had trouble getting their service installed or migrated on time or were unable to have the service completed at all. Because U S WEST continues to serve as the wholesale provider for the majority of DS-1 and DS-3 service being offered by CLECs, those CLECs' ability to offer a "functionally equivalent" alternative to U S WEST which is "readily available" remains directly dependent on U S WEST's timeliness and quality of provisioning. In other words, since most CLECs lease the DS-1 and DS-3 facilities that they use to provide customers with an alternative to U S WEST from U S WEST itself, their ability to offer that service is only as good as U S WEST's ability and willingness to timely and accurately provision such service. As AT&T has found in other markets, if customers determine that they will receive service more quickly from U S WEST than they can receive from a competitor, those customers are more likely to simply remain with U S WEST. Therefore, because

U S WEST continues to control not only the majority of the DS-1 and DS-3 retail markets, but also those facilities necessary to provide service in the DS-1 and DS-3 wholesale market, these Data Requests are directly relevant to U S WEST's burden of proof in this case, and provide the type of comparative information that is critical to this Commission's inquiry. AT&T respectfully requests that U S WEST be compelled to answer such inquiries.

III. Data Request 18

What is the number of fiber route miles in U S WEST's official network for each of the six wire center areas? What is the number of U S WEST fiber strand miles used in all routes, including both lit and unlit fiber, for each of the six named wire center areas? Please provide the number of U S WEST fiber miles of lit fiber for each of the six named wire center areas? Please provide a map of U S WEST's fiber routes for each of the six wire centers on transparencies so that all parties can use to lay over the six fiber route maps U S WEST attached to its Amended Petition.

U S WEST has responded that it will provide AT&T with the number of fiber strand miles, but not the amount of fiber route miles. This is an absolutely unsupportable position. First and foremost, fiber strand miles do not give you an accurate picture of the true geographic coverage of U S WEST's fiber. Fiber route miles tell you where, and to what extent, U S WEST's fiber is located in the state—a critical inquiry given that U S WEST is seeking competitive classification for only a limited geographic area. Fiber strand miles, on the other hand, do not tell the Commission anything regarding where U S WEST's fiber is located. Because any fiber in U S WEST's network may contain a

number of strands, both lit and unlit, the number of strands does not explain geographic penetration or accessibility to particular customer locations. The reason that fiber strand miles, however, are also relevant to this Commission's inquiry is to allow it to assess U S WEST's capacity to serve existing and future customers within the existing fiber route. This bears upon U S WEST's ability to quickly grow its market share, a factor also relevant under WAC 480-120-022(7)(d).

Second, AT&T and most other CLECs have responded to Staff's data requests, one of which requested the number of fiber route miles in the CLECs' networks in Washington. Therefore, Staff believed such information to be relevant to this proceeding, and the CLECs complied with Staff's request. At the discovery conference in this case, U S WEST complained that it did not want to answer any Data Requests that CLECs were not willing themselves to answer. Although AT&T believes that this is an untenable position given that U S WEST bears the burden of proof in this case, applying U S WEST's own logic to this issue would require a response by U S WEST.

Finally, attached to U S WEST's Amended Petition are maps showing the fiber route miles of U S WEST's competitors in the six wire centers for which U S WEST requests competitive classification. Notwithstanding the fact that this is the **only** evidence supporting U S WEST's Amended Petition, U S WEST appears more than willing to disclose, and to rely upon, the fiber route locations of its competitors, while refusing to provide its own fiber route miles for the six wire centers that it has chosen to pursue in this docket. (See footnote 50 of U S WEST's Reply Comments in Support of Amended Petition). Such a position should not be condoned by this Commission. AT&T

respectfully requests that U S WEST be compelled to respond to Data Request 18 in its entirety.

WHEREFORE, AT&T respectfully requests that U S WEST be compelled to fully and completely respond to Data Requests 15 –18, served upon it by AT&T on June 25, 1999, which are directly relevant to the Commission’s inquiry in this case, and that U S WEST not be allowed to skirt the burden of proof that is its and its alone under WAC 480-120-022 and RCW 80.36.330.

Dated the 7th day of July, 1999.

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