

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition of)
)
U S WEST COMMUNICATIONS, INC.,) Docket No. UT-990022
)
for Competitive Classification of) NEXTLINK AND ELI RESPONSE
Its High Capacity Circuits in) TO AT&T DATA REQUESTS AND
Selected Geographic Locations) MOTION TO COMPEL RESPONSES
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_____)

NEXTLINK Washington, Inc. ("NEXTLINK"), and Electric Lightwave, Inc. ("ELI") provide the following Response to the Third Data Requests of AT&T Communications of the Pacific Northwest, Inc. ("AT&T") to U S WEST Communications, Inc. ("U S WEST" or "USWC") and Motion to Compel Responses. NEXTLINK and ELI do not have any additional requests for information and generally support AT&T's motion. If AT&T's data requests are extended to competing local exchange carriers ("CLECs"), however, NEXTLINK and ELI should not be required to produce or attempt to produce information beyond that which they already have provided.

DISCUSSION

A. U S WEST Should Be Required to Provide the Data AT&T Has Requested.

AT&T has requested additional information from U S WEST that is tailored to U S WEST's amended petition. As discussed more fully below, U S WEST has raised the issues

pursuant to which AT&T has made its data requests, and accordingly, U S WEST should be required to provide it.

Data Request 15. AT&T has requested the number of contracts between U S WEST and its DS-1 and DS-3 customers that contain termination penalties. U S WEST in its initial petition and supporting documentation allege that the market for these services are fully open to competing providers, and U S WEST dismisses as "wrong" TRACER's concerns that U S WEST understates the degree to which U S WEST has locked in customers with long-term contracts. USWC Reply Comments at 19. U S WEST cannot make or rely on such a position without providing the supporting information that AT&T has requested.

Data Requests 16 & 17. AT&T has requested information on the provisioning of DS-1 and DS-3 service to wholesale and retail customers. Such information is fundamental to U S WEST's ability to prove the existence of effective competition for DS-1 and DS-3 services. As NEXTLINK and ELI stated in their initial Comments, the materials U S WEST has presented to date demonstrate that competing providers heavily rely on facilities provided by U S WEST to be able to serve retail customers. The Commission cannot find that effective competition exists under these circumstances until, at a minimum, U S WEST has proven that it is providing facilities to competitors pursuant to the same rates, terms, and conditions that U S WEST provides those facilities to itself and its end users. The information AT&T has requested lies at the heart of this issue and should be provided to the parties.

Data Request 18. AT&T has requested the number and a map of fiber route miles in the geographic areas in which U S WEST seeks competitive classification. CLECs and U S WEST have provided this same information for competitors' networks. U S WEST should not be permitted to rely on this information unless U S WEST provides the same information for its own network in a form that will enable the Commission and the parties to compare the U S WEST data with the CLEC data.

B. NEXTLINK and ELI Should Not Be Compelled to Provide Data in Addition to the Information They Have Already Provided.

AT&T's data requests seek information solely from U S WEST, but AT&T has represented that it may be willing to provide much of the same information it has requested of U S WEST to Commission Staff for aggregation. NEXTLINK and ELI are not willing to make that commitment. Requests 1-5 are unique to U S WEST, but the remainder of the requested information would be unduly burdensome for NEXTLINK and ELI to produce or would not be relevant if provided by CLECs, as opposed to U S WEST. U S WEST, moreover, bears the burden to prove the existence of effective competition in the market for DS-1 and DS-3 services, and U S WEST should not be permitted to shift the evidentiary burden to intervening CLECs. The Commission, therefore, should not require NEXTLINK and ELI to provide this data.

Data Requests 6-14. AT&T has requested that U S WEST provide more detailed data on U S WEST's provisioning of DS-1 and DS-3 services in the geographic areas in which U S WEST has requested competitive classification. NEXTLINK and ELI have already provided data on their provisioning of these services in the greater Seattle and Spokane metropolitan areas,

and any additional breakdown would be extremely burdensome, if even possible, to provide. Neither NEXTLINK nor ELI retains data on a U S WEST wire center basis (which is how U S WEST defines the Seattle geographic area), much less on a sub-wire center basis (as U S WEST defines the geographic area in Spokane). Attempting to compile data on these geographic areas, therefore, would take a substantial amount of time and resources, if it could be done at all. Commission Staff, moreover, has not revised the confidential exhibit compiling the CLEC data to reflect the latest revised data provided by NEXTLINK, ELI, and other CLECs. NEXTLINK and ELI should not be compelled to provide data in addition to the information they have already provided, particularly if Staff believes the data cannot be aggregated accurately or in a reasonably useful form. NEXTLINK and ELI, therefore, object to providing the additional detail U S WEST has agreed to provide to AT&T.

Request 15. U S WEST is the incumbent monopoly provider of local telecommunications service in Washington. Data concerning the termination liability U S WEST includes in its DS-1 and DS-3 contracts demonstrates the extent to which competitors of U S WEST can enter the market. Whether and the extent to which termination provisions are included in contracts between CLECs and their customers is irrelevant to this or any other issue in this proceeding. By definition, a customer has an alternative source of telecommunications service when it signs a contract with a CLEC. The same cannot necessarily be said when an end user signs a contract with U S WEST. Accordingly, NEXTLINK and ELI object to producing

information on their customer contracts. Only U S WEST should be required to indicate the number of its contracts that impose termination liability.

Request 16 & 17. Information concerning U S WEST's provisioning of DS-1 and DS-3 services is necessary because U S WEST is the incumbent monopoly and primary source of wholesale DS-1 and DS-3 services. U S WEST's provisioning of DS-1 and DS-3 services, therefore, will have a direct and material impact on the ability of CLECs to provide competitive services. NEXTLINK, ELI, and other CLECs, on the other hand, are already competitively classified because the market ensures that their provisioning of service is at least as good as U S WEST's -- or as good as U S WEST permits it to be to the extent that the CLECs rely on U S WEST facilities. Such information, moreover, would be unduly burdensome for NEXTLINK and ELI to produce, if it could be produced at all. Accordingly, NEXTLINK and ELI object to producing information on their service provisioning. Only U S WEST's service provisioning is relevant to the issues raised in this proceeding, and U S WEST -- not the intervenors -- bears the burden to prove the existence of effective competition.

Request 18. NEXTLINK and ELI have already provided their data on the fiber route miles in their respective networks. To the extent that the request also includes fiber strand miles and network capacity, NEXTLINK and ELI objected to providing that information when U S WEST requested it and continue to object. The fiber capacity of CLECs' networks bears no reasonable relationship to whether effective competition *currently* exists -- as opposed to might develop in the future -- for DS-1 and DS-3 services and would be unduly burdensome to

calculate. NEXTLINK and ELI, therefore, should not be required to provide any data in addition to the information they already have provided to Commission Staff.

CONCLUSION

For the foregoing reasons, U S WEST should be required to provide the information requested by AT&T, but NEXTLINK and ELI should not be required to produce any information beyond that which has previously been provided to Commission Staff.

RESPECTFULLY SUBMITTED this 12th day of July, 1999.

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Electric Lightwave, Inc.

By _____
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