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BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

Request for Competitive Classification of High Capacity Circuits Provisioned at Capacities of DS-1 and Above within the Greater Seattle, Greater Vancouver, and Greater Spokane Areas	)	)	)	No. UT-990022
				Response of U S WEST to Motion to Compel Responses to Data Requests

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U S WEST Communications, Inc., (U S WEST) hereby states its opposition to the Motion to Compel Responses to Data Requests submitted by AT&T Communications of the Pacific Northwest, Inc. (AT&T) on July 7, 1999. U S WEST believes that the objections to AT&T's Third Set of Data Requests communicated in a telephone conference on June 30, 1999 and articulated in a letter dated July 2, 1999 are valid and consistent with the scope of these proceedings.

On June 11, 1999 U S WEST filed its Motion to Amend Petition, seeking to limit the geographic footprint of the areas in which it was seeking competitive classification. On June 21, 1999 AT&T filed a Motion to Reopen Discovery and Extend Comment Filing Deadline. Subsequently, on June 24, 1999, a discovery conference was convened. The Administrative Law Judge issued a ruling on the record stating that AT&T must file its data requests by June 25, 1999,

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and that U S WEST must file objections to these data requests by June 30, 1999. These deadlines have been met by the parties.

**DATA REQUEST 15**

U S WEST objected to this data request on the basis that the information regarding the number of contracts containing termination penalty provisions was not readily available, was so time consuming to compile that it could not be completed in the time allowed, was unduly burdensome and was irrelevant.

While AT&T “fails to see how this Data Request can possibly be determined to be burdensome to respond to,” U S WEST does not maintain its records in a manner which lends itself to responding to this data request expeditiously. Compiling the requested information for retail customers would require the development of software programs to poll various databases to determine which customers have term agreements within these wire centers, when the service was originally installed, and where each customer is within the original term agreed to and then calculate the total number of customers with service still subject to the term agreement. Another option would be manual review of each contract, determination of the wire center each customer has a circuit within and then final calculation. Wholesale customer information would have to be gathered through a separate process that would require similar steps. DS1 and DS3 services are available under term agreements as defined by U S WEST’s tariff. It is estimated approximately 70 percent of U S WEST’s retail high capacity service revenues are subject to term agreements and approximately 35 percent are subject to minimal termination liability charges (i.e. 15 percent of the charges for the remainder of the term).

Further, U S WEST believes this data is irrelevant to this proceeding. The Commission is

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2 charged with determining “the extent to which services are available from alternative providers in  
3 the relevant market,” pursuant to RCW 80.36.330. As stated in all the preceding pleadings filed  
4 by U S WEST in this docket, the extent to which services are available from alternative providers  
5 can be determined by reviewing the amount of facilities alternative providers have in place, the  
6 size of the alternative providers as indicated by their operating revenues, and the aggressive  
7 advertising and marketing by the alternative providers in the high capacity market. The number of  
8 contracts U S WEST has with customers that contain termination liability clauses is not an  
9 effective manner in which to determine the extent of services available from alternative providers,  
10 especially if the intervenors are not held to answer this data request so that a comparison can be  
11 made.

12 Finally, AT&T states that until very recently, U S WEST was the only provider of local  
13 telecommunications services in Washington. AT&T suggests that this, coupled with termination  
14 liability clauses, constrain a CLEC’s ability to enter the market. However, this petition is specific  
15 to high capacity circuit services from alternative providers. Attachment A to the original petition  
16 includes tariffs and price lists of alternative high capacity circuit service providers. TCG and MCI  
17 began offering these services under tariff or price list in 1995. ELI and NextLink followed in  
18 1996. Many of these providers actually entered the market prior to filing their tariffs or price lists.  
19 For example, both ELI and TCG sold these same services under contract in 1995. All providers  
20 utilize termination liability contract provisions. Clearly termination liability clauses do not  
21 constrain a CLEC’s market entry.

22 **DATA REQUESTS 16 AND 17**

23 U S WEST objected to these data requests on the basis that the information regarding

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provisioning requests is irrelevant to the scope of this proceeding. AT&T has attempted to redirect the Commission from its duties under RCW 80.36.330 and ask the Commission to consider additional factors not included in the statute. In the Comments of AT&T and MCI dated April 9, 1999, AT&T extensively opined about not allowing U S WEST competitive classification because of U S WEST's alleged inability to meet provisioning requests. Provisioning requests are not listed in the statute as a relevant factor in determining competitive classification and do not have any bearing on the issue of whether or not DS1 and DS3 services are competitive.

Further, U S WEST provided information regarding AT&T's "escalated" provisioning requests in response to AT&T's Data Request 02-003. AT&T is aware of the wire centers involved. U S WEST will not provide AT&T with its competitors' provisioning information.

Finally, the "escalation" data depicts a skewed view of provisioning requests and should not be considered as a measure of "the ability of alternative providers to make functionally equivalent or substitute services readily available at competitive rates, terms and conditions." U S WEST "escalates" a provisioning request each and every time a customer disagrees with the due date U S WEST provides. It appears from reviewing U S WEST's response to AT&T's Data Request No. 02-003 that AT&T is in the habit of "escalating" every provisioning request it initiates. Such a measure does not provide useful or reliable information about timeliness of provisioning, or the ability of providers to purchase wholesale services from U S WEST.

**DATA REQUEST 18**

U S WEST misstated its objection to this data request in its letter dated July 2, 1999. U S WEST is prepared to provide both the number of fiber route/sheath miles and the number of fiber strand miles for each of the six wire centers. U S WEST also intends to provide maps of its

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fiber routes to accompany the maps submitted with the Motion to Amend Petition. U S WEST is unable to determine and provide the amount of lit and unlit fiber.

**DATA REQUESTS 6, 8, 9 and 10**

With respect to Data Request Numbers 6, 8, 9 and 10, ELI and NEXTLINK will not commit to providing like data and GST estimates it will require 30-60 days to provide such data. MCI Worldcom states it will provide data to the extent that the information is kept and AT&T also qualifies its response to state that it will provide responses to those same data requests assuming that AT&T keeps the data in the same way that U S WEST is being asked to produce it or that it is not unduly burdensome to extrapolate the data from the records that AT&T does keep. U S WEST is prepared to provide the information requested in Data Requests Numbers 6, 8, 9 and 10. However, it respectfully requests that it only be obligated to provide such information to the Commission Staff for comparison to the aggregated data of other providers. If the alternative providers do not provide comparable information, the U S WEST data alone is meaningless and provides nothing more to such providers than market intelligence.<sup>1</sup> U S WEST would like to protect its market data specific to these wire centers since this information could be used by alternative providers to target specific market areas.

**CONCLUSION**

The information requested in data requests 15, 16 and 17 is not readily available and extremely burdensome to produce. No reasonable conclusion can be reached, absent alternative

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<sup>1</sup> Other State Commissions have recognized the relevance of total market data. For example, in Docket Nos. 99-049-13 and 99-049-17 before the Public Service Commission of Utah, it was decided on June 29, 1999 that data submitted by U S WEST to determine if pricing flexibility should be granted could not be analyzed in a vacuum. CLECs were required to supply the same information U S WEST was providing and U S WEST was allowed discovery of the CLECs, regardless of whether they had intervened in the proceeding.

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provider comparison data.

AT&T's Motion to Compel regarding AT&T's Third Set of Data Requests, Numbers 15-18 should be denied. U S WEST requests that its responses to Data Requests 6, 8, 9 and 10 be viewed by the Commission Staff only, unless the intervenors respond to these same requests and a complete comparison to aggregated alternative provider information can be accomplished.

DATED this 16<sup>h</sup> day of July, 1999.

U S WEST Communications, Inc.

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Lisa A. Anderl, WSBA No. 13236