

**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-970300

PUBLIC COUNSEL RESPONSE TO USWC
REQUEST FOR MODIFICATION OF
PROCEDURE

Public Counsel files these comments in response to the Notice of Opportunity to Comment of January 28, 2000. It is true, as U S West Communications, Inc. (USWC) observes in its Request for Modification, that there has been significant experience nationally with Section 271 proceedings since the adoption of the Commission's Interpretive and Policy Statement in this docket. It is reasonable for the Commission to determine whether this experience warrants modifications to Washington's approach. However, Public Counsel opposes the USWC request as filed. Public Counsel would not object to a modification of the procedure to add workshops on single issues or subgroups of issues in advance of the ninety day process currently in effect (see discussion below).

As the Commission observed in its Notice, the USWC request contains little detail. It is difficult to respond, therefore, with much specificity, and Public Counsel will comment further on February 11 once USWC has explained its proposal in more detail. A number of initial observations can be made, however.

Public Counsel notes that the USWC request essentially mirrors the approach the

company recommended in the initial phase of this proceeding.¹ In general, U S West opposed a requirement that it file with the Commission in advance of the FCC filing, and advocated an informal paper review process. *Order On Investigation*, p. 13-15. The Commission rejected this suggested approach, stating:

The recent history of proceedings involving USWC and others indicates to us that specific information is required; that it must be provided early; and that at least limited opportunity to ask questions about it or discover other relevant information must be provided as an incentive for early full disclosure and as a means to satisfy participants that they indeed were provided with the information that was required.

Id., p. 14.

USWC is advocating that the Commission rescind its requirement that a single initial filing be made that is detailed, complete, and mirrors the anticipated FCC filing. As we did in the initial phase of this docket, Public Counsel opposes any suggestion that the state filing be limited to a summary of USWC's position or some other "informal" type of review. Section 271(d)(2)(B) of the Telecommunications Act requires that the WUTC "verify the compliance" of USWC with the Act. Verification requires a comprehensive factual record. A process which allows USWC to simply file a narrative statement which other parties may "comment" upon, or which is limited to workshop discussions, will not enable the Commission to meet its statutory obligation to "verify" that the local market has been opened to competition, particularly if only 90 days is allowed for the process. Nor would an informal workshop process provide due process to parties with significant interests at stake. As noted above, the FCC is relying upon the state commission to conduct a thoroughgoing inquiry. The more complete the initial filing and the more fair the procedures, the more productive and meaningful will be the review.

¹ This casts some doubt on the USWC assertion that subsequent experience warrants the changes the company suggests.

The USWC request for modification goes beyond merely a request for workshops and rescission of the single filing requirement, and challenges, at least in part, other important requirements of the Interpretive and Policy Statement in this docket, including:

- A.1 Ninety day advance notification of FCC filing, including specified evidence of compliance with specific Section 271 requirements
- A. 2 Filing a copy of A.1 materials with the FCC.
- A. 3. Inclusion in the Washington filing of all materials to be filed with the FCC

The Proceeding Schedule

Each of these elements was carefully considered by the Commission before adoption and should not lightly be discarded now.

There may be some value to a variation on the USWC approach, however. A series of workshops on single issues or subgroups of issues could be conducted prior to the filing and the before 90-day process contained in the Proceeding Schedule. This could result in a number of benefits, including early resolution of issues and expedited information exchange which in turn would likely create significant efficiencies for the 90-day process. This would assist USWC, the Commission and other parties as well.

Public Counsel has no objection to the workshop and comment process announced by the Commission for considering this request and other changes to the procedural rules. It may be useful following the workshop to establish a schedule for further comment or to hold an additional workshop or workshops.

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The Commission may also wish to issue a draft of revisions for comment as it did in the initial round of proceedings.

DATED this 4th day of February, 2000

Respectfully submitted,

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