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BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Investigation Into)	
U S WEST Communications, Inc.'s))	Docket No. UT-970300
Compliance With Section 271 of the))	Response of U S WEST to Notice of
Telecommunications Act of 1996))	Opportunity to Comment Concerning
)	Process for Reviewing U S WEST's
)	Section 271 Application
)	

I.INTRODUCTION

On January 28, 2000, the Washington Utilities and Transportation Commission (Commission) issued a Notice of Opportunity to Comment concerning U S WEST Communications, Inc.'s (U S WEST) proposal that the Commission adopt a workshop process for reviewing U S WEST's Section 271 application. The Commission sought comment on U S WEST's proposal that the Commission use workshops to review U S WEST's Section 271 compliance. It further asked for suggestions concerning the "number, subjects, and timing of meetings, means of selecting participants, specific processes that should be employed to adopt a recommendation, and any other details that would assist the Commission" U S WEST

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respectfully submits this pleading in response to the Commission’s inquiry, sets forth a proposed workshop schedule, and offers three principles designed to encourage an open process.

On January 22, 1997, the Commission issued an Order instituting an investigation proceeding to review the requirements for U S WEST’s entry into the in-region interLATA telecommunications market. The Commission’s Order anticipated a second phase in which it would determine the form of the proceeding after reviewing and considering party comments. Over the past two and one-half years, the FCC and state commissions throughout the country have all recognized that collaborative workshops, not adversarial hearings, are the most effective means by which to process Section 271 proceedings. U S WEST respectfully requests that the Commission modify its initial Order, and issue a new procedural order requiring all interested parties to participate in a series of workshops considering each aspect of Section 271.

U S WEST’s request that the Commission conduct a series of workshops addressing each aspect of Section 271 is supported by the FCC’s recent decision authorizing Bell Atlantic’s 271 application in New York. The FCC found that utilization of “collaborative sessions and technical workshops” were “particularly important” to the success of Bell Atlantic’s application.¹ Workshops will create a forum that allows for “broad based industry participation.”² U S WEST therefore respectfully requests that the Commission set a workshop schedule so that it will complete its evaluation of 271 issues at approximately the same time as the Regional Oversight Committee (ROC) completes its operational support system (OSS) test. This process would result in the culmination of all the pertinent Section 271 information that the Commission requires to

¹ *Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act To Provide In-Region, InterLATA Service in the State of New York*, CC Docket No. 99-295, Memorandum Opinion and Order, ¶¶ 8-9 (rel. Dec. 22, 1999) (“*BellAtlantic New York Order*”).

² *Id.* at ¶ 8-9.

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make an informed recommendation to the FCC on U S WEST's Section 271 filing.

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2 **II. DISCUSSION**

3 **A. SECTION 271 PROMISES U S WEST THAT IT WILL BE REWARDED WITH THE**
4 **OPPORTUNITY TO PROVIDE INTERLATA SERVICES ONCE ITS LOCAL MARKETS ARE**
5 **OPENED TO COMPETITION.**

6 The Telecommunications Act of 1996 is intended to bring competition to both the local
7 and long distance telecommunications markets throughout the country. In exchange for a BOC
8 opening its local exchange markets to competition, Section 271 dictates that the BOC will be
9 rewarded through entry into that state's interLATA long distance market. There are four principal
10 components to Section 271. First, U S WEST must satisfy "Track A," which requires, among
11 other things, that a Competitive Local Exchange Carrier (CLEC) is serving both residential and
12 business customers principally over its own facilities. Second, U S WEST must offer evidence
13 that it satisfies the 14 point competitive checklist. Third, U S WEST's entry into the interLATA
14 market must be in the public interest. Fourth, U S WEST must show that it is prepared to offer
15 interLATA services through a separate subsidiary pursuant to Section 272 of the Act.

16 The Act anticipates that, if the local market is open to competition, CLECs will enter the local market, or at least
17 be able to enter it via (1) resale, (2) unbundled network elements (UNEs), and (3) facilities-based
18 bypass. There is substantial evidence that U S WEST's efforts to open Washington's local market
19 are working. The following data show that competitors are availing themselves of all three modes
20 of entry in Washington:

- 21 1. With respect to resale, as of December 31, 1999 U S WEST had provisioned
22 23,888 resold lines in Washington and 431,641 throughout U S WEST's 14
23 state region.
2. With respect to UNEs, as of December 31, 1999 U S WEST had provisioned
6,526 unbundled loops in Washington and 44,578 throughout U S WEST's
14 state region.
3. With respect to facilities based bypass, as of December 31, 1999,

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2 U S WEST had ported 65,090 numbers to CLECs and had included 21,151
3 CLEC numbers in U S WEST's white page directory.

- 4 4. Finally, as of December 31, 1999, 19 CLECs had 272 operational
5 collocations in 60 of U S WEST's 115 central offices. From these
6 collocations, CLECs have access to almost 90 percent of U S WEST's
7 access lines in Washington. Thus, CLECs are positioned well to compete
8 as they choose.

9 This is just some of the evidence which shows that U S WEST's market opening efforts in
10 Washington are working. Thus, it is an appropriate time to proceed with Washington's Section
11 271 proceeding through a series of workshops.

12 **B. U S WEST ASKS THE COMMISSION TO ASSESS U S WEST'S SATISFACTION OF SECTION**
13 **271 IN A SERIES OF INDUSTRY WORKSHOPS.**

14 Section 271 cases are not traditional proceedings that lead to a final Commission decision.

15 Unlike traditional adjudicative proceedings, the Commission does not make the ultimate
16 determination on whether U S WEST satisfies Section 271. The express language of Section
17 271(d) vests the FCC with exclusive jurisdiction to determine whether U S WEST satisfies Section
18 271. The Washington Commission does, however, have an important role in the 271 process.
19 Section 271(d)(3) states that the FCC "shall consult with State commission" in advance of issuing
20 its ultimate decision.

21 To date, the FCC has issued six Section 271 decisions, and in virtually every instance the
22 FCC stressed the importance of the state commission to the 271 process. The FCC has defined the
23 state commission's primary goal as development of "a comprehensive factual record concerning
BOC compliance with the requirements of section 271 and the status of local competition. . . ."³

³ See, e.g., *Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services In Michigan*, Memorandum Opinion and Order, CC Docket No. 97-137, Memorandum Opinion and Order, ¶30 (rel. Aug 19, 1997) ("*Ameritech Michigan Order*").

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The FCC promises to “consider carefully state determinations of fact that are supported by a detailed and extensive record.”⁴

In the case of Bell Atlantic’s Section 271 Application in New York, the FCC gave the recommendation by the New York Commission “substantial weight” because of the “rigorous collaborative process” utilized. As part of this rigorous process, the FCC cited the New York Commission's collaborative sessions and technical workshops in which all parties participated to clarify or resolve issues.⁵ Many state commissions in addition to New York have used, or are utilizing, workshops to develop a record. These states include Texas, California, Georgia, and Florida. In U S WEST’s region, U S WEST is currently participating in workshops in Arizona and with the ROC, which have been extremely productive to date. U S WEST also expects to commence workshops in Colorado in the near future.

FCC Commissioner Michael K. Powell aptly summarized the benefits of a collaborative process to Section 271 applications:

[W]e could have done much more if we had the time and resources to work more cooperatively with [the BOC] to reach agreement on many checklist items . . . Section 271 review is inefficient if it results in an applicant having to file two and three times just to obtain a clear picture of what it is doing right and what it is doing wrong. I believe we must do more to adopt a new approach to this process if we hope to provide the clarity that BOCs and new entrants need to open local markets . . . I do not question that the BOC does and should bear the burden of proof, but I believe we could do much more to help develop and implement a workable, collaborative framework for promoting compliance with section 271, rather than relying on burdens of proof and other adjudicative devices to dispense with these applications.⁶

⁴ *Application of BellSouth Corporation Pursuant to Section 271 of the Communications Act of 1934, as amended to Provide In-Region InterLATA services in Louisiana*, CC Docket No. 98-121, Memorandum Opinion and Order, FCC 98-271, ¶ 9 (rel. Oct. 13, 1998) (“*BellSouth Louisiana Second Order*”).

⁵ *BellAtlantic New York Order* at ¶¶ 6 – 13 and 20.

⁶ *Application by BellSouth et al. Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide InterLATA Services in South Carolina*, CC Docket No. 97-208, Memorandum Opinion and Order, 13 FCC Rcd 539, (BellSouth South Carolina Order), Separate Statement of Commissioner Michael K. Powell.

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2 Assessing U S WEST's satisfaction of Section 271 in a series of industry workshops
3 should benefit all involved. Competitors and U S WEST will benefit from a prompt resolution of
4 issues affecting the local market. Consumers will benefit from enhanced competition in both the
5 local and interLATA markets. As experience has shown both within and outside of U S WEST's
6 region, the workshop process is the best method for processing these dockets; therefore,
7 U S WEST encourages the Washington Commission to modify its current 271 procedure and
8 utilize the workshop process.

9 **THE FCC HAS CREATED A LEGAL FRAMEWORK FOR ANALYZING SATISFACTION OF SECTION**
10 **271.**

11 To maximize the use of these proposed workshops, the Commission should recognize and
12 utilize the FCC's framework for assessing 271 issues. First, the FCC created a two prong test that
13 U S WEST must satisfy with respect to each of the 14 items on the checklist. To determine
14 whether U S WEST is "providing" each checklist item, it must:

15 . . . demonstrate [1] that it has a concrete and specific legal obligation to furnish
16 the item upon request pursuant to a state-approved interconnection agreement or
17 agreements that set forth prices and other terms and conditions for each
18 checklist item, and [2] that it is currently furnishing, or is ready to furnish, the
19 checklist item in the quantities that competitors may reasonably demand and at
20 an acceptable level of quality.⁷

21 To meet the first aspect of the test, that U S WEST has a "concrete legal obligation" to
22 provide a checklist item, U S WEST can cite language in any existing interconnection agreements
23 or it can file a "Statement of Generally Available Terms" (SGAT) pursuant to Section 252(f) of
the Act. U S WEST plans to rely on a Washington SGAT as its primary means to meet this piece

⁷ *Id.* at ¶ 54.

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of the FCC’s test. The SGAT will spell out in detail how U S WEST will offer each item on the competitive checklist to CLECs. The SGAT will provide a common document to frame discussions about U S WEST’s legal obligations. Once in effect, the SGAT will also provide another alternative that CLECs can opt into or select from pursuant to Section 252(i). To U S WEST’s knowledge, other states throughout the country have used SGATs as the basis for confirming that their respective ILECs have a concrete and specific legal obligation to furnish each checklist item.

The second piece of the FCC’s test is to establish that U S WEST can provide each checklist item at an “acceptable level of quality.” U S WEST has developed a series of performance measures to track its performance. These measures have been developed in Arizona 271 workshops and continue to be refined in ROC workshops. The performance data generated will be analyzed to assess whether U S WEST is offering the checklist item to CLECs on a nondiscriminatory basis. To establish “nondiscriminatory” treatment, the FCC has again provided guidance. When U S WEST performs the same function for itself or its retail customers (i.e., a retail analogue exists), it must offer the item at parity meaning in “substantially the same time and manner” as it provides the item to itself.⁸ When no retail analogue exists, however, U S WEST must provide the checklist item such that an “efficient competitor has a meaningful opportunity to compete.”⁹ In the latter circumstance, a performance “benchmark” will be set in the ROC process to define U S WEST’s expected performance.

U S WEST has the burden to establish by a preponderance of the evidence that it meets

⁸ *BellAtlantic New York Order* at ¶ 44.
⁹ *Id.*

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both prongs of this test as to each checklist item.¹⁰ However, “[o]nce the BOC has made such a showing, opponents must produce evidence and arguments to show that the application does not satisfy the requirements [of that portion] of section 271, or risk a ruling in the BOC’s favor.”¹¹ To meet their burden, CLECs must present substantial evidence that U S WEST does not meet the checklist item. “Mere unsupported evidence in opposition will not suffice.” Similarly, “anecdotal evidence” or “isolated incidents may not be sufficient . . . to overcome the BOC’s *prima facie* case.”¹² U S WEST recommends that the Commission utilize these same standards during the proposed collaborative workshops.

THE COMMISSION SHOULD HOLD WORKSHOPS ON EACH ASPECT OF SECTION 271.

As stated earlier, Section 271 has four distinct components. OSS issues do not touch three of these subjects and only affect certain of the 14 checklist items. Each of the 14 checklist items can then be placed in two categories: (1) checklist items that the Commission can address independent of the OSS collaborative test; and (2) checklist items which have aspects that the Commission can address independent of the OSS collaborative test. Intervenors in other states have argued that the latter category should be deferred until the OSS test is complete. Any suggestion that the Commission should defer consideration of one or more checklist items is misplaced. Neither the New York nor Texas Commissions, the two states widely acknowledged to be farthest along in the workshop process, deferred consideration of checklist items until the OSS test was complete. The New York Commission considered Bell Atlantic’s compliance with checklist items concurrently with third party OSS testing by KPMG. The Texas Commission conditioned Southwestern Bell

¹⁰ *Id.* at ¶ 48.
¹¹ *Id.* at ¶ 49.
¹² *Id.* at ¶ 50.

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Section 271 approval upon the satisfactory completion of third party OSS testing. The Nebraska Commission, the state farthest along in-region, has considered every aspect of Section 271 in advance of analyzing whether U S WEST's OSSs are adequate.¹³

Moreover, as previously discussed, the first-prong of the FCC's two-prong test requires U S WEST to have a concrete legal obligation to provide each checklist item to CLECs upon request. Obviously, contractual provisions cannot be assessed in the testing process. Workshops will, therefore, provide a forum for the parties to debate and discuss the adequacy of U S WEST's respective checklist offerings. For example, U S WEST will bring forth evidence on how it offers CLECs access to collocation during the workshop to discuss Checklist Item Number 1. There is no need to defer this discussion until after the OSS test is complete.

Nonetheless, because there may be a desire to process those checklist items that are unaffected by OSS first, U S WEST submits the following table outlining those aspects of 271 independent of OSS and those affected by it.

¹³ In any case, the Nebraska Commission has and will be considering all of the checklist items concurrent with the upcoming ROC OSS test.

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SECTION 271 ITEM	INDEPENDENT OF OSS	AFFECTED BY OSS
TRACK A: STATUS OF COMPETITION	4	
CHECKLIST ITEM 1: INTERCONNECTION & COLLOCATION		4
CHECKLIST ITEM 2: ACCESS TO UNEs		4
CHECKLIST ITEM 3: POLES, DUCTS CONDUITS AND ROW	4	
CHECKLIST ITEM 4: LOOPS		4
CHECKLIST ITEM 5: TRANSPORT		4
CHECKLIST ITEM 6: SWITCHING		4
CHECKLIST ITEM 7(I): 911/E911	4	
CHECKLIST ITEM 7(II): DIRECTORY ASSISTANCE	4	
CHECKLIST ITEM 7(III): OPERATOR SERVICES	4	
CHECKLIST ITEM 8: WHITE PAGE LISTINGS	4	
CHECKLIST ITEM 9: NUMBER AD MINISTRATION	4	
CHECKLIST ITEM 10: SIGNALING & ASSOCIATED DATABASES	4	
CHECKLIST ITEM 11: NUMBER PORTABILITY		4
CHECKLIST ITEM 12: DIALING PARITY	4	
CHECKLIST ITEM 13: RECIPROCAL COMPENSATION	4	
CHECKLIST ITEM 14: RESALE		4
SECTION 272: SEPARATE LONG DISTANCE SUBSIDIARY	4	
PUBLIC INTEREST	4	

Thus, U S WEST strongly recommends that the Commission hold workshops on each aspect of Section 271 during the pendency of the ROC OSS test. Holding workshops now will provide U S WEST with the opportunity to take corrective action on 271 items, if necessary, in parallel

1
2 with the OSS testing, thereby bringing the benefits of 271 satisfaction to Washington consumers
3 that much more quickly.

4 **E. U S WEST'S PROPOSED WORKSHOP SCHEDULE AND PRINCIPLES.**

5 Given all of these factors, U S WEST respectfully
6 requests that the Commission schedule a series of collaborative
7 workshops on each aspect of Section 271. U S WEST recommends that
8 the workshops be timed to complete at approximately the same time
9 as the OSS test, currently September 2000. Consequently, U S WEST
10 suggests the following workshop schedule:

DATE & PROJECTED LENGTH	SECTION 271 ITEM(S)
MARCH 1, 2000	U S WEST to file SGAT
MARCH 2000	Checklist item 8: White Page Listings
(1 DAY)	Checklist item 9: Number Administration
	Checklist item 12: Dialing Parity
APRIL 2000	Checklist item 7: 911/E911 services,
(1 DAY)	Directory assistance, and Operator services
	Checklist item 10: Access to signaling and databases
APRIL 2000	Confirmation by Commission of Adequacy of
(1-2 DAYS)	ROC's OSS Test Plan and Performance Indicators
MAY 2000	Checklist item 3: Poles, Ducts, Conduits and
(1 DAY)	ROW
	Checklist item 13: Reciprocal Compensation
JUNE 2000	Section 272: Separate Long Distance
(1-2 DAYS)	Subsidiary
	Checklist item 14: Resale
JULY 2000	Checklist item 1: Interconnection and
(2 DAYS)	collocation
AUGUST 2000	Checklist item 4: Loops
(3 DAYS)	Checklist item 11: Number Portability
SEPTEMBER 2000	Checklist item 2: Combinations of Elements
(2 DAYS)	Checklist item 5: Transport
	Checklist item 6: Switching

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2 **OCTOBER 2000 Public Interest**
3 **(1-2 DAYS)**

4 U S WEST recommends that Track A issues - the status of
5 competition in Washington - be addressed during the course of the
6 workshops. For example, as each checklist item is discussed,
7 U S WEST should describe the commercial demand for the item.
8 Similarly, the Commission should require that competitors
9 delineate their current or projected use of the checklist item.
10 Finally, in the last workshop on public interest, U S WEST should
11 provide the Commission with a summary of the then current demand
12 for each checklist item so the Commission can compare how
13 commercial demand has changed over the course of the year.

14 The FCC has also strongly encouraged states to create a
15 process that is open to all parties. Thus, the Commission should
16 consider including the following principles in its workshops
17 irrespective of the procedure that it opts to use.

18 **PURPOSE:** The workshops should provide a forum for all
19 affected parties to educate the Commission and openly
20 discuss each aspect of Section 271, as well as the
21 affected portions of the SGAT. It should be incumbent on
22 the parties to raise all known disputed issues.

23 **RECORD:** The workshops should be transcribed so that a formal
record is produced.

OPENNESS: The workshops should provide a forum for all
parties to express their opinions. All parties should have
the opportunity to file written comments and present oral
comments on each 271 item. No party should be excluded from
any discussion or aspect of the docket.

Use of these basic tenets should ensure that the process allows a

1
2 full airing of the issues; allows full participation in the
3 process by all parties; creates a thorough record for the FCC's
4 consideration; and allows the Commission to resolve this important
5 docket in a timely fashion.

6 III. CONCLUSION

7 U S WEST understands that Section 271 subsumes numerous
8 issues and, therefore, will require substantial effort. U S WEST
9 is open to any of the many different alternatives available to the
10 Commission for processing these workshops. For example, the
11 Commission could schedule workshops, as other states have done,
12 and utilize staff and/or a consultant to independently manage the
13 workshops. The Commission could collaborate with another state or
14 several states, as has the ROC, to help alleviate the workload.
15 The Commission could also take administrative notice of the
16 substantial progress made in ongoing workshops in other states.
17 U S WEST is confident additional alternatives exist and is willing
18 to discuss virtually any method. U S WEST simply asks the
19 Commission to time the workshops to complete at approximately the
20 same time as the OSS test.

21 For all of the foregoing reasons, U S WEST respectfully
22 requests that the Washington Commission issue an Order that:

23 Modifies the procedure set forth in the Commission's June 24,
1997 Order;

Orders a series of Section 271 workshops;

Adopts a schedule that will allow completion of the
workshops at approximately the same time as the ROC

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OSS test; and
Allows all interested parties to discuss fully, fairly,
and openly each aspect of Section 271.

Dated this __ day of February, 2000.

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