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BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

I.INTRODUCTION

On February 4, 2000, U S WEST detailed its request that the Washington Utilities and Transportation Commission (Commission) process this 271 docket through a series of collaborative workshops rather than a formal evidentiary hearing. Though most intervenors encourage the use of workshops,¹ they identify assorted reasons why the Commission should also

¹ Nextlink, ELI, and ATG "agree that a collaborative process, including multiple workshops on individual checklist items would facilitate Commission and party review. *Nextlink, ELI, and ATG reply, p. 1, (February 4, 2000)*; AT&T and MCI do not oppose the use of workshops generally, but they question the need to develop a workshop schedule and procedure at this time. *AT&T and MCI joint initial comments, p. 1 (February 4, 2000)*; Public Counsel recognizes that it is reasonable for the Commission to consider whether the significant national experience with section 271 over the last two years warrants modification of Washington's approach. *Public Counsel Response, p. 1 (February 4, 2000)*.

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2 conduct an evidentiary hearing and/or require U S WEST to file a formal application. These
3 suggestions would lead to unnecessary, duplicative and wasteful effort for all involved. The FCC
4 and state commissions throughout the country have uniformly concluded that workshops, and
5 workshops alone, provide the best, most efficient, most comprehensive means by which to manage
6 271 dockets. The Commission should follow this national trend.

7 II.DISCUSSION

8 The FCC Will Afford “Substantial Weight” To State Commission Recommendations That 9 Use Workshops To Assess Section 271 Satisfaction.

10 Over the past two and one-half years, the FCC and state commissions throughout the
11 country have all recognized that collaborative workshops, not adversarial hearings, are the most
12 effective means by which to process Section 271 proceedings. The FCC has consistently
13 encouraged state commissions to develop comprehensive factual records² and promised to
14 “consider carefully state determinations of fact that are supported by a detailed and extensive
15 record.”³ Many state commissions, including New York, Texas, California, Georgia, Florida, and
16 Arizona, have used, or are utilizing, workshops to develop comprehensive factual records.

17 In the case of Bell Atlantic’s Section 271 Application in New York, the FCC gave the
18 recommendation by the New York Commission “substantial weight” because of the “rigorous
19 collaborative process” utilized. As part of this rigorous process, the FCC cited the New York
20 Commission's collaborative sessions and technical workshops in which all parties participated to

21 ² 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.

22 ³ *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
23 98-271, ¶ 9 (rel. Oct. 13, 1998) (“*BellSouth Louisiana Second Order*”).

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clarify or resolve issues.⁴ U S WEST encourages the Commission to institute such a process.

Despite all of the resistance to U S WEST’s proposal, there is virtually no dispute that collaborative workshops on each aspect of Section 271 would be beneficial. Instead, intervenors assert that workshops alone are not enough. The additional steps proposed by intervenors fall into three general categories: (1) U S WEST should be required to file a complete application because workshops will not generate a complete record; (2) U S WEST should be required to present its case in an evidentiary hearing because the evidence may change between the workshop and the Commission’s recommendation to the FCC; and (3) U S WEST is legally required to present its case in a formal evidentiary hearing. As will be explained below, each of these assertions falls wildly off the mark and ignores key learnings of the FCC and state commissions throughout the country.

The Proposed Collaborative Workshops Will Generate A Comprehensive Record For This Commission And The FCC To Evaluate.

Several intervenors recommend that the Commission require U S WEST to file a “complete application” before workshops commence. Intervenors rationalize that this will ensure that the Commission and the FCC have a complete record to evaluate. Intervenors mistakenly assume that U S WEST does not plan to file detailed testimony. U S WEST fully intends to file detailed testimony well in advance of each workshop on the issues scheduled to be discussed in the workshop.

U S WEST does not propose workshops without testimony; much to the contrary, workshops without testimony would be a futile exercise. U S WEST understands that it bears the

⁴ *BellAtlantic New York Order* at ¶¶ 6 – 13 and 20.

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initial burden of proof and therefore must provide the Commission with detailed evidence.

U S WEST only asserts that the testimony should be filed in stages, not all at the beginning of the process. Experience shows that filing a “complete application” leads to unnecessary work, delay, and inefficiency for all involved. In each of the three states where U S WEST currently has a 271 application pending, it initiated the process with many thousands of pages of testimony. However, by the time most of the testimony was (or will be) scrutinized it was so stale that U S WEST, and consequently the intervenors, had to file supplemental testimony to bring the original testimony current. This occurred in Montana, Nebraska and Arizona.

For example, Arizona started its checklist item workshops 10 months after U S WEST filed its complete application.⁵ Consequently, much of the testimony U S WEST filed will have to be updated to account for legal developments and changes in the parties’ respective business positions. This does not only generate additional work for U S WEST. Intervenors and Staff alike studied the thousands of pages of outdated testimony.

The recent Bell Atlantic decision supports this position as well. Bell Atlantic did not complete its New York filing for the FCC until after the workshop process was complete. Moreover, Bell Atlantic submitted its application to the FCC within weeks of completing the workshops. At that time it filed a comprehensive record containing its testimony, updated to reflect any positions agreed to in the workshops; supporting documentation; and workshop transcripts.

U S WEST’s suggestion that testimony and supporting documentation be filed on a rolling

⁵ Though U S WEST has not needed to file pre-filed testimony for the checklist items that have been discussed to date, this will not be true for all of the checklist items.

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basis actually aids the intervenors. They have complained that the request for workshops places an undue burden on their resources. By handling the production of direct and rebuttal testimony on a rolling basis, U S WEST, intervenors and Staff alike are spared the burden of having to prepare and update large amounts of testimony and supporting documentation addressing U S WEST's satisfaction of various checklist items. Instead, parties can focus upon responding to the checklist item(s) at issue in the scheduled workshop. Not only will this reduce the workload, it should improve the quality of all parties comments by allowing them to focus upon the checklist items at issue in a particular workshop.

The FCC's Legal Framework Ensures The Commission's Recommendation Will Be Based On Accurate Information.

Some intervenors assert workshops alone create the potential for the Commission to make a determination on stale, inaccurate information because the information may have changed since it was presented in the workshop. The FCC has created a legal framework to prevent against this very thing. As explained above, U S WEST bears the initial burden of proof as to each aspect of Section 271. Once U S WEST establishes a *prima facie* case, however, whether as to Track A, Section 272, public interest or for any checklist item, the burden shifts to the intervenors to "produce evidence and arguments to show that the application does not satisfy the requirements of section 271 [for the checklist item at

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2 issue], or risk a ruling in the BOC's favor."⁶ Thus, once the Commission
3 finds that U S WEST satisfies a particular issue, the intervenors have the right to bring forth new
4 evidence to show that U S WEST is no longer in compliance.⁷ Thus, the FCC's legal framework
5 was created to negate this very concern.

6 **There Is No Requirement For The Commission To Hold An Evidentiary Hearing.**

7 U S WEST strongly disagrees with the myriad of arguments that workshops alone are
8 inadequate. First, it disagrees with the suggestion that the proposed workshop process is
9 "informal" and therefore inadequate.⁸ The FCC did not consider the New York Commission's
10 workshop process "informal." To the contrary, it found it "particularly important" to the success
11 of Bell Atlantic's application.⁹

12 Second, U S WEST disagrees that prefiled testimony, workshop discussions, and any
13 commitment made by U S WEST during the course of the workshops are not sufficient to enable
14 the Commission to make a recommendation concerning U S WEST's compliance. The parties'
15 testimony and supporting documentation, workshop transcripts, the SGAT and interconnection
16 agreements, OSS testing results, and performance indicator information will provide the
17 Commission with the comprehensive factual record necessary to produce a recommendation

18 ⁶ *Id.* at ¶ 49; Application of BellSouth Corp., BellSouth Telecomm., Inc., and BellSouth Long Distance, Inc. for
19 Provision of In-Region, interLATA Services in Louisiana, CC Docket No. 98-121, Memorandum Opinion and Order
20 ¶ 52 (rel. Oct. 13, 1998) ("Second BellSouth Louisiana Order").

21 ⁷ Intervenors cannot bring forth just any material, however. The FCC does not require "perfection"
22 from BOCs. "Mere unsupported evidence in opposition will not suffice," and "anecdotal evidence"
23 or "isolated incidents may not be sufficient . . . to overcome the BOC's *prima facie* case." *Id.* at ¶
50.

⁸ *Public Counsel Response*, p. 2 (February 4, 2000).

⁹ *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*").

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deserving substantial weight from the FCC.

Third, notwithstanding suggestions to the contrary, U S WEST’s request for workshops does not challenge other aspects of the Commission’s existing procedure. The suggestion that U S WEST will not comply with the 90 day advance notification of FCC filing is wrong. U S WEST’s February 4th filing serves as U S WEST’s advance notification of FCC filing. U S WEST desires to satisfy a number of milestones before making its FCC filing, including obtaining the Commission’s recommendation concerning its checklist compliance and the adequacy of its OSS systems. Rather than limiting consideration of its application to a 90 day time period, U S WEST is proposing the workshop process with the belief that a less adversarial approach will lead to more productive dialog and results.

Fourth, intervenors suggestion that the Commission “cannot make a formal determination as to USWC’s compliance with Section 271 as required by the Act without a formal adjudicative proceeding” is simply wrong.¹⁰ Section 271 does not require a “formal” determination. It requires the Commission to make a recommendation to the FCC. Neither New York nor Texas required a formal adjudicatory proceeding. Both of those states filed with the FCC immediately upon completion of their workshop processes.

Fifth, U S WEST strongly objects to the suggestion of various intervenors that the Commission should combine workshops with the existing adversarial process. This would only create significant inefficiencies and opportunity to game the system. Parties would have less incentive to constructively participate fully in workshops. Instead, they could bide their time, let the workshops proceed, and raise issues for the first time in the adversarial proceeding that could

¹⁰ *Sprint Comments*, p. 1 (February 4, 2000).

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have been discussed in the workshops. This would delay constructive evaluation of U S WEST's Section 271 Application.

Finally, U S WEST takes issue with the suggestion that its request is void of any substantive basis.¹¹ The substantive basis for its request is the comparison between the results achieved by Bell Atlantic in New York and the results achieved by parties that relied on a more traditional, adversarial approach. Participants in the New York process discussed checklist items in a more constructive manner and closed more issues than have participants that relied upon a more traditional, adversarial approach. The New York Commission developed a better record than did the state commissions in proceedings that relied upon a more traditional, adversarial approach. The consumers of New York now experiencing the twin benefits of local and interLATA competition well in advance of consumers in any other state. For these reasons, U S WEST asks the Commission to 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.

¹¹ *TRA Response*, p. 1 (February 4, 2000).

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B. Section 271 Satisfaction Is Critical To Telecommunications Competition; U S WEST's Proposed Workshop Process Will Ensure The Workshops Develop A Timely and Complete Record.

Intervenors suggest that the workshop process proposed by U S WEST may unnecessarily strain limited resources and create a duplicate effort. Consequently, they ask the Commission to delay scheduling workshops until after the ROC completes its investigation of U S WEST's Operational Support Systems (OSS). U S WEST is sensitive to resources issues; however, it is also sensitive to the interest of the Commission, CLECs, U S WEST, and Washington consumers in finally realizing the full promise of the Telecommunications Act of 1996. Section 271 approval will increase competition in both the local market and interLATA markets, as the citizens of New York can attest. Thus, U S WEST's proposal would allow completion of the 271 process roughly contemporaneously with completion of the ROC OSS testing.

It is true that Section 271 applications involve significant undertakings for the Commission, U S WEST, and intervenors alike. The return on these undertakings for all concerned parties and for Washington consumers outweighs any potential strain on resources.

Several intervenors complain that U S WEST did not detail how it anticipated the workshop process to function. U S WEST thought the structure of the workshops would be established through joint discussions between the interested parties. Given the request, however, U S WEST is pleased to provide its thoughts. As it has in Arizona and Minnesota, U S WEST proposes the following workshop processes.

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U S WEST's Reply to
Response of Intervenors

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- 20 days before each workshop, interested parties can submit written comments on the 271 issues scheduled for the workshop;
- 10 days before each workshop, each party can submit written rebuttal comments on the 271 issues scheduled for the workshop;
- 20 days after each workshop, the party overseeing the workshop will submit proposed findings on the 271 issues discussed in the workshop; and
- 10 days after submission of the proposed findings, parties can submit written comments on disputed issues for Commission resolution.

For this process to work as it should, the Commission should require parties to submit all known evidence supporting the assertions in their written comments that predate workshops. This is necessary to provide parties with a full opportunity to investigate issues in advance of the workshop and fully discuss issues at the workshop. This should ensure that the workshops are as productive as possible. Of course, U S WEST would not object to oral comments, documents, or exhibits not contained in written comments if they are new or they are necessary to address materials in another party's rebuttal comments.

As evidenced by these suggestions, U S WEST envisions a process modeled upon New York and Texas, and U S WEST's own experience in Arizona. U S WEST envisions a process where it submits written testimony and supporting information/documentation establishing that it satisfies a particular checklist item; intervenors submit written testimony and supporting information/documentation identifying their concerns; parties participate in workshops and discuss their concerns; parties resolve as many issues as possible during the workshop(s); the party

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running the workshop tracks areas of disagreement, prepares a report following each workshop, and submits this report for the Commission's consideration; and then the Commission can decide whether U S WEST has satisfied a particular 271 issue. This process would be repeated until the Commission has fully evaluated each aspect of Section 271.

•III.CONCLUSION

Experience has shown that the workshop process is the best method for processing Section 271 dockets; therefore, U S WEST encourages the Commission to modify its current 271 procedure accordingly. Assessing U S WEST's satisfaction of Section 271 in a series of industry workshops will benefit all involved. The Commission will benefit from the creation of a comprehensive record. Competitors and U S WEST will benefit from a prompt resolution of issues affecting the local market. And, most importantly, consumers will benefit from enhanced competition in local and interLATA markets.

Dated this 11th day of February, 2000.

Respectfully submitted,

• By: _____
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