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July 7, 2000

## VIA MESSENGER

Ms. Carole J. Washburn  
Carole J. Washburn, Executive Secretary  
Washington Utilities & Transportation Commission  
1300 S. Evergreen Park Drive SW  
P.O. Box 47250  
Olympia WA 98504-7250

Re: U S WEST Petition for Competitive Classification, Docket No. UT-000883

Dear Ms. Washburn:

On June 7, 2000, U S WEST Communications, Inc. ("U S WEST") filed a petition in the above-referenced docket seeking to have the Commission determine that U S WEST's business services in selected wire centers should be classified as competitive. NEXTLINK Washington, Inc., Electric Lightwave, Inc., Focal Communications Corporation, McLeodUSA Telecommunications Services, Inc., Winstar Wireless, the Association for Local Telecommunications Services ("ALTS"), and the Association of Communications Enterprises, f/k/a Telecommunications Resellers Association ("ASCENT") oppose U S WEST's Petition and urge the Commission, at a minimum, to suspend and investigate that petition.

The Commission may classify a service as competitive if it finds that the service is subject to "effective competition," which the legislature has defined to mean "that customers of the service have reasonably available alternatives and that the service is not provided to a significant captive customer base." RCW 80.36.330. On its face, U S WEST's supporting evidence does not demonstrate the existence of effective competition for business services anywhere in Washington, and additional evidence would demonstrate that no such competition currently exists.

Alternative providers of business service cannot make comparable services available to customers unless they can access those customers' locations, either directly through the competitors' own network or by using portions of U S WEST's network. U S WEST has provided maps purporting to show the locations of competitors' networks

in the areas for which U S WEST seeks competitive classification, but even if accurate, those maps demonstrate that no competitor or combination of competitors approaches duplication of U S WEST's network. Indeed, U S WEST has repeatedly attempted to use this fact as a justification for treating CLEC switches as end offices for reciprocal compensation purposes.

Accordingly, competitors can provide access to the majority of business customers only by using U S WEST facilities, including unbundled loops. U S WEST, however, offers no evidence that it is providing competitors access to its network pursuant to rates, terms, and conditions that are fair, just, reasonable, and nondiscriminatory. U S WEST thus has failed to demonstrate that CLECs are readily able, and will continue to be able, to provide service to business customers at competitive rates, terms, and conditions.

To the contrary, available evidence demonstrates that U S WEST refuses to comply with its obligations under federal and state law, effectively undermining business consumer choice. U S WEST's continued refusal to provide access to and interconnection with its network to competitors includes the following:

(1) Failure to Provision Interconnection Facilities. Despite the Commission's decision in MCImetro's complaint against U S WEST in Docket No. UT-971063, U S WEST continues to refuse to fund sufficient facilities needed for intercarrier interconnection. U S WEST, for example, has unnecessarily delayed provisioning interconnection facilities to Focal for several months based on an alleged lack of facilities, and has essentially denied interconnection at one central office, stating that U S WEST has no funding committed to establishing new facilities in that office.

(2) Failure to Provision Loop Facilities. U S WEST continues to fail to provision loop facilities to competitors within the same period of time U S WEST provisions such facilities for its retail customers. For example, between 25% and 70% of the total number of orders NEXTLINK has submitted to U S WEST for Spokane from August 1, 1999, to February 1, 2000, were or are "held," *i.e.*, not provisioned when due, and the average amount of time that these orders remain held is 45 days.

(3) Failure to Maintain and Repair Loop Facilities. U S WEST's maintenance and repair record for facilities provided to competitors is abysmal. For example, between November 1, 1999, and January 28, 2000, NEXTLINK customers experienced 195 outages or other service interruptions attributable to U S WEST on facilities it provides to customer premises, and many of these interruptions occurred repeatedly on the same facility. Of those service interruptions, the average time U S WEST took to correct the problem was 57 hours, and in some cases, U S WEST never fixes the problem.

(4) Failure to Make Collocation Space Available. U S WEST seeks competitive classification for business services for customers served by the Bellevue Glencourt central office, but collocation space is exhausted in that central office. No competitors other than those who are already collocated, therefore, can access U S WEST facilities in that office, nor will collocated carriers be able to serve any additional customers once their collocated equipment reaches capacity. Accordingly, U S WEST has a captive customer base in the area served by the central office and will continue to enjoy that monopoly for the foreseeable future.

(5) Refusal to Permit Collocators to Interconnect. U S WEST has stated that it will no longer permit CLECs collocated in a central office to interconnect their facilities in that central office. Without this ability, CLECs cannot use the networks of other CLECs to provide transport between U S WEST central offices, requiring CLECs to use only their own networks or U S WEST's network, to the limited extent U S WEST makes its network available. Not only does this decision preclude a finding that U S WEST's business services are competitive, it would justify reclassification of U S WEST's high capacity services as monopoly, rather than competitive, services.

(6) Imposition of Penalties on Conversion to UNEs. The FCC recently reiterated its requirement that ILECs convert retail services that CLECs use to serve their local exchange customers to UNEs upon request. U S

WEST has informed carriers that have investigated such conversions that if these facilities are used to provide local service, they are subject to monthly recurring charges of \$25 per DS-0, \$600 per DS-1, and \$16,800 per DS-3 applied *retroactively* to the date when these facilities were provisioned as a retail service. U S WEST thus continues to attempt to evade its responsibility to provide facilities to competitors at TELRIC-based rates.

The information U S WEST provides in support of its Petition does not address how competitors can access most of the business customers in the exchanges in which U S WEST seeks pricing flexibility when U S WEST systematically denies competitors access to its network. U S WEST's Petition, therefore, does not demonstrate that alternative providers have the ability "to make functionally equivalent or substitute services readily available" to business customers in the defined geographic areas. RCW 80.36.330(c).

Nor does U S WEST's Petition prove that alternative providers are able to make such services available "at competitive rates, terms, and conditions." *Id.* To the contrary, Exhibit D to U S WEST's Petition shows that most competitors' basic business rates are *higher* than U S WEST's retail rate, and competitors' rates are unlikely to decrease once the Commission's pricing decisions in the generic cost proceeding, Docket Nos. UT-960369, *et al.*, become final. U S WEST's basic business exchange rate is \$26.89 per month, with a nonrecurring charge of approximately \$50. CLECs currently pay U S WEST recurring and amortized nonrecurring rates for an unbundled loop of between \$13 and \$15 per month. After the Commission's orders in the generic cost proceeding are final, a CLEC will have to pay U S WEST over \$26 in statewide averaged recurring and nonrecurring charges for an unbundled loop alone<sup>1</sup> – only slightly less than U S WEST's entire retail rate for basic business service – without considering the costs incurred to obtain the collocation necessary to access that loop or the CLEC's own network and other costs.

If most CLECs currently cannot match U S WEST's basic business retail prices paying existing unbundled loop rates, CLECs will not be able to match those prices when unbundled loop rates nearly double. Granting U S WEST competitive classification under these circumstances will inevitably mean higher prices for *all* business customers as CLECs are forced to maintain or raise prices to attempt to recover the charges they pay to U S WEST while U S WEST has the freedom to raise its retail prices to match the CLEC prices. The legislature did not intend to authorize such a result.

U S WEST also has not demonstrated, and cannot demonstrate, that competitors can offer service to all business customers in the designated geographic areas at competitive terms and conditions. The Commission has never established carrier-to-carrier service quality standards for U S WEST's provisioning of facilities to competitors and has repeatedly rejected CLECs attempt to obtain such standards in arbitrations. U S WEST agreed to some wholesale service quality standards as part of a settlement agreement with Commission staff in the Qwest merger, Docket No. UT-991358, but those standards and associated remedies do not even go into effect until next year. Those standards, moreover, virtually guarantee that competitors cannot timely provision service using U S WEST facilities because none of the intervals is shorter than the 5 business days the Commission requires all carriers to provision basic local exchange service to end-user customers. *See* WAC 480-120-051. CLECs thus cannot even comply with the Commission's retail service quality rules, much less compete with U S WEST in provisioning basic business services, when using U S WEST facilities.

U S WEST's Petition ignores this issues and relies instead on indications of *potential* competition, such as the national market capitalization of various competitors and the percentage of revenues they receive from business services. Such information misses the point and cannot form the basis of a Commission finding that effective

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<sup>1</sup> Depending on the Commission's resolution of pending petitions for clarification or reconsideration of its geographic deaveraging order, the unbundled loop rate in some of the wire center areas in which U S WEST seeks competitive classification will be lower than the statewide average (including Seattle Main), but others will approach or exceed the statewide average rate (including Spokane Moran).

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competition currently exists. Even U S WEST concedes that it has no specific information about how data that is more directly related to the Commission's inquiry, including revenues and amount of ported numbers, represents the state of competition in the defined geographic area. No effective competition exists or can exist, however, if competitors cannot obtain access to U S WEST's network or profitably offer service to the business consumers in the defined geographic area.

U S WEST, therefore, has failed to produce evidence sufficient to demonstrate that competitors have sufficient access to U S WEST's network to provide a viable alternative source of basis business service throughout the geographic areas in which U S WEST seeks competitive classification. Accordingly, the Commission either should deny U S WEST's Petition, or should suspend and investigate the Petition to permit a more thorough examination of the requisite factual, policy, and legal issues.

Very truly yours,

Davis Wright Tremaine LLP

Gregory J. Kopta

cc: Lisa Anderl  
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