

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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| In the Matter of the Investigation Into |) DOCKET NO. UT-970300 |
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| U S WEST COMMUNICATIONS, INC.'S |) ORDER ADOPTING SUPPLEMENTAL |
| |) INTERPRETIVE AND POLICY |
| Compliance with Section 271 of the |) STATEMENT ON PROCESS AND |
| Telecommunications Act of 1996. |) EVIDENTIARY REQUIREMENTS |
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I. Introduction

- 1 On October 29, 1997, the Commission issued an Interpretive and Policy Statement on Process for RBOC Application Under Section 271 of the 1996 Telecommunications Act (Interpretive and Policy Statement), in which it established policies and a schedule for conducting its review. The Commission has an obligation under the Telecommunications Act of 1996 (Act) to verify to the Federal Communications Commission (FCC) that U S WEST is in compliance with Section 271(c) of the Act. The schedule called for U S WEST to file with the Commission, a copy of all information that the company will file with the FCC, 90 days prior to the date U S WEST files its application with the FCC.
- 2 U S WEST is now stating its intention to pursue an application to the FCC for authority to provide interLATA toll service in to Washington State customers. It has asked the Commission to consider a proposal to amend the prior Interpretive and Policy Statement to include the provision for workshops in lieu of a 90-day adjudicative process for developing the Commission's recommendation to the FCC. Participants in the oral and written discussions concerning the proposed amendment included U S WEST, Public Counsel, Sprint, TRACER, AT&T/MCI, COVAD, ELI, Nextlink, Rhythms, ATG, and Commission Staff.
- 3 When the Commission issued the 1997 Interpretive and Policy Statement, it called for parties to cooperate in producing a statement of evidence required for the application. The parties engaged in discussions on the topic during 1997 and 1998. Commission Staff then circulated a draft statement of evidence required for the application that reflected a consensus of the parties participating in the discussions. A number of parties, including parties who had not participated in drafting, commented on the draft. Participants and commenters in this process included Commission Staff, Public Counsel, U S WEST, Telecommunications Resellers Association, AT&T, MCI, Sprint, and the Washington Independent Telephone Association. It is now time to adopt the evidentiary requirements.
- 4 The Commission Staff at the March 10, 2000, Commission open meeting, presented a draft Supplemental Interpretive and Policy Statement that would incorporate workshops

into the procedural schedule for this docket and establish evidentiary requirements. The Staff proposal calls for the addition of three workshops, and a fourth if needed, to the procedural schedule for this Docket. It would also require the filing of a preliminary document -- not a full application -- that would set forth an outline of all the documents that U S WEST intends to file in support of its application. The workshop schedule would allow time for discovery and would retain the adjudicative process set out in the earlier policy statement, but the process could be shortened if issues are largely resolved in the workshops.

- 5 In this order, the Commission adopts a policy statement that accepts the Commission Staff proposal, with clarification and modification, to amend the Interpretive and Policy Statement and to adopt proposed evidentiary requirements.

II. Matters Considered in This Order

A. Initial Proposal.

- 6 On January 18, 2000, U S WEST filed a request to modify the process and schedule in the Interpretive and Policy Statement. In ensuing written and oral comments, all parties acknowledged that some aspects of U S WEST's modified three-workshop process were beneficial, while all voiced specific objections to the proposal.

B. Comments, Process Workshop, and Commission Staff Proposal.

- 7 The Commission invited a refined proposal from U S WEST, invited others to comment in two rounds of comments, and convened a workshop to consider the proposal and comments. The Commission Staff, during the March 10, 2000, Commission open meeting, presented a draft Supplemental Interpretive and Policy Statement based on U S WEST's proposal and the comments of others. The Commission Staff proposal incorporates four workshops into the earlier procedural schedule for this docket. It would also require the filing of a preliminary document -- not a full application -- that would set forth an outline of all the documents that U S WEST intends to file in support of its application. Compared with U S WEST's proposal, the Staff draft would lengthen the workshop schedule to allow more time for discovery and preparation of presentations, and would retain the adjudicative process set out in the earlier Interpretive and Policy Statement, but the process could be shortened if issues are largely resolved in the workshops.

C. Evidentiary Requirements.

- 8 The Commission also has reviewed the Commission Staff statement of the parties' agreed evidentiary requirements for the Sec. 271 process and comments received thereon, and

establishes evidentiary requirements as part of the Interpretive and Policy Statement.

D. Commission Decision.

- 9 The parties have provided sufficient information in the process workshop, in their written comments, and at the open meeting presentation to allow the Commission to reach a decision. The Commission therefore grants U S WEST's request, in part, and by this order adopts a supplemental policy statement incorporating workshops into the Section 271 review process and articulating evidentiary requirements for the application.

III. Parties' Positions

A. U S WEST's Proposal:

- 10 **U S WEST's Initial Proposal.** U S WEST filed a skeletal proposal on January 18, 2000. At the Commission's request, U S WEST expanded upon its proposal in a February 4, 2000 filing. U S WEST proposed a series of nine workshops of 1-3 days each starting in March, 2000 and ending in October, 2000. The workshops would take the place of the current 90-day prefiling requirement in the docket. In the workshops, parties would address Section 271 checklist items that are not related to OSS (Operational Support Systems). Later workshops would incorporate aspects of OSS-related checklist items that will not be addressed in the region-wide OSS testing being performed under the auspices of the Regional Oversight Committee (ROC)¹. The company also proposed the use of a Statement of Generally Available Terms (SGAT) as a core document containing U S WEST's legal obligations concerning terms and conditions of service.
- 11 **Modified Workshop Schedule.** During the February 18th session, in response to comments by other participants, U S WEST modified its workshop proposal to consist of three workshops. Under this proposal, workshops would be held in May, August, and October, 2000 and would allow for filing with the FCC prior to the end of 2000.
- 12 **Proposed Workshop Format.** U S WEST proposed that the workshops be transcribed, that workshop participants be placed under oath, and that "loose" cross-examination procedures be used (e.g., cross-examination could be conducted by a lay person, rather than only by an attorney).
- 13 **Discovery.** U S WEST acknowledges that some kind of discovery should be allowed.
- 14 **Disagreements.** Disagreements on issues should be decided by an ALJ or by the Commissioners on a paper record. Evidentiary hearings in addition to the workshop

¹The ROC is comprised of members representing utility regulatory commissions in the states in which U S WEST operates.

process should not be needed.

- 15 **Timing of filings.** U S WEST proposed to file its FCC application with the WUTC on the same day it filed it at the FCC. The Commission would then have 20 days to prepare and forward a recommendation on the filing to the FCC.

B. Responses from Other Participants

- 16 All parties voiced some objections to U S WEST's modified three-workshop process, while all acknowledged that some aspects of the workshop proposal were beneficial. The objections, suggestions, and concerns fell into the following general categories:

- 17 • **U S WEST should file its entire draft application prior to the workshops.** The parties pointed out that in other states where workshops and collaboratives were part of the Section 271 approval process, the RBOC filed a draft application long before the workshop/ collaborative schedule began. The draft application served as the basis for discussion at the workshops and in the case of Bell Atlantic in New York and SBC in Texas, the draft application was updated to reflect the modifications and decisions made during the workshop process.
- 18 • **The proposed schedule is too tight.** The proposed schedule does not allow adequate time for discovery and preparation of parties' presentations. The filing schedule proposed is similar to that in Arizona, which called for initial (rebuttal) comments from parties in 20 days, and responses by U S WEST 10 days after that. However, in Arizona, a complete draft Section 271 application was filed, and over 1,000 discovery requests were issued after the draft application was filed and before workshops commenced. Since then, limited discovery has continued. This proposal does not allow sufficient time for discovery and preparation. The overlapping workshop schedules U S WEST has proposed, with a follow-up workshop for one phase taking place the same day as U S WEST's complete filing of evidence for the next phase, imposes difficult burdens on parties to review new material and conclude a prior process simultaneously.
- 19 • **The proposed schedule does not consider the effect of other proceedings.** Parties mentioned the schedule in the carrier-to-carrier rulemaking, the Qwest/U S WEST merger, generic pricing dockets, and other Washington State proceedings as barriers to attendance and necessary groundwork for the Section 271 hearings. The parties also expressed concern at U S West's intention to pursue similar, contemporaneous workshops in five other states as well as Washington. They stated that they would be spread too thin under the proposed schedule to address their concerns adequately in all states in addition to participating in other ongoing proceedings.
- 20 • **SGAT is unacceptable.** The parties point to language in the Clarification section of the Commission's 1997 Interpretive and Policy Statement stating that a Statement of

Generally Available Terms (SGAT) in pursuit of a “Track B” Section 271 approval option² is not an acceptable option for U S WEST in Washington. They believe the existing arbitrated interconnection agreements should be the basis for legal obligations regarding checklist items.

- 21
- **The proposed schedule does not coordinate well with ROC OSS testing.** U S WEST’s workshop schedule would address OSS-related checklist items before the conclusion of the OSS system testing to be performed under auspices of the ROC. Parties point out that the OSS testing is not expected to be concluded before the end of 2000 at the earliest, and that in Arizona, a procedure for Commission consideration of the results of the OSS testing has not been developed yet.
- 22
- **The proceedings should be structured in a way to invoke the *ex-parte* rule prohibiting parties from discussions with the Commissioners.** The parties believe the proceeding should be adjudicative in nature and that *ex-parte* procedures should be in place. U S WEST believes the proceeding does not need to be adjudicative, since the Commission will not have to decide issues; it will just need to develop a recommendation to the FCC.
- 23
- **The 90-day pre-filing requirement should not be altered.** Parties believe that workshops should augment rather than replace the 90-day consideration period currently ordered in this docket. Parties mentioned the need for an adjudicative hearing to address impasse and contested issues, as well as to address any issues in the FCC filing that have not been raised in the workshops.
- 24
- **Single-party issues.** COVAD advocated a separate workshop for DSL (Digital Subscriber Line) issues.
- 25
- **Workshop structure.** Staff asked the parties whether their concept of *ex parte* would require two Administrative Law Judges (ALJs) to be involved in the process, one to be involved in the workshops and another to conduct the adjudication. U S WEST suggested that either an ALJ or staff/consultant could run the workshops. It reiterated its view that this proceeding is the vehicle for developing the record the FCC will hear, and is not adjudicative. The other parties stated that the workshops should be run by an ALJ, should be adjudicative, and should require that Commissioners be subject to the *ex parte* rule. They did not believe that a separate ALJ would be needed for workshops.

²The Telecom Act contemplated that some states might experience no local exchange competition, and provided that a Section 271 applicant in such states could prove its willingness to provide service to competitors by means of an SGAT in lieu of the experience in actual interconnection agreements. This alternative is designated a “Track B” application.

- 26 • **Public Interest Concerns.** Public Counsel asked U S WEST how public interest concerns would be addressed in the proposed schedule. U S WEST stated that public interest considerations would be addressed throughout the workshop process, and that the Commission could decide at the end of the workshop process whether it needed more time to consider issues raised in the workshop reports.

IV. Commission Decision on Process

27 The Commission heard oral comments on this matter on March 10, 2000. The commenters included Public Counsel, COVAD, MCI-Worldcom, AT&T, U S WEST, and Commission Staff. The parties commented on several matters.

A. Workshop Format

28 Commission Staff proposed an 18-month schedule involving four workshops (the fourth to address matters that have not reached closure or on which impasse exists) and retaining the final 90-day adjudicative process. U S WEST asked that the proposal be shortened by compressing workshop schedules, by overlapping workshop schedules, and by eliminating the fourth workshop and final adjudication. Other commenters opposed the suggestion.

29 Consistent with all parties' comments, the Commission will adopt the workshop format. We adopt the Commission Staff proposal of four workshops, but the fourth, available to deal with impasse items and any matters that have not been previously addressed, is required only if needed.

30 The workshop process should be considered adjudicative in nature. The Commission's formulation of its recommendation to the FCC on U S WEST's Section 271 application is not required to be an adjudicative proceeding. RCW 34.05.413 of the Washington State Administrative Procedure Act (APA) authorizes the Commission to conduct the process as an adjudication. We will do so, to allow testimony under oath and greater reliance on a record, and to facilitate procedural needs of the process. As with any adjudication, the provisions of RCW 34.05.455 will prohibit *ex parte* contact between parties and Commissioners.

31 An ALJ will preside at the workshops to keep the process focused and fair. Though similar to a hearing, with testimony under oath, the workshops will be less formal and will allow more latitude and flexibility in questioning.

B. Workshop Schedule and Content Issues

32 **Workshop timing.** U S WEST's proposed timeline is too compressed. No other state has completed a Section 271 review in anywhere near U S WEST's proposed timeline. It would be unfair to U S WEST as well as to other parties to adopt a schedule that we

know to be unrealistic. Commission Staff has proposed an alternative that is more consistent with experience in other states, offers time for discovery and preparation, and is more realistic. The additional time appears to be the minimum that will allow both discovery and an adequate time for review and preparation for the workshops. The Commission supports compressing the schedule if experience demonstrates that to be feasible, particularly if all parties agree. We adopt a modified schedule in the Interpretive and Policy Statement, but emphasize that the dates are approximate and will be determined by the date of U S WEST's filing and by prehearing conferences that will take then-current circumstances into account.

- 33 **Fourth Workshop, if Required.** In addition to the three workshops proposed by U S WEST, a fourth workshop should be scheduled to address any unresolved issues and issues not raised in the other workshops, to be available if needed.
- 34 **Initial Filing.** U S WEST must file a preliminary document that will set forth an outline of all the documents U S WEST intends to file in support of its application. Beyond that, “chunked” filing (filing logical portions of the application at different times) is acceptable if all needed specific information is filed well in advance of each workshop. We reject parties’ suggestions that the Commission require U S WEST to file a complete application at the start of the process, because much of the required information will be stale by the time the relevant workshop commences. The Commission Staff’s proposal avoids the need for such duplication. The Interpretive and Policy Statement does not foreclose a more detailed filing on any issue if U S WEST chooses to do so. It is quite possible that doing so could avoid the need to defer some items, permit greater discovery in early phases of the process, and thus lead to a faster decision.
- 35 **14-point list.** The Commission will retain the 14-item list of matters to be clarified in U S WEST’s Section 271 filing set forth in the 1997 Interpretive and Policy Statement. The Commission amends the Interpretive and Policy Statement only as to process. As noted below, a statement of required evidence is set out in Appendices A and B to the Supplemental Interpretive and Policy Statement.
- 36 **Limited use of an SGAT.** During the public discussions regarding the Interpretive and Policy Statement, U S WEST questioned the need to ban use of the SGAT (Statement of Generally Available Terms) for purposes other than a “Track B” application. The Company explained that the SGAT can be useful in situations where no existing interconnection agreement provides for an element. Under the SGAT or a comparable intrastate tariff the Company can in those circumstances demonstrate the availability of the pertinent element. No other participant opposed the SGAT for those purposes, so we will modify the proposed draft to clarify that the use of tariffs or an SGAT, if otherwise appropriate, is not forbidden for the limited purposes stated. This is not inconsistent with the Interpretive and Policy Statement, which addressed only use of the SGAT for a “Track B” application.
- 37 **OSS and DSL element consideration.** The parties presented different views about the

proper scheduling of consideration of the OSS application element. All acknowledged that a mechanism for testing the OSS element is being worked out by agreement among state regulatory bodies and that an actual test will be conducted – although it will likely not be completed before the end of the year 2000. Some suggested that all consideration of OSS elements be deferred until after that time, while others suggested that time could be spent very productively on matters of principle and that the test results could be considered whenever they are ready. The Commission accepts the latter view, and retains the proposed schedule of OSS elements for that reason. Matters may be reconsidered or concluded as appropriate when necessary information is available, and lack of test results does not appear to be a total barrier to consideration of principles. The Commission is not convinced that a separate workshop on DSL issues is necessary, any more than on any other single significant issue, but notes that one can be scheduled if the need becomes apparent.

38 **Public Interest Issues.** Parties agreed at the process workshop that public interest matters will be considered at appropriate points during each of the workshops. Public Counsel suggested in his oral presentation, and the Commission agrees, that the agenda for the third workshop should specifically include public interest issues. This will assure that the Commission will consider all such issues as identified in the evidentiary requirements or as otherwise raised.

C. Post-Workshop Process.

39 **Presentations to Commissioners.** After each workshop, Commission Staff will summarize the parties' agreements and remaining areas of disagreement. Parties will then make a presentation to the Commissioners, stating the principal evidence underlying the agreements, explaining the nature and basis for any disagreements, and responding to Commission questions. The precise nature of the presentation and the need for parties' comments on the draft document will be addressed at prehearing conferences.

40 **Resolution of issues.** It became apparent late in the discussions that at least some of the parties anticipate that the Commission will take action at one or more points during the workshop process, to accept in some formal manner the parties' agreements and perhaps to decide matters on which parties cannot agree. Prehearing conferences during the workshop process can be used, if appropriate, to consider various process options and to establish schedules for achieving such decisions.

41 **Concluding adjudication.** We believe that it is necessary to retain the final "90-day" adjudicative process in the schedule. This final stage will enable a review of the actual information and the actual documents that U S WEST files with the FCC and will ensure that the application is consistent with the parties' agreements and commitments made during the workshop process. The concluding adjudicative process will also permit the resolution of any items that have not been resolved to that point. The concluding process

will only be as long or as involved as needed. To the extent that agreements exist, the Commission has accepted them, and there is no reason to reopen them for further review, those matters need not be considered again. If, as some seem to anticipate, the entire recommendation has been agreed or otherwise resolved, there may be no need for the concluding adjudicative process at all, and it may be dispensed with. The actual need for it will be determined at the appropriate point in the process. Consistent with this decision, U S WEST must file its “final” Section 271 Application to the FCC in Washington State at least 90 days before U S WEST plans to file it with the FCC, unless the Commission sets a shorter time based on the extent of remaining issues and the Commission’s perceptions of remaining evidentiary and process needs.

D. Approximate Procedural Schedule

42 The Commission adopts the following approximate procedural schedule for the workshop process. The Commission commits to shortening the schedule if parties’ resolution of Section 271 issues in other states’ proceedings satisfies Washington State needs, or if the Washington State process proceeds more rapidly than the schedule anticipates. **Note: DATES IN THIS SCHEDULE ARE APPROXIMATE. Actual dates will be established by U S WEST’s filings and in prehearing conferences.**

Initial Filing - March 21

U S WEST files its preliminary document with an outline of its FCC application, including a complete list of all of the documents U S WEST intends to file in support of its application. U S WEST also files its complete package of Workshop I support, including testimony.

Workshop 1 - June 21

Topics: Checklist items 3, 7-10, 12 and 13 (Poles/Ducts/Conduits, 911/E911, Directory Assistance, Operator Services, White Page Listings, Number Administration, Signaling/Assoc. Databases, Dialing Parity and Reciprocal Compensation).

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| Dates: | 3/21/00 | Filing of U S WEST’s outline application and list of documents. |
| | | Complete Filing of Workshop I support, including testimony. |
| | 3/30/00 | Prehearing conference |
| | 5/21/00 | Answering Testimony |
| | 6/5/00 | U S WEST Rebuttal Testimony |
| | 6/21/00 | 3-day Workshop |
| | 7/6/00 | 1-day Follow-up Workshop |
| | 7/27/00 | Circulation of Staff Summary of Workshop Results and Draft Recommendations to FCC on relevant topics |

8/4/00 Presentation to Commissioners

Workshop 2 - November 6, 2000

Topics: Checklist Items 1, 11, and 14 (Interconnection/Collocation, Number Portability, and Resale); Section 272 Affiliate Issues

Dates: 8/7/00 Complete Filing by U S WEST, including testimony
 8/11/00 Prehearing conference
 10/7/00 Answering Testimony
 10/20/00 U S WEST Rebuttal Testimony
 11/6/00 5-day Workshop
 11/28/00 2-day Follow-up Workshop
 12/7/00 Circulation of Staff draft recommendations
 12/11/00 Presentation to Commissioners

Workshop 3 – March 12, 2001

Topics: Checklist Items 2, 4, 5, and 6 (UNEs, Loops, Transport, and Switching) and any Public Interest elements not previously considered.

Dates: 12/12/00 Complete Filing by U S WEST, including testimony
 12/15/00 Prehearing conference
 2/12/01 Answering Testimony
 2/26/01 U S WEST Rebuttal Testimony
 3/12/01 5-day Workshop
 3/26/01 2-day Follow-up Workshop
 4/9/01 Circulation of Staff draft recommendations
 4/16/01 Presentation to Commissioners

Workshop 4 - July 5, 2001 (If needed)

Topics: Issues not addressed or not resolved in previous three workshops.

Dates: 4/16/01 Prehearing Conference to identify issues and confirm schedule.
 5/16/01 U S WEST Filing
 6/7/01 Answering Testimony
 6/21/01 Rebuttal Testimony
 7/5-7/01 2-Day Workshop
 7/21/01 Circulation of Staff Draft
 8/1/01 Presentation to Commissioners – parties present basic information to Commissioners, respond to Commissioner

- questions.
- 8/21/01 Commission adopts draft recommendation to FCC on the entire application, as presented and updated
- 9/1/01 U S WEST Files Actual FCC Application with WUTC and 90-day evidentiary process begins.

V. Evidentiary Requirements

A. Origin of the Statement of Evidentiary Requirements.

43 Participants in the development of the 1997 Interpretive and Policy Statement met during 1997 and 1998 to review and develop a statement of evidentiary requirements, consistent with Commission instructions. Commission Staff circulated a draft document, which reflected a consensus of the participants, among a number of potentially interested persons, and received several comments.

B. Evidentiary Requirements Are Adopted.

44 The draft Supplemental Interpretive and Policy Statement circulated for parties' comments in this matter included as appendices A and B the Commission Staff original consensus draft, with changes based upon parties' comments. No person voiced reservations or objections about the proposed evidentiary standards. We adopt the Commission Staff's draft in Appendices A and B of the Interpretive and Policy Statement.

VI. Conclusion

45 The Commission concludes that a series of workshops, coupled with a formal hearing process, is an appropriate means of developing a recommendation on U S WEST's application to provide interLATA toll service under Section 271 of the Telecom Act. The Commission adopts a supplemental Interpretive and Policy Statement, attached to this order, setting out the appropriate process and including a statement of evidentiary requirements that the Commission considers essential for formulating a recommendation.

46 The resulting process, defined by the original and supplemental Interpretive and Policy Statements, provides the appropriate process to develop the essential information

enabling the Commission to make a timely, reasonable, and fully informed recommendation to the FCC.

DATED at Olympia, Washington and effective this day of March 2000.

MARILYN SHOWALTER, Chairwoman

RICHARD HEMSTAD, Commissioner

WILLIAM R. GILLIS, Commissioner