

October 11, 1999. (“Third Supplemental Order”). The Commission found that “the issues identified by Intervenors, Public Counsel, and Staff to be proper subjects for inquiry in this proceeding.” Third Supplemental Order, p. 4 (emphasis added). These issues include, for example, the impact of the merger on the level of charges under U S WEST tariffs and contracts, competitive issues, including the potential impact of the divestiture of assets, and issues pertaining to the Act and Washington law. Moreover, the Commission itself concluded in its order that the development of competitive markets, the quality of U S WEST’s service, compliance with Section 271 and divestiture were all issues it intended to investigate in this docket.

The Applicants refuse to comply with the Third Supplemental Order. Of the 103 data requests propounded by Intervenors, the Applicants have refused to provide any information in response to 24 of these requests, refused to provide answers to part of an additional 22 requests and provided either incomplete or non-responsive answers to 26 more of the requests.¹ As to one of the data requests (66), Applicants have neither objected nor provided a substantive response. Thus, Applicants have not provided substantive information (in whole or in part) to 70 of the 103 data requests (70%).²

¹ See Appendix A for a list of these data requests. Copies of the data requests and responses are attached as Exhibit 1 (Documents produced in response to the data requests are not attached but will be provided upon request).

² Counsel for Applicants and Intervenors “met and conferred” on November 4, 1999 regarding the data requests listed on Appendix A. Qwest agreed to provide a response to data request 66 and to provide an affiliate/subsidiary organization chart in response to data request 2. Applicants also agreed to evaluate whether a supplemental response or further information might be provided as to 22 other data requests but no specific assurances were given that additional information would be forthcoming. Intervenors also agreed to evaluate whether 5 of the data requests might be modified as to scope or terminology. Nonetheless, given the very short time before the November 22 deadline and to preserve their rights under the Commission’s rules,

In support of their refusal to answer most of the Intervenors' discovery, the Applicants have interposed the following objections:

1. The request seeks information outside the scope of this docket;
2. The request requires disclosure of trade secrets and proprietary, confidential and competitively sensitive information;
3. The request seeks information relating to entities outside the scope of the Commission's jurisdiction;
4. The request seeks information outside the jurisdictional boundaries of the state of Washington;
5. The request seeks publicly available information;
6. The request seeks information protected by the attorney/client privilege and the work product doctrine;
7. The request seeks information regarding products not introduced to the market;
8. The request requires the creation of documents not yet in existence; and
9. The request is vague, ambiguous, argumentative, overbroad, burdensome, requires a special study, seek a legal opinion or is not reasonably calculated to lead to the discovery of relevant information.

None of these objections has any merit whatsoever. The Applicants' refusal to provide information based on these objections deprive the Intervenors and the Commission of critical data needed to evaluate the proposed merger. In the Third

Intervenors still seek to compel answers to these 29 requests. Depending on the nature of any follow-up responses from the Applicants, Intervenors will notify the Commission if any one or more of these requests should be removed from further consideration.

Supplemental Order, the Commission ruled that intervening parties are entitled in this docket to the opportunity to “show through the production of evidence either that the proposed transaction should be disapproved, or approved subject to conditions.” (p. 5). But, this directive is without substance if the Applicants are allowed to withhold the very information needed to determine if such a showing is necessary, much less to make that showing.

For the reasons discussed below, the objections should be overruled, and the Applicants ordered to provide complete answers to the data requests. Similarly, the Commission should extend the date by which Intervenors’ direct evidence is due and adjust the remainder of the schedule accordingly.

ARGUMENT

A. Timeliness of Responses & Request for Continuance.

The Applicants have not kept the promise they made at the pre-hearing conference to a 7-day turn-around time for discovery. The Applicants received the data requests on October 14, 1999. Under the Commission’s September 29 prehearing conference order, the responses were due on October 25 (7-business days) but they were not in fact served on Intervenors until October 27, 1999.

Given this delay and the striking deficiencies in the responses provided to the Intervenors’ data requests, the current schedule for this docket is no longer realistic. Under the Commission’s September 29, 1999 order, direct evidence from Intervenors must be filed by November 22, 1999. The lack of substantive information from the Applicants in response to Intervenors’ data requests has deprived the Intervenors of any meaningful opportunity to prepare direct testimony regarding the ramifications and

propriety of the proposed merger. The Applicants' recalcitrance has effectively denied Intervenor a meaningful opportunity, as is their right, to actively participate in these proceedings.

For the foregoing reasons, Intervenor and other parties should not be required to file testimony by November 22. Rather, Intervenor request that the Commission adjust all dates on the present schedule, including the evidentiary hearing dates in late January 2000, to provide parties with adequate time after the Commission rules on this and similar motions to prepare and file direct evidence. Staff has already filed its own motion for a continuance on grounds that the Applicants have not filed answers to all of Staff's outstanding data requests, and The Northwest PayPhone Association has also filed a motion to compel and for a continuance. Intervenor understand that Public Counsel, confronted with similar difficulties as Intervenor in obtaining information, has filed or will also file a motion to modify the schedule and continue the hearing. The Intervenor support the Staff's request for a continuance, although, as The Northwest Payphone Association noted in its motion, the date the staff has suggested as the new filing deadline (December 13) might not provide sufficient time to allow Intervenor to prepare their direct testimony. Depending on the timeliness and quality of any supplemental responses from Applicants, Intervenor may require additional time beyond December 13 to do so. Accordingly, Intervenor request that the Commission establish a date by which Applicants must provide responses to Intervenor's data requests and continue the testimony filing deadline until two weeks after that date.

B. Comments on Objections - General.

1. Scope of the Merger Docket.

The Applicants contend that substantially all of the data requests relate to issues outside the scope of this docket, asserting that this docket only pertains to the merger of two unregulated parent corporations. This objection is not well founded. The carefully tailored data requests pertain to statements in the application on which the Applicants rely to support their request for approval of the merger from the Commission. In support of their application, the Applicants would have the Commission rely upon these self-serving assurances, unsupported by specific facts or supporting documentation, yet deny to Intervenor the right to test the validity of these assertions through discovery. Applicants cannot credibly maintain in one instance that the scope of the docket relates only to the merger of two unregulated corporations yet in the same breath make assurances to this Commission in support of their application that relate directly to the subject matter of Intervenor's data requests.

Given the nexus between the data requests and the actual scope of this docket established by the Commission in the Third Supplemental Order and statements of the Applicants themselves, the data requests are entirely proper. They will enable Intervenor to protect their interests as well as to facilitate the Commission's ability to obtain sufficient information necessary to make a fully informed determination regarding the application. As the following discussion demonstrates, the data requests have been grouped within subject areas – such as the quality and availability of facilities and services, competition, and Section 271 – to ensure that the information requested relates to the Commission's review of the proposed merger,.

- a. Impact of the merger on the quality and availability of facilities and services.**

In describing the public interest benefits of the merger, the Applicants contend that “First and foremost, the proposed merger will cause no adverse impact upon the continuity and quality of service provided to U S WEST’s Washington customers. Indeed, the combined company will be well situated to improve and enhance services for consumers” (pp. 11-12). Similarly, Qwest CEO Joseph Nacchio told regulators at a recent Regional Oversight Committee [“ROC”] meeting that the merged company will invest \$5.3 million on “service development.” As recently as last week, U S WEST CEO Solomon Trujillo announced what the company describes as “the most sweeping service initiative in the company’s history.”³ Mr. Trujillo said that U S WEST is investing \$4 billion dollars in 1999 to expand and upgrade its network and had commenced an unprecedented service improvement initiative.⁴ Despite these remarks, Intervenor and other competitors have and continue to experience significant delays and problems in obtaining the facilities and services from U S WEST that are necessary to provide service to customers in Washington and elsewhere. Intervenor thus have every right to test through discovery Applicants’ assertions of future improvement allegedly resulting from the proposed merger in order to protect Intervenor’s contractual and statutory rights. No less than 53 of Intervenor’s data requests seek the production of information relating to the impact of the merger on the quality and availability of services and facilities, including whether such services will be made available on a non-discriminatory basis and whether such facilities and services will be provided in

³ See, www.uswest.com/news/102599.html.

⁴ *Id.*

compliance with applicable interconnection agreements and applicable law.⁵

b. Impact of the merger on competition.

A recurring but unsupported mantra of the application is that the merger will have no negative impact on competition. However, both in the application and in public statements regarding the merger, the Applicants insist the merger will have a positive impact on competition. Examples of these assertions abound. In the application, the Applicants state:

“[T]he merger will have no negative impact on competition.” (p. 11)

“Thus, the strategic merger of Qwest, Inc. and U S WEST, Inc. will serve the public interest by producing procompetitive effects ...” (p. 2)

Qwest’s CEO Joseph Nacchio enhanced these representations at the ROC meeting, stating that the merged company will not be as hostile on “local competition”. The data requests seek the production of information that address whether in fact the merger will have a material impact on competition in the local exchange market.

As already noted, many of the data requests relate to the question of the impact of the merger on the quality and availability of services. This same area of inquiry will also assist the Commission in evaluating whether the merger may, contrary to the assertions of the Applicants, actually have anti-competitive effects. If the merger results in the degradation of the quality and services that must otherwise be made available to Intervenor and others as a matter of right, their ability to compete will be unlawfully diminished. Only the Applicants stand to gain from such an outcome. This potentially discriminatory impact from the merger is certainly a legitimate area of inquiry through

⁵ E.g., data requests 4-6, 9, 12-13,19-25, 29,30-41, 43-45, 65-72, 75-88 and 94-96.

discovery.

In addition to those requests previously noted, other data requests also seek information that pertain to whether the combined company will diminish competition by unlawfully discriminating against its competitors in the provision of services and facilities but provide services and facilities to its affiliates on more favorable rates, terms and conditions.⁶ All of these requests are well within the scope of proper inquiry into the potential impact of the proposed merger on competition.

c. Impact of the merger on Section 271 compliance and divestiture.

The Applicants contend that “the merger will create powerful incentives for post-merger Qwest, Inc. to satisfy section 271 requirements in order to reenter the in-region interLATA market in Washington as soon as possible.” (p. 10). In light of this dramatic yet unsupported prediction, Intervenors have sought the production of information germane to the impact of the merger on U S WEST’s ongoing activities in connection with compliance under Section 271. Given U S WEST and Qwest’s prior violation of section 271 through unlawful joint provisioning of in-region interLATA services, their assurances of future compliance cannot be accepted at face value. Data requests 58 through 64 relate directly to this issue.

Moreover, the Applicants “recognize that [Qwest] must discontinue all interLATA service in the U S WEST region prior to the closing of the proposed merger. It will do so by divesting itself of those services prior to the closing.” (p. 12). Data requests 52 through 57 seek information regarding the nature and extent of such divestiture. Therefore, the Applicants cannot plausibly contend that inquiry into the

⁶ E.g., data requests 2, 3, 7, 15, 18, 27, 28, 46-51, 73-74, 89-93 and 97-99

impact of the merger on Section 271 compliance and any required divestiture of assets fall outside the scope of this docket.

2. Proprietary or confidential information.

The Applicants object to the production of any trade secrets, proprietary or other confidential information relating to the proposed merger, including their post merger plans to enhance competition and the quality and availability of services and facilities to customers. This objection is without merit. There is no blanket privilege or prohibition against the disclosure of relevant confidential or proprietary business information. This objection is a red herring. A protective order is in place prohibiting the use of information disclosed in this proceeding for any purpose other than as relates to matters in this docket.

The Applicants cannot legitimately attempt to hide certain information behind some cloak of confidentiality when it is germane to the assertions Applicants have made in support of their proposed merger. To contend, for example, that the proposed merger will enhance competition or improve the quality of service, yet keep secret from Intervenors and the Commission the very information Applicants ostensibly rely upon in support of such assertions effectively deprives the Commission of the ability to adequately assess the propriety of the merger. If the Applicants intend to hide information behind a veil of secrecy, they should withdraw assertions to which the information relates or withdraw the application altogether. Applicants cannot have it both ways.

3. Commission Jurisdiction and the production of information outside the boundaries of Washington.

Applicants claim they are not required to produce information related to matters outside the “jurisdictional boundaries of the state of Washington.” (general objection 6). This objection is without merit. Applicants have already conceded that the scope of the Commission’s inquiry is not limited to matters within Washington. The Applicants have assured the Commission that “The proposed merger will produce economies of scope and scale. This, in turn, will lead to expanded and innovative service offerings, . . . with attendant benefits for the combined company's current and future customers, both inside and outside the 14-state region.” (p. 11) (emphasis added). The Applicants further remark that, “Following the merger, Qwest, Inc. will be committed to the needs of all customers – urban and rural, business and residential – in Washington and throughout the 14-state U S WEST region.” (p. 12). Thus, having invited Commission inquiry regarding the impact of the merger within its 14 –state region, the Applicants cannot properly limit the scope of discovery to only matters within Washington.

Moreover, this Commission cannot fully measure or evaluate the impact of the proposed merger simply by limiting its inquiry to matters within the state of Washington. The proposed merger may have an impact across the entire U S WEST region, which will invariably reverberate into the State of Washington. Applicants may engage in activities elsewhere that could have a detrimental impact upon the provision of services within the state including basic local exchange and other critical services. Thus, the Commission and the parties need to know how the merger will affect all areas in which the merged company provides or plans to provide service to understand whether and the extent to which Washington consumers may be uniquely impacted.

4. Publicly available information.

Applicants contend that many of the data requests impose upon them the burden of collecting and producing information that is otherwise available to Intervenors from public sources. While some of the information Intervenors have sought may be publicly available, Intervenors' burden to collect such information from third parties far outweighs the burden of production upon the Applicants. The requested information is already in the possession and control of the Applicants. The effort required of the Applicants to retrieve this information from their records is considerably less than the time and expense Intervenors would incur to attempt to obtain the same information from a variety of public sources, to the extent it continues to be maintained at such sources. Hence, contrary to Applicants' assertions, the information is not as readily available to Intervenors as it is to the Applicants and should be produced.

5. Attorney-client privilege and work product doctrine.

Applicants interpose as a general objection and, in limited instances as a specific objection, that certain information is protected by the attorney-client privilege and work product doctrine. However, Applicants have not identified the nature of the ostensibly privileged information, produced a privilege log or submitted information or documents to the Commission for an in camera inspection. The mere assertion of the attorney-client privilege and work product doctrine in response to discovery, by itself, is not a valid invocation of either privilege. U S WEST should submit any ostensibly privileged documents in camera for review by the Commission and provide to Intervenors and the Commission a privilege log identifying the subject matter of the document, its author, the person to whom the document was transmitted and the date of communication.

6. Creation of documents not in existence and products not yet on the

market.

The Applicants object to certain of the data requests on grounds that they would require the creation of documents not in existence or require the production of information regarding products not yet on the market. Neither of these objections is legally valid or cognizable. Intervenors have not requested that the Applicants generate new documents. Rather, the data requests seek only existing information, including records of service quality complaints and facility provisioning, along with an explanation of how the proposed merger will impact existing operations, including resolution of such complaints and facility provisioning. These requests do not require the Applicants to create documents any more than all data requests require the “creation” of a response.

Information regarding future products is also probative and, again, an issue the Applicants themselves raised. The Applicants contend one of the resulting benefits of the proposed merger is the introduction of “expanded and innovative service offerings”. Clearly, information regarding such offerings, even if not yet available on the market, will help the Commission determine whether, for example, the Applicants intend to make such offerings available to Intervenors and others on a nondiscriminatory basis or whether Applicants intend to develop such products for their own benefit (e.g., advanced broadband services) but neglect other essential facilities their competitors require to provide service. Both of these objections should be summarily overruled.

7. Other objections.

The remaining general objections described in the introduction (category nine) are all without merit. In particular, the objections that certain of the data requests are not reasonably calculated to lead to the discovery of relevant information or are overbroad are

without merit. As discussed at length above, all of the data requests fall squarely within the issues raised before this Commission. Any objection based on the burden of production is also meritless. The Applicants have submitted for approval to the Commission a major multi-billion dollar corporate combination. They should be prepared to exercise an effort that is commensurate with the scope of the transaction necessary to permit the Commission to complete an appropriate review of the transaction. The Commission should overrule each of the general objections.

C. Comments on Objections - Specific Data Requests.

1. No Substantive Responses. (Appendix A – Section I)

Applicants have interposed objections to and refused to provide any substantive response or answer whatsoever to 24 of Intervenor’s 103 data requests. As discussed above, these objections are not valid and Applicants should be compelled to provide complete answers to each of these requests. While Intervenor’s do not intend to discuss each of these requests individually, four of these data requests compel more specific argument.

Data Requests 1 and 4

Data Request 4 reads as follows:

U S WEST, in listing key benefits of the merger on its website, has noted that the merged company “expects to achieve cost savings of \$4.4 billion, and capital-expenditure synergies in excess of \$2 billion over the period.” Please describe in detail how US WEST and Qwest will achieve these savings, including all relevant assumptions (e.g., the date on which US WEST anticipates receiving authority under Section 271). Please provide all documents that support your response.

Data Request 4 is substantively similar to Public Counsel’s data requests 2 and 3 (attached as Exhibit 2). In its data request 2, Public Counsel requests (in connection with

certain statements made in Applicants' SEC Form S-4) a detailed explanation of the nature of each type of anticipated expense savings resulting from the merger, the implementation steps anticipated to capture such savings, and to provide the most detailed available studies prepared to date to quantify such expense savings. Public Counsel's data request 3 seeks the same information as to "capital expenditure savings." In data request 4, Intervenors request the same type of information with respect to both "cost savings" and "capital expenditure" savings.

Notably, the Applicants do not object to Public Counsel's data request 3 or 4. Rather, they state that while the information is highly confidential and competitively sensitive, it will be made available for inspection and review at a mutually agreeable time and location. When asked at the November 4, 1999 meet and confer session whether the offer made to the Public Counsel to review the information would be extended to Intervenors, Applicants said it would not. Applicants have offered no principled reason to draw a distinction between Public Counsel and the Intervenors. Indeed, they cannot. There is no legitimate distinction. Public Counsel and the Intervenors are both properly before the Commission and are entitled to review all information produced to other parties if it is requested (see Data Request 1).

The Applicants' claim that the information sought in data request 4 is competitively sensitive is a red herring. The parties to this proceeding are bound by the Commission's protective order and hence such information cannot be used to the competitive disadvantage of the Applicants. Accordingly, the Applicants should be ordered to provide a complete answer to data request 4. In the alternative, the Applicants should be compelled, under the auspices of data request 1, to make available to Intervenors the information sought in Public Counsel's data request 2 and 3 under the same terms and conditions as it will be made

available to the Public Counsel.

Data Request 51

In data request 51, Intervenor request that Applicants produce all documents they have provided to the U.S. House Committee on Commerce. The Chairman of that Committee specifically requested that U S WEST produce all documents concerning its internal policy regarding the process for negotiating interconnection agreements with competitors. The Applicants objected contending that the request is outside the scope of the proceedings and not reasonably calculated to lead to the discovery of admissible evidence. These objections are clearly without merit. This data request directly impacts the issue of the state of competition in Washington and the U S WEST region.

The Intervenor are informed and believe that U S WEST made available to the Commerce Committee certain internal letters (which, as reported in the *Seattle Post-Intelligencer* on November 2, 1999, the company apparently made public on November 1, 1999)⁷ which state in part “At the time of this CPD’s distribution, corporate [U S WEST] policy dictates that we will not proactively engineer for CLEC interconnection. However, the continued policy of actually honoring orders for CLEC interconnection will cause DTC port shortages in this office.”⁸ (emphasis added). This document and documents like it are certainly probative of whether U S WEST intends to comply with its obligations under the Act to provide interconnection to competing carriers on a non-discriminatory basis and, will do so on a post-merger basis. These internal documents appear to suggest otherwise. They

⁷ See, www.seattle-pi.com/pi/business/west02.shtml

⁸ *Id.*

should be produced in this docket.

Data Request 62

In data request 62, Intervenors ask Applicants whether the merged company or its subsidiaries would voluntarily implement conditions to which SBC and Ameritech agreed to as part of their merger. Again, the Applicants object contending the request is outside the scope of the proceedings and not reasonably calculated to lead to the discovery of admissible evidence. These objections are frivolous.

The importance of this request cannot be overemphasized. After all, the Commission has stated in the Third Supplemental Order that it will consider evidence directed to whether it would approve the merger with conditions. The conditions to which SBC and Ameritech voluntarily agreed pertain to matters central to the issues at hand in this docket. While Intervenors do not necessarily believe that such conditions are in fact stringent enough with respect to the merger in this docket, whether the Applicants would agree to similar conditions may be indicative of whether they are willing to commit to clear, specific goals as part of the merger necessary to advance the public interest. If Applicants are unwilling to commit to even the mild conditions SBC and Ameritech voluntarily agreed to as part of their merger, the signal is clear: the Applicants are concerned only with their own advantage and not, as the Commission noted in the Third Supplemental Order, with “striking a balance among the interests of customers, shareholders, and the broader public that is fair and that preserves affordable, efficient, reliable and available service.” (p. 5). The Applicants should be compelled to answer data request 62.

2. Partial Responses. (Appendix A – Section II)

The Applicants have provided responses to 22 of the data requests that follow a consistent pattern. The Applicants interpose an objection to and then refuse to provide information responsive to the first part of the request, which generally seeks information concerning Applicants' current or past activities. Then, in response to the second part of the request, the Applicants provide a canned substantive response. The second part of the request generally seeks information as to how the proposed merger will impact these activities described in the first. For example, in data request 85, Intervenors ask U S WEST to describe how it has complied with service quality standards and performance measurement standards in the state for both wholesale and retail services, including the process and procedures in place to measure service quality. The Applicants object to this part of the request. In the next part of the data request 85, Intervenors ask the Applicants how the proposed merger will affect the procedures to measure service quality. The Applicants state only, "No decisions have been made with respect to how the combined company will address specific operational or funding issues post-merger."

This type of incongruous response defies logic. Its substantive impact, however, is clear. The Applicants refuse to provide the Commission with specific information on their current or past activities yet expect the Intervenors and this Commission to take it on faith that the merger will have no adverse impact on the public interest. The Applicants even retain this distorted expectation despite the fact they cannot, in numerous instances⁹, identify the impact the merger will have on the many specific operational, legal and

⁹ See responses to data requests 24, 35, 39, 42-46, 68, 69, 84, 85, 89, 94, 97 and 99.

regulatory matters identified in the 22 data requests (as well as in others).¹⁰

The Commission is entitled to know the nature of the Applicants' current practices so it can plausibly evaluate the impact of the merger. This will assist the Commission in deciding whether the merger should be approved in the first instance or whether such approval should be granted subject to specifically enforceable conditions. The type of conditions to impose will necessarily depend in large part on the current practices of the Applicants. But without knowledge of those practices, the Commission has no way to test what impact the merger will have on the public interest. For these reasons, the Applicants should be compelled to provide complete answers to the 22 data requests listed in section II of Appendix A.

3. Non-Responsive or Incomplete Answers (Appendix A – Section III)

a. Section III.A.

In the data requests listed in section III.A, the Applicants file responses that are equally incongruous as those listed in part II. A single pattern emerges. For example, in data request 70, the Applicants are asked whether U S WEST provides access to combinations of unbundled network elements (UNEs) and, if so, to describe all combinations of UNEs. The Applicants refuse to answer this question. Then, in the second part of data request 70, Intervenors ask what UNE combinations the merged company will provide. The answer provided is not responsive. The Applicants state “No decisions have been made with respect to positions the combined company will take on specific regulatory or legal issues after the merger has been completed.” While this may

¹⁰ See responses to data requests 15, 18, 27, 33, 48, 49, 58, 59, 65, 70, 71, 72, 75, 76,77, 80, 81, 83, 90, 91 and 102

be true, it does not answer the question posed, I(i.e., what UNE combinations will the merged company provide). This question does not pose or raise a regulatory or legal issue. It poses a clear, straightforward question regarding the prospective operations of the merged company. This pattern repeats itself for each of 11 data requests in section III.A. The Applicants should be compelled to provide complete and fully responsive answers to these data requests.

b. Section III.B.

In each of the data requests listed in Section III.B., the Applicants objected to part of the request and then provided other answers that were not responsive to the question posed. As explained below, the Applicants should be ordered to provide fully responsive answers to each of these requests.

Data Request 28

In this request, the Applicants are asked to state whether U S WEST provides access services to Qwest on rates, terms and conditions that are offered to other carriers on a nondiscriminatory basis. The Applicants simply do not answer the question. They state only that “switched access is a regulated service” and that “Any carrier that purchases switched access services from U S WEST, purchase those services from the appropriate ... tariff.” This response does not state whether in fact Qwest, U S WEST’s merger partner, obtains access services from U S WEST. Intervenors are entitled to a direct answer to a straightforward question.

Data Request 32

Here, the Applicants are asked to describe how the merged company “will ensure” compliance with interconnection and other inter-carrier agreements. The Applicants

state that the merger will not affect U S West Communications, Inc.'s obligations under the Act or interconnection agreements. This answer begs the question. Intervenors are entitled to know how the merged company will ensure compliance.

Data Request 54

Data request 54 reads as follows:

If Qwest does not intend to divest, transfer, or reconfigure any assets as part of the proposed merger, please describe how it will divest, transfer, discontinue, or reconfigure services without also divesting, transferring, or reconfiguring the facilities used to provide those services, including but not limited to (a) how facilities over which Qwest currently provides interLATA services will be used by Qwest, US WEST, or the merged company pending Section 271 authority; (b) how the merged company or its subsidiaries will book and recover the costs of those facilities; and (c) the extent to which revenues generated from US WEST retail or wholesale customers will be used, directly or indirectly, to maintain those facilities. Please provide all documents that support your response.

Notwithstanding an objection, Qwest answers by referring to its written divestiture plan provided in response to data request 52. The divestiture plan does not provide an answer to this request. Qwest should be compelled to answer it.

Data Request 61

In this data request, the Applicants are asked when U S WEST plans to seek Section 271 relief in Washington and how the merged company plans to comply with or achieve an enumerated list of requirements of Section 271. In response, the Applicants refer to their *Comments on Applications For Transfer of Control* filed with the FCC produced in response to data request 63. Once again, this document does not answer the question. The Applicants should be compelled to answer it.

Data Request 73

In this request, the Applicants are asked whether U S WEST obtains advanced services (e.g., broadband access or DSL) from Qwest. The Applicants do not answer this simple question nor any of the follow-up questions. Instead, the Applicants describe U S WEST's so-called "Megabit" service, a service that apparently utilizes DSL technology. This frivolous answer has nothing to do with the question posed, i.e., whether U S WEST obtains advanced services from Qwest. The Applicants should answer the question in its entirety.

Data Request 74

Data request 74 read as follows:

Please identify and describe all advanced services that US WEST or Qwest currently provide to end-users or carriers other than each other. In addition, please identify and describe all advanced services that US WEST or Qwest receive from carriers other than each other. Please describe the rates, terms, and conditions on which US WEST or Qwest provide or receive these advanced services. Please describe the impact the proposed merger will have on the provisioning or obtaining of advanced services by the merged company or its subsidiaries. Please provide all documents that support your responses.

Over an objection, U S WEST provides a perfunctory response that bears no relation to the serious subject of the provision of advanced services to end-users and other carriers. U S WEST states "retail services offered by U S WEST, and the rates, terms and conditions by which they are offered are publicly available in either U S WEST's tariffs and/or catalogs. To the extent individual customer circumstances warrant, services may also be provided via individual customer contracts." The Applicants should be ordered to answer the data request.

c. Section III.C.

In this remaining group of data requests, the Applicants fail to provide complete

answers to each of the requests. The Applicants should be ordered to provide complete answers.

Data Request 2

Here, Qwest was asked but failed to provide the identity of its affiliates and subsidiaries. It should be compelled to do so.

Data Request 3 and 7

In data requests 3 and 7, Intervenors seek information regarding the provision of services to their affiliates and subsidiaries. In its response to data request 3 (which incorporates its answer to data request 7), Qwest fails to describe how the proposed merger will impact its contractual relationships with its affiliates and subsidiaries. Moreover, neither Applicant identifies how the proposed merger will impact its “contractual relationships” with non-affiliates. In the response provided to data request 7, the Applicants state only that “the provisioning of services” to unaffiliated carriers will be unaffected by the merger. The response is silent on the subject of the impact of the merger on contractual relationships.

For data request 7, neither Applicant answer the first question of the request: whether they provide services to affiliates or subsidiaries pursuant to rates, terms and conditions that are offered or provided to nonaffiliated companies on a nondiscriminatory basis. The Applicants interpose an objection to the request and provide some response. However, it is unclear whether the objection extends to the first part of the question or whether in fact the Applicants simply neglected to provide a complete answer. In either event, the objection should be overruled and the Applicants compelled to answer.

Data Request 6

Data Request 6 read as follows:

Please provide a map of Qwest's network in the state and a description of services provided in each area in which Qwest has constructed its network to (a) to US WEST or Qwest and affiliates or subsidiaries; and (b) to carriers unaffiliated with Qwest or US WEST. Please describe all changes to this network and these services that will result from the proposed merger. Please provide all documents that support your response.

Qwest provides a general map in a supplemental response but fails to answer the follow-up questions in parts (a) and (b) and the third question regarding the impact of the merger. The map does not provide any information from which answers to these follow-up questions could be derived or determined. Any objection should be overruled and Qwest ordered to provide a complete answer to the request.

Data Request 8

Data request 8 is the mirror image of data request 7: do their affiliates or subsidiaries provide services to the Applicants pursuant to rates, terms and conditions that are offered or provided to nonaffiliated companies on a nondiscriminatory basis. Once again, the Applicants do not answer this question or the follow-up question: if not, why not. Applicants answer to data request 7 (incorporated into 8) does not answer either question. The objections should be overruled and the Applicants ordered to provide a complete answer to this request.

Data Request 11

In this request, Applicants are asked to provide information regarding the purported "minimal" overlap in their respective services from the merger. Applicants respond to part (a) of the request but provide no answers to parts (b) through (d). The objections, to the extent Applicants intend them to apply to parts (b) through (d), are

without merit. The Applicants should provide complete answers to this request.

Data Request 12

Here, the Applicants incorporate their response to data request 11 as and for their answer to data request 12. In data request 12, the Applicants are asked to identify all services provided by Qwest that compete with services U S WEST provides and to describe the impact on such services from the merger. The response to data request 11 does not answer data request 12. The Applicants should provide complete answers to this request.

Data Request 56

Qwest fails to answer the first two questions of this request: Is it continuing to market interLATA services in the state and, if so, will it continue to do so during its divestiture. The Applicants refer to their answer to data request 52 wherein Qwest produces its written divestiture plan. However, that plan does not provide answers to the first two questions in this data request.

Data Request 64

In this request, the Applicants are asked “how” they will comply with an enumerated list of requirements under Section 272 of the Act. The Applicants say they will (when appropriately authorized) comply with Section 272 of the Act through a separate subsidiary. This response begs the question. It does not state how the requirements of Section 272 will be fulfilled. Accordingly, the Applicants should be compelled to provide a complete answer to this request.

CONCLUSION

The Intervenor prays for the following relief:

- A. An order from the Commission that overrules the objections to the data requests identified on Appendix A and compels the Applicants to provide complete answers to each of these requests within 7 days of entry of the order;
- B. An order from the Commission extending the November 22, 1999 deadline for the filing of Intervenors' direct testimony to and including but no sooner than December 13, 1999 and adjust all other deadlines accordingly.
- C. An order from the Commission continuing the January 2000 evidentiary hearings to a date certain into the future to accommodate adjustments to the new schedule as requested herein.
- D. Such other or further relief as the Commission finds just and reasonable.

DATED this 8th day of November 1999.

RESPECTFULLY SUBMITTED,

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