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September 27, 1999

Carole J. Washburn  
Executive Secretary  
Washington Utilities & Transportation Commission  
P.O. Box 47250  
Olympia, WA 98504-7250

Re: US West's Petition for Competitive Classification  
Docket No. UT-990022

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OFFICE OF THE ATTORNEY GENERAL  
WASHINGTON STATE

Dear Ms. Washburn:

Enclosed for filing are the Commission Staff's Supplemental Reply Comments in the above-named docket and Confidential Attachment B.

Very truly yours,

SHANNON E. SMITH  
Assistant Attorney General  
(360) 664-1192

Enclosures

cc: All parties, via FAX and US Mail



CERTIFICATE OF SERVICE

UT-990022

I hereby certify that I have this day served copies of the Commission Staff's Supplemental Reply Comments upon the following parties of record in this proceeding by facsimile and by mailing a copy thereof properly addressed to each such party by first class mail, postage prepaid.

DATED this 27th day of September, 1999.

  
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CERTIFICATE OF SERVICE

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

US WEST'S PETITION FOR COMPETITIVE CLASSIFICATION OF  
HIGH CAPACITY CIRCUITS

DOCKET NO. UT-990022

SUPPLEMENTAL REPLY COMMENTS OF COMMISSION STAFF

SEPTEMBER 24, 1999

RECEIVED  
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STAFF OF THE  
UTILITY AND TRANSPORTATION  
COMMISSION

Staff submits its Supplemental Reply Comments regarding US West Communications Inc.'s ("US West") Amended Petition for Competitive Classification of its High Capacity Circuits.

### **SUMMARY**

Staff supports US West's request for competitive classification of its high capacity circuits in the six specific areas requested. While there are certainly imperfections in the market, the request is drawn narrowly enough that it meets the statutory standard for competitive classification. Staff's comments address (1) the fundamental question of whether these services meet the standard for competitive classification and (2) clarification of details of the classification itself.

1. The evidence demonstrates that, within the limited area covered by US West's amended petition, high-capacity services are subject to effective competition.

AT&T & MCI (p. 4, section II) and TRACER (p. 11, ll. 19-22, p. 12, ll. 1-7) both mischaracterize the information in confidential Attachment B to suggest that there is very little competition in the market. Staff believes that the Commission must consider not just Attachment B but the limitation on the information it contains. For example, it is not clear that intervenors provided a complete inventory of the areas they currently serve, and the exhibit does not include any service by non-intervening competitors, such as Sprint, TCI, and wireless providers. Moreover, and perhaps most importantly, building access or the absence of building access does not demonstrate either way whether effective competition exists. The evidence that

competitors are serving numerous buildings suggests that competitors can get access to buildings. Staff submits that the more compelling evidence is that competitors have collocated in numerous offices and installed fiber optic transmission networks.

Nextlink, ELI, and GST in their joint comments also mischaracterize Staff's analysis of whether US West has a significant captive customer base for these services. They take Staff to task for basing its view on "nothing more than the existence of multiple competitors in the six wire center areas." Joint Comments, at 4, ll. 6-7. The existence of these competitors is indeed quite compelling: why are they there if not to serve customers? However, the evidence in this proceeding is considerably broader than the mere existence of providers and includes evidence on multiple fiber transport routes in each wire center, loss of market share by the incumbent, and the availability of alternative technologies. If Staff's recommendation were based on the mere presence of competitors, it would have included competitive classification of the entire Seattle and Spokane exchanges as well as Tacoma, Olympia, Vancouver, Yakima, Bellingham, and probably other cities as well.

The commenters claim Staff made a "sudden and unexplained" change from its initial statements, conveniently ignoring the fact that US West's petition is what changed. Staff would continue to oppose the petition that was the subject of its initial comments, and Staff would encourage all parties to re-evaluate their positions in view of the dramatic reduction in the scope of US West's petition.

Staff does not mean to dismiss too lightly the concern of intervenors about building access. It certainly is a legitimate concern, and the Commission should continue to work to

increase access of customers to competitive alternatives. That effort should include quick action on any complaint by a competitor who might allege that US West is not fulfilling its obligations to provide non-discriminatory access to rights-of-way and support structures it controls. Staff commits to work with companies whenever possible on an informal basis to resolve these issues without formal proceedings.

However, the law does not require perfect competition; it requires effective competition, i.e., the presence of *reasonably available* alternatives and the absence of a *significant captive* customer base. RCW 80.36.330(1) (emphasis added). In addition, the Commission should consider that the competitive classification is not deregulation and that customers will still have some protections if the petition is granted. US West will be required to price these services above cost, a requirement that would not necessarily apply if the service is tariffed. The Commission could still investigate prices for these services and could require that US West demonstrate that the prices are fair, just and reasonable. Even if classified as competitive, these services would still be subject to the anti-discrimination and anti-preference statutes, RCW 80.36.170 and 80.36.180. Finally, the Commission could remove the competitive classification of these services if doing so would protect the public interest.

2. The Commission should clarify that SNHS, SONET, and SHARP services are included in the competitive classification and that circuits are not classified as competitive to the extent they extend beyond the competitive zone boundaries.

TRACER's comments raise the question of whether SNHS, SONET, and SHARP services are to be classified as competitive. These services are a function of the fiber optic

technology used by US West and its competitors. The same fiber rings that are used to provide DS-1 and DS-3 circuits also provide these services. Therefore, they should be classified as competitive as well.

The Washington Association of Internet Service Providers raises the question of how circuits that extend beyond the specific wire centers will be treated. Staff believes that the most appropriate treatment is to establish prices for these circuits based on their relative proportion of the circuit that is within the competitive and non-competitive zones. This is the same way circuits are priced when they are jointly provided by two carriers using meet-point billing. In this case, the prices would come not out of two tariffs but out of one price list and one tariff.

### **CONCLUSION**

Staff acknowledges that the services at issue here are themselves complicated and that the determination of effective competition is complicated. Since US West's petition was filed on January 25, 1999, Staff has closely examined the evidence presented by US West and all other information that it could obtain. It found that much of US West's original petition was unwarranted. However, US West significantly scaled back the extent of its request, and it now includes areas that are at the heart of competitive local exchange activity in the state of Washington. Within those areas, multiple alternative providers are offering service, and there is not a significant captive customer base.