

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition of	)	
	)	
U S WEST COMMUNICATIONS, INC.	)	DOCKET NO. UT-961596
	)	
for a Declaratory Order	)	DECLARATORY ORDER
Regarding Bellcore Research	)	
. . . . .	)	

**SUMMARY**

**PROCEEDING:** On December 17, 1996, U S WEST Communications, Inc. (U S WEST or Company), filed with the Commission a Petition for Declaratory Order. That petition seeks a ruling whether Title 80.12 RCW (Transfers of Property) requires Commission approval of the transfer of the one share of stock held by U S WEST in Bellcore.

**APPEARANCES:** U S WEST is represented by Edward T. Shaw, attorney, Seattle. The staff of the Washington Utilities and Transportation Commission (Commission Staff) is represented by Shannon E. Smith and Mary M. Tennyson, Assistant Attorneys General, Olympia.

**COMMISSION DECISION:** The services provided by Bellcore are necessary or useful in the performance of U S WEST's duties to the public. The company must secure an order from the Commission authorizing any sale of U S WEST's one share of stock which is evidence of its one-seventh ownership of Bellcore.

**MEMORANDUM**

I. PROCEDURAL HISTORY

U S WEST filed its Petition for Declaratory Order on December 17, 1996. The Commission entered a Notice of Receipt for Declaratory Order and Opportunity to Participate on January 3, 1997.

Persons wanting to comment on the petition were allowed to do so by 5:00 p.m., Monday, January 13, 1997. Persons filing comments were asked to state whether they believed facts were accurately and sufficiently stated in the petition, and whether a stipulated statement of facts could be developed or a hearing might be needed to establish pertinent facts.

On January 7, 1997, the Commission Staff filed with the Commission notice of its intent to participate in this proceeding. On January 8, 1997, U S WEST filed with the Commission copies of certain documents. The documents were stamped confidential.

On January 15, 1997, the Commission entered a Notice of Request for Statement of Fact on Petition for Declaratory Order. The Commission called for submission of statements of fact upon the matter posited by the U S WEST petition pursuant to WAC 480-09-230(4). Persons interested in filing a statement of fact were allowed to do so by 5:00 p.m., February 18, 1997.

On February 18, 1997, the Commission Staff filed with the Commission its Statement of Facts, and U S WEST filed with the Commission its Statement of Facts/Affidavit of Carl Inouye. U S WEST again alleged that the facts underlying this petition are not in dispute. U S WEST also asked for the opportunity to respond to any filing made by the Commission Staff.

On March 7, 1997, U S WEST filed with the Commission its Answer to Staff's Statement of Facts. The answer states: "A review of the Staff's submission discloses there are no factual disputes between the parties -- there is only a dispute on the legal conclusion to be drawn from those facts." Answer, p. 1.

## II. FACTS PRESENTED

The facts in this matter are set out in the U S WEST petition, the statements of fact provided by U S WEST and the Commission Staff, and the answer to the Commission Staff statement of facts provided by U S WEST. The following relevant facts have been considered:

1. On November 21, 1996, U S WEST and its Regional Bell Operating Company co-owners announced they had signed an agreement to sell their ownership of Bellcore to Science Applications International Corporation (SAIC), an unaffiliated company.
2. The agreement is to sell the seven shares of stock of Bellcore held by the RBOCs to SAIC.
3. The sales agreement requires U S WEST to obtain the appropriate regulatory approvals, if required.
4. Bellcore was created as part of the divestiture of local exchange companies from AT&T on January 1, 1984.

5. U S WEST Communications, Inc., presently owns one share of stock in Bellcore. On the company's books of accounts, the certificate is booked at \$29 million.
6. The \$29 million book value of the stock certificate is the value of the property, equipment, and cash transferred to Bellcore by AT&T at divestiture. This included land and buildings, equipment, working capital, and cash to cover the cost of asbestos clean-up in one particular building. The property was previously under the direct ownership of AT&T or owned by Bell Laboratories or Western Electric.
7. Bellcore is an affiliated interest of U S WEST.
8. Bellcore is a support services company providing engineering, network planning, operations, and research and development support to U S WEST and other former Bell companies. U S WEST holds a one-seventh ownership interest in Bellcore. The purpose of the company is to provide technical and other support services that relate to the needs of its owners.
9. The business relationship after the sale between U S WEST and Bellcore will continue in that Bellcore will provide U S WEST services under contract in the same areas of operation as it does today, except it will do so as an unaffiliated company. U S WEST's customers will not be deprived of access to Bellcore services in the foreseeable future that have been used by U S WEST in the past to support the provision of telecommunications service.
10. The services provided by Bellcore are: technical and other services that support the needs of the seven regional companies that were created as a result of the divestiture of the Bell system. The primary focus of Bellcore's activities is on the technical aspects of exchange and exchange access communications services and network and the efficient operation of these networks. Bellcore provides to U S WEST technical support and tools used in the areas of network planning, system engineering, implementation and operations support, network systems development, and standards. In addition, Bellcore provides services in applied research, finance, and support services. Bellcore also serves as the single point of contact for matters relating to national security and emergency preparedness as required in the Modification of Final Judgment. These services in turn

support the provision of regulated services by U S WEST.

11. The basis currently used to determine pricing of Bellcore services provided to U S WEST is: all internal Bellcore costs are directly assigned or allocated to the various projects. These projects are then divided among the owner/clients participating in that project based on a negotiated factor or based on usage. Each company is billed monthly for its share of costs based on the allocation process. Costs include salary and wages, corporate overheads, other expenses, i.e., travel, office supplies, relief, pension, and social security loadings and float. Bellcore billings include a return on investment component. No information has been provided regarding the basis that will be used to determine pricing of Bellcore services if the proposed sale is consummated. The Commission has long held in administering Chapter 80.16 RCW that charges by an affiliate for services rendered to a regulated company will not be considered reasonable, and therefore not allowed to be included in regulated results of operations, that exceed reasonable cost plus a regulated rate of return of applicable investment; the same ceiling that would apply if the regulated company performed the services for itself, instead of hiring the affiliate.
12. U S WEST reported that it paid \$7,676,599 to Bellcore in 1995 for Washington Intrastate, less common costs.
13. Payments by U S WEST to Bellcore for 1995 included an 11.25% return on investment.
14. U S WEST has loaned Database Management Services, Inc., a wholly owned subsidiary of Bellcore, \$2,935,597.15 to be repaid over 56 months at 6% simple interest.
15. Neither the value of the assets owned by Bellcore, nor the value of the one share of stock in Bellcore owned by U S WEST have ever been included in the Washington intrastate rate base.
16. The Commission has never determined the fair value of the share of stock in Bellcore.
17. U S WEST has purchased services from Bellcore over the years, and these affiliated interest expenses have been examined for reasonableness in all of the company's rate cases. The Commission has protected customers of regulated services from paying in rates

the charges of Bellcore deemed by the Commission to be excessive or unreasonable for the service rendered.

18. The Commission has not in the past required U S WEST to seek permission under the transfer of property statute when it has sold retired or surplus facilities and equipment that are not in rate base or real property never placed in rate base.
19. The Commission has never declared that non-rate-base assets are not subject to Chapter 80.12 RCW.

### III. ISSUES PRESENTED

1. Is U S WEST's ownership share of Bellcore a franchise, property, or a facility?
2. Are the services provided by Bellcore to its owners, including U S WEST, necessary or useful in the performance of U S WEST's duties to the public?

### IV. COMMISSION DISCUSSION

RCW 80.12.020 provides, in relevant part, as follows:

No public service company shall sell, lease, assign or otherwise dispose of the whole or any part of its franchises, properties or facilities whatsoever, which are necessary or useful in the performance of its duties to the public, . . . without having secured from the Commission an order authorizing it so to do[.]

The purpose of this statute is to address disposition of assets which are necessary or useful to the provision of service to ensure that public service companies do not make choices that will harm their customers. The statute does not dictate a result. Instead it requires that the transaction be brought before the Commission for scrutiny and protection of the customers' interests.

1. Is U S WEST's ownership share of Bellcore a franchise, property, or a facility?

Yes.

There appears to be no question but that the share of stock in Bellcore

owned by U S WEST is property owned by the company. On the company's books of accounts, the certificate is booked at \$29 million. The \$29 million book value of the stock certificate is the value of the property, equipment, and cash transferred to Bellcore

by AT&T at divestiture. This included land and buildings, equipment, and working capital.

U S WEST appears to argue that the standard for determining whether property is necessary or useful is the same as the standard for determining if property is used and useful and may included in rate base, citing RCW 80.04.250. The two standards are not the same. Whether property was included in rate base may be a factor in determining its treatment in a petition under Chapter 80.12 RCW. The “necessary or useful” standard is broader than the “used and useful” standard, and is used to make a very different inquiry. The question in this petition is whether the Commission should review a transaction in order to protect ratepayers.

2. Are the services provided by Bellcore to its owners, including U S WEST, necessary or useful in the performance of U S WEST’s duties to the public?

Yes.

The agreed upon facts demonstrate that Bellcore only provides services to its owners. Thus, the fact that these services are currently available to U S WEST’s customers is a direct result of U S WEST’s stock ownership. U S WEST’s payments to Bellcore have been approved, after Commission review, in U S WEST rate cases. Thus, the Commission has found that the services were necessary or useful in the performance of U S WEST’s duties to the public. U S WEST also assures the Commission that the services currently provided by Bellcore will continue to be provided to U S WEST services under contract in the same areas of operation as it does today. Thus, U S WEST contend that the services will continue to be necessary or useful to U S WEST’s customers.

U S WEST argues at a number of places in its petition, statement, and answer that the sale is a good idea, and that the Commission Staff improperly seeks to capture proceeds of the sale for the benefit of ratepayers. The issues of whether the sale is wise, and of what should be done with proceeds are important, and deserve Commission scrutiny. That is the purpose of seeking authorization under Chapter 80.12 RCW. Those issues are not framed by the petition for declaratory order that is the subject of this Order.

As noted in the facts provided by U S WEST, the Commission has long held in administering Chapter 80.16 RCW that charges by an affiliate for services rendered to a regulated company will not be considered reasonable, and therefore not allowed to be included in regulated results of operations, that exceed reasonable cost plus a regulated rate of return on applicable investment; the same ceiling that would apply if the regulated company performed the services for itself, instead of hiring the affiliate. If the sale of U S WEST’s share of Bellcore is approved, this ceiling will no longer protect rate payers. The

only reasonable course of action for the Commission is to thoroughly review all aspects of the proposed sale under RCW 80.12.020 before that sale is allowed to proceed.

### **FINDINGS OF FACT**

1. The Washington Utilities and Transportation Commission is an agency of the state of Washington, vested by statute with authority to regulate rates, rules, regulations, practices, accounts, securities, and transfers of public service companies, including telecommunications companies.

2. U S WEST Communications, Inc., is registered as a telecommunications company providing service within the state of Washington as a public service company.

3. U S WEST Communications, Inc., on December 17, 1996, petitioned the Commission for a declaratory order regarding the sale of its share of stock in Bellcore Research Communications, Inc. (Bellcore).

4. U S WEST Communications, Inc. requests the Commission find that title 80.12 RCW (Transfers of Property) does not require Commission approval of the sale of the one share of stock held by U S West in Bellcore.

### **CONCLUSIONS OF LAW**

1. The Washington Utilities and Transportation Commission has jurisdiction over the parties and subject matter of this petition.

2. Non-rate base assets that are used, and will continue to be used, to provide services to U S WEST'S customers are subject to Chapter 80.12 RCW.

3. U S WEST Communications, Inc., must seek authorization from the Commission before it sells its one-seventh share of Bellcore.



**ORDER**

THE COMMISSION ORDERS That U S WEST Communications, Inc., must obtain authorization from the Commission under Chapter 80.12 RCW prior to any sale of its one share of stock in Bellcore.

DATED at Olympia, Washington and effective this            day of  
April 1997.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

SHARON L. NELSON, Chairman

RICHARD HEMSTAD, Commissioner

WILLIAM R. GILLIS, Commissioner