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BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition of	)	
	)	DOCKET NO. UT-991930
MOUNT ST. HELENS TOURS, INC.	)	
	)	
For Designation of a Telecommunications	)	
Common Carrier to Serve an Unserved	)	
Community, or Portion Thereof.	)	
.....	)	
In the Matter of the Petition of	)	
	)	DOCKET NO. UT-991931
BARBARA BRADY	)	
	)	
For an Exchange Area Boundary Change.	)	
.....	)	
In the Matter of Designation of a	)	
Telecommunications Common Carrier to Serve	)	DOCKET NO. UT-993000
WILDERNESS LAKE COMMUNITY, or	)	
Portion Thereof, on the Commission's Own	)	
Motion	)	
	)	
U S WEST COMMUNICATIONS, INC.	)	RESPONSE OF U S WEST
	)	COMMUNICATIONS, INC.
GTE NORTHWEST INCORPORATED	)	
_____	)	

On January 14, 2000, the Commission entered an Order of Consolidation and Notice of Prehearing Conference in the above-referenced matters. The Commission also required "the

1  
2 companies” to file responses to the petitions no later than January 26, 2000. However, the notice  
3 was only sent to U S WEST and GTE. U S WEST believes that other companies, including  
4 competitive local exchange carriers, other incumbent carriers, and wireless carriers, may  
5 potentially be implicated in any service obligation imposed under Section 214 of the  
6 Telecommunications Act of 1996. Those carriers should also be given notice of these  
7 proceedings and an opportunity to file responses.

8 U S WEST hereby files its response to these petitions. U S WEST believes that its  
9 comments are general enough to address the issues raised in all three proceedings. These  
10 proceedings raise the issues of when and how the Commission should designate a carrier to serve  
11 an unserved community or portions thereof. The Telecommunications Act of 1996 addressed  
12 this issue in Section 214(e)(3), which provides as follows:

13 (3) DESIGNATION OF ELIGIBLE TELECOMMUNICATIONS CARRIERS  
14 FOR UNSERVED AREAS. If no common carrier will provide the services that  
15 are supported by Federal universal service support mechanisms under section  
16 254(c) to an unserved community or any portion thereof that requests such  
17 service, the Commission, with respect to interstate services, or a State  
18 commission, with respect to intrastate services, shall determine which common  
19 carrier or carriers are best able to provide such service to the requesting unserved  
20 community or portion thereof and shall order such carrier or carriers to provide  
21 such service for that unserved community or portion thereof. Any carrier or  
22 carriers ordered to provide such service under this paragraph shall meet the  
23 requirements of paragraph (1) and shall be designated as an eligible  
telecommunications carrier for that community or portion thereof.

19 Section 214 provides for both the State Commission and the FCC to designate a carrier,  
20 for intra and interstate services respectively. The FCC is currently in the comments cycle in its  
21 Further Notice of Proposed Rulemaking (FNPRM) on these issues in CC Docket No. 96-45.  
22 U S WEST filed comments in that proceeding on December 17, 1999 and January 19, 2000.

23 These consolidated proceedings are the first time that the Washington Commission has

1  
2 addressed the issues raised by Section 214(e)(3)<sup>1</sup>. Based on the plain language of the statute, and  
3 the FCC’s inquiry into these same matters, the Commission should address the following  
4 questions in this proceeding:

5 Is the petitioner “unserved” within the meaning of Section 214?

6 Is the unserved area a “community,” or does the area constitute a portion of such a  
7 community?

8 How does the Commission determine when “no common carrier will provide service”?

9 How should a carrier be selected to serve under Section 214(e)(3)?

10 **Is the petitioner “unserved” within the meaning of Section 214?**

11 The petition first raises the question of whether a proceeding under 214(e)(3) is  
12 appropriate. Section 214(e)(3) addresses only circumstances when no carrier will provide the  
13 services supported by Federal universal service support mechanisms.

14 The Mount St. Helens Tours’ petition describes that the petitioner and others are currently  
15 receiving service, but claims that the service will be discontinued next month. The petition  
16 describes that the service is currently provided through a radio transmitter, and further states that  
17 the petitioner and others have already paid \$24,000 to install the service. Petitioner is not within  
18 U S WEST’s exchange territory, as U S WEST’s exchange boundary is located near milepost 22  
19 as described in the petition. U S WEST provides T-1 service up to a Forest Service location near  
20 the exchange boundary, and has established a demarcation point there, where the service is  
21 “handed off” to the radio system. Facilities beyond that point are owned and maintained by the  
22 petitioner or others, not by U S WEST. It is not clear what will happen in February to cause the

23 <sup>1</sup> The Commission has addressed the issue of a telecommunications carrier’s obligation to serve in Docket Nos. UT-970325 and UT-990301.

1  
2 service to be discontinued. It may be that the petitioners simply need to relocate one of the radio  
3 transmitters in order to continue to receive service as they currently do. Today, petitioner would  
4 not fall under the definition of “unserved.” It further seems that no evidence has been provided  
5 that petitioners will be unable to relocate their radio transmitter if that is required in February.  
6 Thus, it does not appear at this point that the Mount St. Helens Tours group is “unserved” within  
7 the meaning of Section 214(e)(3).

8           With regard to the petition of Barbara Brady, and the Commission’s investigation into  
9 Wilderness Lake, it is not clear from the information on file whether these individuals or groups  
10 are unserved or not. U S WEST did advise the Commission at the October 27, 1999 open  
11 meeting that two wireless carriers actually have towers located in the Wilderness Lake area and  
12 that several residents do in fact have wireless service. It may be that none currently has landline  
13 service available from the incumbent carrier who is located nearby, but issues of service provided  
14 through other technologies, such as wireless, are not addressed in the petitions or other  
15 documents. The Commission should first undertake an evaluation of what service is available or  
16 is being provided before making a determination that the group or individual is “unserved.”

17           **Is the petitioner a member of a “community,” or does the area constitute a portion**  
18           **of such a community?**

19           The Commission must consider not just whether the petitioners are unserved, but whether  
20 the unserved area constitutes a “community.” The provisions of Section 214(e)(3) only allow the  
21 Commission to designate a carrier to serve an unserved *community*, not an unserved area or an  
22 unserved individual. Thus, the Commission must consider whether this area constitutes a  
23 community within the meaning of the statute. Community is not defined within the statute, but is  
defined in the Merriam-Webster Dictionary as

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2 1: a unified body of individuals: as **a:** state, commonwealth **b:** the people with  
3 common interests living in a particular area; *broadly:* the area itself community  
4 **c:** an interacting population of various kinds of individuals (as species) in a  
5 common location **d:** a group of people with a common characteristic or interest  
6 living together within a larger society community of retired persons. . . .

7 In other words, one or two vacation homes set apart in a high-cost area would not qualify  
8 because they do not constitute a community or a portion of a community. On the other hand, a  
9 cluster of unserved homes affiliated with an established and served town might, depending on  
10 other circumstances, qualify as a portion of a community. However, that unserved cluster would  
11 not be “unserved” within the meaning of the statute if the cluster is within an existing ETC’s  
12 service area. Existing ETC service areas are not unserved because there is a carrier with the legal  
13 obligation to serve throughout.

14 **How does the Commission determine when “no common carrier will provide”  
15 service?**

16 The Commission need not designate, and in fact may not designate, a carrier to serve  
17 under Section 214(e)(3) unless no common carrier will provide service. The Commission must  
18 make such a finding, and in these proceedings should undertake to develop standards for making  
19 this determination, including which carriers must be asked, by whom, and under what conditions,  
20 in order to reach the conclusion that no carrier will provide the services supported by the federal  
21 universal service support mechanisms. As discussed above, even if a landline carrier is unwilling  
22 to serve, that does not mean that “no common carrier” will do so.

23 **How should a carrier be selected to serve under Section 214(e)(3)?**

If any of the areas at issue truly constitute unserved communities or portions thereof, the  
question remains as to how a carrier should be selected to serve. U S WEST believes, and has  
set forth in its comments to the FCC, and in Docket Nos. UT-990301 and UT-970325, that a

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2 competitive bidding mechanism of some sort is the most appropriate. The lowest bidder should  
3 be selected to serve, with assurances to the bidder of full cost recovery. If no federal or state  
4 universal service funding is in place to provide such cost recovery for deployment of facilities  
5 and service to high cost areas, then the Commission must consider whether it can, under  
6 applicable law, order a carrier to serve, and if so, include cost recovery mechanisms to assure  
7 cost recovery. These recovery mechanisms can include recurring and nonrecurring charges to the  
8 end user, as well as universal service support funding.

9       If funding is in place, the best way to select the most efficient involuntary ETC for an  
10 unserved community is to utilize a competitive bidding mechanism of some sort.<sup>2</sup> In particular,  
11 the bidders should submit bids detailing (1) the amount of support per line needed, and, also  
12 (2) the amount of one-time construction support needed. The affordable benchmark should be  
13 dictated by the Commission in advance. The lowest bidder should be selected.

14       Moreover, the involuntary ETC will thereafter be entitled to recover its actual costs  
15 through its rates and universal service support. Anything else would amount to a requirement  
16 that a particular carrier support universal service in that area, contrary to Section 254 of the Act  
17 However, the amount of support cannot exceed the winner's bid. Absent full cost recovery, the  
18 involuntary designation risks become an unconstitutional taking. In addition, because of the  
19 unpredictable demand and high likelihood of defaulting customers as noted by the FCC,<sup>3</sup> the  
20 bidders must be assured of full recovery in order for the process to be viable. Finally, without  
21 full explicit support (including targeting below the wire center), implicit subsidies will be  
22 illegally maintained, and inefficient entry will be incited in low-cost areas while efficient entry

23 <sup>2</sup> See FNPRM ¶ 95.

<sup>3</sup> FNPRM ¶ 116.

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in high-cost areas will be discouraged.

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2 In the event the bidding mechanism fails, the Commission might select an involuntary  
3 ETC based on a number of universal service factors. The FCC has preliminarily suggested  
4 certain factors for consideration<sup>4</sup>, and U S WEST has filed comments on these, explaining why  
5 some of the factors are not relevant for consideration, and suggesting at least one additional  
6 factor. Specifically, the FCC's first factor – whether the unserved community is within an  
7 existing service area – is inapposite. If the community is in a service area, then it is not unserved  
8 because it already has an ETC with a duty to serve. Thus, the first factor is relevant in a  
9 214(e)(3) inquiry in general, but it is not a factor in selecting a carrier. Likewise, the FCC's  
10 second proposed factor – the extent to which the carrier has adjacent facilities – is also irrelevant.  
11 Due to the legal obligation to interconnect under Section 251,<sup>5</sup> the adjacent carrier has no  
12 inherent advantage over other candidates. Similarly, the FCC's eighth factor – whether the  
13 carrier is already an ETC – is off the mark. The key is whether the carrier can meet the  
14 requirements and duties of ETC status.

15 In addition, U S WEST has suggested that the FCC should consider the amount of  
16 support for which the carrier will qualify. For example, it may be that one carrier is a rural  
17 company and entitled to large amounts of support if it is designated, while another carrier may be  
18 entitled to no support because it is a non-rural carrier. Selection of the non-rural carrier would

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19 <sup>4</sup> FNPRM ¶ 96. If the competitive bidding mechanism does not give rise to a carrier willing and able to provide the  
20 supported services in the unserved area at a reasonable cost, we seek comment on whether the Commission should  
21 then initiate an inquiry to determine the carrier or carriers best-able to provide service to the area. We seek comment  
22 on whether the following factors would be relevant in making that determination: (1) whether the area falls within  
23 the designated service area of an existing carrier; (2) the extent to which a carrier has deployed facilities capable of  
providing supported services in the surrounding area; (3) the cost for that carrier to build facilities capable of  
providing the supported services; (4) the quality of services that would be provided; (5) the financial strength of the  
carrier; (6) the proportionate impact serving the area would have on the number of lines and the geographic area  
served by the carrier; (7) the amount of time required for the carrier to deploy facilities; and (8) a carrier's status as  
either an incumbent LEC or a competitive eligible telecommunications carrier.

<sup>5</sup> 47 U.S.C. §251.

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necessarily increase the state support necessary to serve the unserved community because no Federal USF resources are available to it. Rural carriers have much greater access to federal universal service support and thus would create a smaller burden on state resources.

In conclusion, U S WEST recommends the Commission notice the other telecommunications companies in the state of Washington, including CLECs certified in the areas at issue, wireless carriers, and other ILECs prior to proceeding any further. In the alternative, in evaluating these petitions, the Commission must first determine whether the statutory criteria in Section 214(e)(3) are met, must next determine how it will designate a carrier, and must ensure a mechanism for adequate cost recovery if it does order a carrier to serve.

DATED this 26th day of January, 2000.

U S WEST Communications, Inc.

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Lisa A. Anderl, WSBA #13236

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