

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Complaint and Request for)	
Expedited Treatment of AT&T Communications)	No. UT-991292
of the Pacific Northwest, Inc. Against U S WEST)	
Communications, Inc. Regarding Provisioning of)	U S WEST’S ANSWER TO AT&T’S
Access Services)	MOTION TO COMPEL PRODUCTION,
)	TO RE-OPEN RECORD, AND TO
)	PERMIT ADDITIONAL BRIEFING
)	

U S WEST Communications, Inc., (“U S WEST”) hereby files its response to AT&T’s motion to compel production and to reopen the record. This answer is filed pursuant to the provisions of WAC 480-09- and WAC 480-09-480(7). AT&T’s motion was filed on March 8, 2000. This answer is timely submitted on March 20, 2000.

INTRODUCTION

AT&T asks the Commission for three separate things: an order compelling production of certain information concerning the gold/silver/bronze wire center designations; an order re-opening the record to admit those documents as additional exhibits; and, an order permitting supplemental briefing on that issue.

1
2 **I.ARGUMENT**

3 AT&T's motion is not well taken and should be denied. There is no basis upon which to
4 order additional discovery. That said, there would be no reason to re-open the record and permit
5 supplemental briefing.

6 A. No additional discovery is warranted.

7 AT&T first asks that the Commission order U S WEST to produce documents pertaining to
8 the gold/silver/bronze wire center differentiation program. Certain such documents were produced
9 in Minnesota in response to a Minnesota Commission request in the merger docket. AT&T has
10 similarly sought that those same documents be produced in the Washington merger docket,
11 No. UT 991358. U S WEST has objected to that discovery in the merger as untimely. U S WEST
12 objects to the discovery in this docket as well, on the basis that it is untimely, and not reasonably
13 related to the issues to which AT&T claims it is relevant.

14 It is ironic that AT&T now seeks additional discovery, when in October 1999, it opposed
15 U S WEST's motion to extend the discovery cutoff. Additionally, now that it suits AT&T's
16 strategy, AT&T seeks an extension of the schedule to introduce new evidence and to permit
17 additional briefing. AT&T has, in the past in the docket, insisted on the most expeditious of
18 schedules, claiming that it will be irreparably prejudiced by any delay whatsoever. Clearly, AT&T
19 only believes this to be true when it perceives a strategic advantage in a hurried proceeding. Yet,
20 when delay seems to confer some advantage, AT&T can be heard to vigorously advocate that as
21 well.

22 AT&T first claims that additional information regarding gold/silver/bronze wire center
23 designations is relevant to AT&T's claim of discrimination. AT&T cites comments from

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

Chairman Scott in Minnesota, suggesting that Chairman Scott’s remarks show the possible discriminatory purpose of the program. Leaving aside for a moment the fact that this was simply a remark by a commissioner in another state, not on the record in this proceeding, and not in any commission order, it is clear that these remarks establish no such thing.

First, Chairman Scott’s statement about an effort to “beat back the competitive threat” appears to be directed at competition for local customers. AT&T has repeatedly stated that this complaint is not about local service, but about access service. Second, AT&T has claimed discrimination, but has not shown, or even explained how it could show, any disparate treatment of either AT&T specifically or wholesale customers generally. Third, it is not discriminatory to respond to competition. Thus, no discrimination can be shown through this additional data.

AT&T next claims that these Minnesota documents should have already been provided in this docket, citing seven separate data requests in Washington which AT&T claims should have produced the Minnesota documents. That is simply incorrect. None of the data requests cited by AT&T (numbers 6, 14, 15, 32, 38, 59, and 60) would reasonably require the production of the Minnesota responses. U S WEST responded to request number 14, which asked for a definition and description of the gold/silver/bronze program. U S WEST also responded to request number 15, which asked for a list of U S WEST’s wire centers and their designations. Other data requests, which repeatedly asked for “all documents”, were overly broad and unduly burdensome in the context of this complaint proceeding. For example, number 32 was an expansive “all documents” request. U S WEST objected to many of these requests, and many of the objections were sustained. For example, data request numbers 6, 59, and 60, were the subject of an earlier motion to compel, and U S WEST prevailed in its arguments opposing those data requests. In some cases

1
2 (numbers 6 and 59) U S WEST was simply not required to produce additional information beyond
3 that which had already been provided. In others (number 60) the request was found to be unrelated
4 to the subject of the complaint and the motion to compel was denied. Finally, data request number
5 38, which asks for forecasting information, is not related to the gold/silver/bronze issues and did
6 not require production of the documents at issue here. In response to that request U S WEST did
7 provide information related to the forecasting process. There is simply no basis upon which to
8 conclude that these documents should have previously been produced. In fact, even a cursory
9 review of the Minnesota data requests shows them to be very focused and specific, not the general
10 ones that AT&T claims should have produced the same documents.

11 B. The Information Sought is Not “New Evidence.”

12 AT&T alternatively claims that the information sought constitutes “new evidence”
13 within the meaning of WAC 480-09-820. AT&T claims that U S WEST should have produced the
14 Minnesota documents in response to Washington request number 14. However, as noted above,
15 number 14 only asked U S WEST to define and describe the gold/silver/bronze designation. It did
16 not ask for documents, and U S West’s response to the data request was a complete response to the
17 question asked. Nor is this information essential to a decision in this case. Whether it is relevant in
18 the Minnesota merger docket is not an issue that needs to be addressed, but, as discussed in
19 paragraph 5 above, the information has not even been shown to be relevant in this case, much less
20 essential to a decision.

21 Reopening the record is extraordinary relief, and no basis is shown in AT&T’s motion for
22 such relief. The Commission recently ruled on a petition to reopen the record in MCI v.

23 U S WEST, Docket No. UT 971063, February 10, 1999. In that case, U S WEST petitioned to

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

reopen the record, citing “new evidence” as the basis. The Commission denied that petition, stating that a petitioner must establish both that the information is essential to a decision, and that it was unavailable at the time of hearing. AT&T has failed to show how the Minnesota information is necessary to a decision in this case, and has failed to show that the information should have been produced in response to earlier data requests. Thus, reopening the record is not relief which is appropriate in this case.

C. Additional Briefing is Not Warranted.

Under the circumstances, no additional briefing is necessary. Specifically, since AT&T should not be permitted additional discovery, and there is no new evidence, there is no need for additional briefing on the gold/silver/bronze issues.¹

AT&T inexplicably seeks to conduct additional discovery, when it opposed such discovery earlier in this docket, and selected a schedule which did not permit the depth and breadth of discovery AT&T originally sought. U S WEST believes that AT&T’s request is untimely and ill-founded. Based on the discussion set forth herein, AT&T’s motion should be denied.

DATED this 20th day of March, 2000.

U S WEST Communications, Inc.

Lisa A. Anderl, WSBA No. 13236

¹ If this docket were to be reopened, it would be inappropriate to do so and only allow additional briefing – AT&T should not be permitted to simply draw conclusions from U S WEST’s documents, without allowing U S WEST an opportunity to present testimony and evidence.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

U S WEST'S Answer to AT&T's
Motion to Compel Production, to
Re-Open Record, and to Permit
Additional Briefing

U S WEST, Inc.
1600 7th Ave., Suite 3206
Seattle, WA 98191
Telephone: (206) 343-4000
Facsimile: (206) 343-4040