

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

AT&T COMMUNICATIONS OF THE
PACIFIC NORTHWEST, INC.,

Complainant,

v.

US WEST COMMUNICATIONS, INC.,

Respondent.

NO. UT-991292

COMMISSION STAFF'S
RESPONSE TO AT&T'S BRIEF

The Washington Utilities and Transportation Commission Staff (Staff) submits this brief in response to AT&T of the Pacific Northwest, Inc.'s (AT&T) brief. As set forth below, Staff argues that US West Communications, Inc. (US West) has failed to provide access service to AT&T in accordance with its obligations under state statutes and its tariffs. Staff recommends that the Commission order US West to comply with state statutes and its tariff when providing intrastate access services to AT&T, to notify AT&T when it cannot provide the service because facilities are not in place, and to report to AT&T and the Commission, on a monthly basis, the geographic areas in the state where US West believes access or interoffice facilities will not be available during the next 12 months.

STAFF'S RESPONSE
TO AT&T'S BRIEF - 1

I. ARGUMENT

A. US West Has Failed to Comply With the Standard Intervals for Providing Service Described in its Tarriffs and Has Violated Statutory Requirements for Timely Service

1. US West is required by state law and regulations to provide service to customers in a timely manner. Those obligations are set forth in the following statutes and rules that provide, in relevant part:

All rates, tolls, contracts and charges, rules and regulations of telecommunications companies, for messages, conversations, services rendered and equipment and facilities supplied, whether such message, conversation or service to be performed be over one company or line or over or by two or more companies or lines, shall be fair, just, reasonable and sufficient, and the service so to be rendered any person, firm or corporation by any telecommunications company shall be rendered and performed in a prompt, expeditious and efficient manner and the facilities, instrumentalities and equipment furnished by it shall be safe, kept in good condition and repair, and its appliances, instrumentalities and service shall be modern, adequate, sufficient and efficient.

RCW 80.36.080 (emphasis added);

Every telecommunications company operating in this state shall provide and maintain suitable and adequate buildings and facilities therein, or connected therewith, for the accommodation, comfort and convenience of its patrons and employees. Every telecommunications company shall, upon reasonable notice, furnish to all persons and corporations who may apply therefor and be reasonably entitled thereto suitable and proper facilities and connections for telephonic communication and furnish telephone service as demanded.

RCW 80.36.090 (emphasis added);

Upon receipt of an application for service, a utility shall endeavor to provide a specific date upon which service will be provided. If prior to any agreed upon date it becomes apparent that service cannot be supplied as agreed, the

utility shall promptly notify the applicant prior to the agreed upon date that there will be a delay in completing the application and the reason(s) therefor.

....

WAC 480-120-051.

2. US West incorporates these requirements into its tariffs for switched and special access. Those tariffs provide, in relevant part:

[E]stablish a service date when the customer has placed an order for service with all the appropriate information to allow processing of the Access order. The date on which the service date is established is considered to be the Application Date (Order Date). The Company will provide a firm order confirmation to the customer and will advise the customer of the Application Date and the associated critical dates.

The time required to provision the service (i.e., the interval between the Application Date and the Service Date) is known as the service interval. Such intervals will be established in accordance with the service date interval guidelines as set forth in the Service Interval Guide mentioned in 5.2.1, following, and, where possible, will reflect the customer's requested service date.

WN U-37, Section 5.1.1(switched access); Ex. 506; and

The Company assures that all provisioning requests for DDS, DS1 and DS3 Service will be installed on the customer requested service date (due date) providing it is equal to or greater than the standard intervals published in the Service Interval Guide. . . .

WN U-33, Section 3.2.2.L (special access); Ex. 507.

3. US West further explains its timelines for service in its Service Interval Guide, which is incorporated by reference into its state tariffs. *See* Ex. 501-T, at 24; Ex. 402 (Service Interval Guide). Under the standard interval guide, US West will provide DS0 service within five business days in high density locations, and within eight business days in low density areas.

Ex. 402, at 6. The company will provide DS1 service within the same standard intervals.

Id. at 10. These intervals apply when facilities are in place. Id. at 6 & 10.

4. Where facilities are not available, US West's tariffs and Standard Interval Guide state that US West will provide those facilities on an individual case basis (ICB). *See* Ex. 506, at 12-13 (tariff sheets 11-12); Ex. 507. If facilities are not available, US West is required to notify the customer about the lack of facilities and that the service date will be provided on an ICB. Ex. 402, at 2. When US West provides facilities on an ICB, the company is must notify the customer when it will provide the service. *See* Ex. 505, at 13 (tariff sheet 12).

5. AT&T presented evidence showing that US West fails to meet its standard intervals at an unreasonably high rate. From October, 1998, to September, 1999, US West's average intervals for completing orders far exceeded the standard interval. Ex. C-101-T, at 7-8. *Id.* 1-8.¹ US West also misses its commitment dates an unreasonably high percentage of the time. Id. at 10, *Id.* 3-4.²

6. It also is clear from the evidence that US West does not inform AT&T when facilities are not available as required by tariff and the Standard Interval Guide. In many cases, US West provides AT&T with a firm order confirmation (FOC) notifying AT&T that it will provide service on a certain date. Ex. C-112-T, at 9; Tr. at 260-62, 282-83. This causes obvious problems for AT&T because both AT&T and its end-use customer make business plans based on

¹The actual number of days of the average intervals are confidential numbers and are set forth in the testimony.

²In this brief, Staff does not intend to repeat the arguments made in AT&T's brief. Rather, Staff cites to evidence in the record that supports its recommendations for a Commission order in this case.

US West's commitment to have facilities available on a given date. Neither AT&T nor its customer should be in the position of having to change their business plans because of US West's false promises.

7. As set forth above, and in AT&T's brief, it is clear that US West has violated state law requiring "prompt, expeditious and efficient manner," RCW 80.36.080, and violated its tariff requirements for timely service. WN U-37, Section 5.1., WN U-33 Section 3.2.2.L. In addition, US West violated the Commission's regulation that when the company cannot provide service on the agreed upon date, the company must notify the customer of the delay and the reasons for the delay. WAC 480-120-051.

8. By failing to provide timely service, and by giving AT&T service dates when it does not have the facilities to provide service on time or when it does not intend to build facilities, US West also has violated RCW 80.36.090. This statute requires that US West must provide service when a customer is reasonably entitled to service. As a provider of long distance service, AT&T is entitled to access services from US West. As is clear from the evidence in this case, AT&T has attempted to obtain access service from US West pursuant to US West's tariffs and Standard Interval Guide and US West's performance in meeting the requirements has been poor. *See generally*, Ex. C-101-T, at 6-11, 13-14; Ex. C-112-T, at 7-8; Ex. 103-C. By frequently and unreasonably delaying service to AT&T, US West has violated RCW 80.36.090.

B. US West Has Discriminated Against AT&T

9. Under state law, US West cannot subject another carrier to any undue or unreasonable prejudice or disadvantage, or discriminate against another carrier or give itself an advantage with respect to noncompetitive services. This statute provides:

No telecommunications company shall make or give any undue or unreasonable preference or advantage to any person, corporation or locality, or subject any particular person, corporation or locality to any undue or unreasonable prejudice or disadvantage in any respect whatsoever. The commission shall have primary jurisdiction to determine whether any rate, regulation, or practice of a telecommunications company violates this section. This section shall not apply to contracts offered by a telecommunications company classified as competitive or to contracts for services classified as competitive under RCW 80.36.320 and 80.36.330.

RCW 80.36.170.

Notwithstanding any other provision of this chapter, no telecommunications company providing noncompetitive services shall, as to the pricing of or access to noncompetitive services, make or grant any undue or unreasonable preference or advantage to itself or to any other person providing telecommunications service, nor subject any telecommunications company to any undue or unreasonable prejudice or competitive disadvantage. The commission shall have primary jurisdiction to determine whether any rate, regulation, or practice of a telecommunications company violates this section.

RCW 80.36.186.

1. By Failing to Notify AT&T that US West Lacks Facilities to Complete Orders, US West Discriminates Against AT&T and Favors Its Own Retail Operation

10. As set forth above, US West does not notify AT&T when it cannot complete an order because facilities are not available. Instead, US West gives AT&T a date when it will provide service. *Supra*, ¶ 6. This practice discriminates against AT&T and benefits US West's retail operation because US West knows where facilities are not available and can use that

information for its marketing purposes. See Ex. C-1-T, at 68, 71. Keeping this valuable commercial information from AT&T is discriminatory.

11. In a prior complaint case against US West, the Commission determined that US West discriminated against another carrier by withholding information about the availability of local interconnection facilities. The Commission held:

US West's failure to provide notice of current or forecasted exhaust also was discriminatory because it allowed US West to make network plans based upon information that is withheld from MCI Metro. This enabled US West to develop its business plan and marketing strategy around the availability of network capacity, while MCI Metro was required to adjust its business plans and marketing strategy in mid-stream.

....

US WEST granted an unreasonable preference to itself by making planning decisions based upon foreknowledge of the availability of facilities.

MCI Metro Access Transmission Services, Inc. v. US West Communications, Inc., Docket No.

UT-971063, Commission Decision and Final Order Denying Petition to Reopen, Modifying

Initial Order, In Part, and Affirming, In Part, ¶¶ 114-15 (Feb. 10, 1999). This reasoning applies

equally to the present case. Therefore, the Commission should find that US West has

discriminated against AT&T in violation of RCW 80.36.170 and 80.36.186.

2. US West Discriminates Against AT&T and End-Use Customers By Failing to Notify AT&T of Its Wire Center Prioritization

12. Until recently, US West has prioritized funding in wire centers by ranking wire centers as "Gold," "Silver," or "Bronze." See Tr. at 733-38; Ex. 308-C. AT&T presented evidence regarding the average provisioning levels for Washington wire centers that are designated Gold, Silver, and Bronze. Ex. C-116. It is clear from this evidence that US West's prioritization affects how quickly US West fills orders.

US West discriminates against AT&T because the wire center prioritization is available to itself, but not to AT&T. For the reasons set forth above, AT&T should have all of the information available to US West's marketing department, otherwise AT&T is prejudiced or disadvantaged.³

C. Staff's Recommendation

13. As set forth in our response to US West's Motion to Dismiss, the Commission has jurisdiction over the issues in this case because AT&T alleged, and proved, untimely service regarding intrastate facilities. *See* Staff's Resp. to Mot. to Dismiss. In addition, Staff believes that evidence of US West's provisioning intervals for its interstate services is probative of how the company provides intrastate service. *Id.*

14. Staff recommends that the Commission issue an order:

- Requiring US West to comply with its intrastate tariffs for switched and special access;
- Requiring that US West immediately fill all outstanding held orders for intrastate switch or special access service, if any;
- Requiring that US West report to the Commission and to AT&T on a monthly basis the number AT&T orders for access facilities that are held for lack of facilities;

³The fact that Staff confines its argument regarding prioritization to whether US West discriminates against AT&T by not sharing that information with AT&T should not be construed as an endorsement by Staff of US West's wire center prioritization.

- Requiring US West to notify the Commission and AT&T on a monthly basis of any geographic areas in the state where US West anticipates that access or interoffice facilities will be unavailable in the next 12 months.

15. Staff believes the above conditions are proper in order to put AT&T in a position where it can rely on US West's tariffs and provide AT&T with necessary information about the availability of facilities in order for AT&T to make business decisions.

II. CONCLUSION

US West has violated state law and regulations regarding its obligations to provide service to AT&T and has discriminated against AT&T. The Commission should issue an order as recommended by Staff.

Dated: March 24, 2000.

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