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November 27, 1995

VIA FAX (360) 586-1150
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Mr. Steve McLellan
Secretary, Washington Utilities
and Transportation Commission
1300 So. Evergreen Park Dr. S.W.
P.O. Box 47250
Olympia, Washington 98504

'95 NOV 28 A8:20

Re: DDC Contract, Docket No. UT-951081

Dear Mr. McLellan:

The above-referenced contract concerning the operation of the Washington Data Distribution Center ("DDC") for the Primary Toll Carrier ("PTC") environment (referred to as the "DDC Agreement") is scheduled for Commission consideration in its November 29, 1995, open meeting. TCG Seattle ("TCG") submits the following comments on the DDC Agreement.

TCG is concerned with the effect of the DDC Agreement on companies other than US WEST Communications, Inc. ("US WEST") and GTE Northwest Incorporated ("GTE") -- specifically other PTCs. The agreement apparently was drafted and negotiated through the Washington Exchange Carrier Association ("WECA") in the wake of the Commission's authorization of GTE to be a PTC. WECA, US WEST, and GTE are the only parties to the DDC Agreement, but the contract purports to bind all local exchange companies that may later choose to participate in the DDC as a PTC. See DDC Agreement § 10.1.

TCG submits that a contract filing is not the proper means of establishing terms and conditions of DDC participation that will be binding on other companies that provide intraLATA toll as a PTC. The Commission previously refused to give such preclusive effect to the first contract between WECA and a new entrant LEC for universal service funding. Rather, each such contract between WECA and a new entrant must be individually negotiated and approved by the Commission. The DDC Agreement appears to allow such individual negotiations for new entrants that choose

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to participate in the pooling process. See DDC Agreement at 3, ¶ 6. Only new PTCs are effectively bound by a contract to which they were not a party if they decide to participate in the DDC.

The Agreement as it is currently drafted, moreover, does not adequately consider the interests of new entrants. Article 4.6, for example, addresses the allocation of charges for WECA compensation among participating PTCs. That section describes the current estimate of applicable charges and requires US WEST to pay those charges and seek reimbursement from "other PTCs for their appropriate share of these costs." DDC Agreement at 16. Rather than specifying an allocation, however, the Agreement provides only that cost sharing is determined according to "a separate agreement between USWC and the other PTCs." Id. A new entrant that chooses to operate as a PTC thus must rely on US WEST -- its principal competitor -- to determine what is an "appropriate share" of WECA administrative costs for the new entrant to pay. The new entrant's participation in the DDC, moreover, depends on its reaching an agreement on this issue with US WEST. See id. ("The DDC shall not distribute records to a PTC which has not signed such an agreement.").

Most of TCG's customers use carriers other than TCG to carry their intraLATA toll calls, but TCG carries some intraLATA toll. If TCG is considered to be a PTC and decides to participate in the DDC, it should be given the opportunity to negotiate the terms and conditions of its participation. Such an opportunity is particularly important in light of the DDC Agreement's shortcomings as applied to new entrants.

If the Commission approves the DDC Agreement, therefore, it should make clear that the Agreement is not binding on, or required to be accepted by, any company that subsequently seeks to participate in the DDC as a PTC.

Sincerely yours,

DAVIS WRIGHT TREMAINE

Gregory J. Kopta

cc: Karen Notsund
Richard A. Finnigan

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