

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

IN THE MATTER OF THE)
COMPLAINT AND REQUEST FOR)
EXPEDITED TREATMENT OF AT&T) DOCKET NO. UT-991292
COMMUNICATIONS OF THE PACIFIC)
NORTHWEST, INC. AGAINST)
U S WEST COMMUNICATIONS, INC.)
REGARDING PROVISIONING OF)
ACCESS SERVICES)

REPLY BRIEF OF AT&T

AT&T Communications of the Pacific Northwest, Inc. (“AT&T”) submits its brief as follows:

INTRODUCTION

1. The heart of this case is what constitutes reasonable and adequate service. *T. at 537.* U S WEST Communications, Inc. (“U S WEST”) builds its responses to AT&T’s claims upon three principal arguments. First, U S WEST, through repeated motions, has challenged the Commission’s jurisdiction to hear the case. Second, U S WEST puts forth interpretations of its tariffs that strain credulity. Finally, U S WEST attempts to recast measures of its performance by inflating the universe of orders while attempting to discredit AT&T’s data and analysis. None provides a creditable defense

I. THE COMMISSION SHOULD EXERCISE ITS JURISDICTION OVER AT&T’S CLAIMS.

2. The issue of the Commission’s jurisdiction to consider this case has been addressed in AT&T’s opening brief as well as in its responsive briefs to U S WEST’s

various motions, the most recent being its Brief in Support of its Motion to Dismiss. In its Reply Brief (on the merits), U S WEST refers, almost in passing, to the Recommended Decision of the Administrative Law Judge in addressing AT&T's complaint against U S WEST in Colorado. That decision is not binding upon this Commission and should not be followed. First, AT&T has filed exceptions to the Colorado Public Utilities Commission on March 13, 2000 and the matter is still pending. Thus, the commission has not acted upon the judge's recommendation to defer to the FCC.

3. Second, U S WEST points to the judge's reliance upon the doctrine of "primary jurisdiction." *U S WEST's Reply Brief at ¶ 93*. This doctrine requires that a court refer issues within an agency's special expertise to the appropriate agency for an initial determination. *Tenore v. AT&T Wireless Services*, 136 Wash.2d 322, 349, 962 P.2d 104, 117-118 (1998). As the decision notes, the doctrine requires that claims be referred when (1) the agency has authority to resolve the issues, (2) the agency has special competence over the issues, and, (3) "the claim before the court involves issues that fall within the scope of a pervasive regulatory scheme creating a danger that judicial action would conflict with the regulatory scheme." *Id. at 346, 962 P.2d at 115*.

4. Because of concerns that a decision by the Colorado commission on provisioning would have region-wide impact, the ALJ recommended deferring to the FCC. By this rationale, this Commission would never be able to address any issues concerning access services because these services are all provided over one network and would have a region-wide impact. The Colorado decision is especially troubling because the judge found that "AT&T has experienced regular, frequent, widespread and ongoing delays in obtaining access," that "AT&T has little control over the date that access

ordered in the normal course of events will be provided,” that “U S WEST has put held status on many orders submitted by AT&T”; that “many other orders have simply not been filled on the date originally promised;” and, that “[w]hen U S WEST does not meet its dates for the provision of service, it works a hardship on AT&T as well as AT&T’s customers.” The judge also found that AT&T had requested information from U S WEST identifying “hot spots” and that U S WEST had refused to provide this information to AT&T. *Docket No. 99F-404T, Recommended Decision of Administrative Law Judge at 5-6. (Feb. 7, 2000)*. In short, the judge would not “fix” the wrongs he concluded that U S WEST had committed.

5. Finally, as Commission Staff notes at ¶ 22 in its Response to U S WEST’s February 29, 2000 Motion to Dismiss, this Commission, by statute, has “primary jurisdiction” of AT&T’s discrimination claims pursuant to RCW 80.36.170 and 80.36.186. This Commission should, consistent with its authority, “fix” all of the inadequacies shown in this record, and require U S WEST to perform according to its tariffs and its statutory obligations.

II. TARIFFS MUST IMPLEMENT, NOT AVOID, STATUTORY OBLIGATIONS.

6. U S WEST’s tariffs are filed to implement its statutory obligations to provide service to customers in this state. U S WEST contends that its tariffs “set forth a somewhat different obligation.” *U S WEST’s Reply Brief, at ¶ 37*. U S WEST points to the language of its tariffs that condition its offering of services¹. U S WEST is required

¹ U S WEST also contends that it is not required to give precedence to an order for carrier access service over an order from an end-user customer for basic telephone service. AT&T has made no claim that its orders should be given priority over retail orders.

to make “every reasonable effort” to provide service, “subject to the availability of facilities”. As U S WEST noted in hearings, AT&T has similar provisions in its tariffs. Moreover, contrary to U S WEST’s assertions, AT&T is not demanding 100% performance. Nor, it is quite clear from the record, is U S WEST providing service at anywhere near that level.

7. So, what are “reasonable efforts”? In U S WEST’s view, “reasonable efforts” means providing service within 6 months of ordering. This time period is derived from tariff language² which, on its face, does not lend itself to the interpretation U S WEST propounds. In situations where the customer has requested a service date beyond the Standard Service Interval Guide, the Negotiated Interval “may not exceed by more than six months” that date. Where there is no such date, the Negotiated Interval may not exceed by more than six months “the Company offered Service Date,” which will be determined by the type and quantity of service requested when the quantity exceeds specified amounts. As Ms. Field testified at hearing, she was aware that there were limits on how far ahead U S WEST would take orders. *T. at 225*. In the case of the services about which AT&T is complaining, there are standard intervals for the service and AT&T was requesting service in those time periods. No customer, in the face of a five or eight day standard interval, would read that language—and AT&T did not and does not—to mean that U S WEST could provide service anytime within the next six months.

² The language is quoted verbatim in AT&T’s Post-Hearing Brief, at ¶ 34.

8. And, what is an appropriate understanding of “subject to the availability of facilities”? Although in Minnesota U S WEST had agreed³ to maintain “held orders” below .005%, again, AT&T was not demanding 100% performance. Lack of facilities, in U S WEST’s view appears to have no limit, although Ms. Halvorson did agree that failing to provision orders 50% of the time for lack of facilities was not “reasonable.” *T. at 537*. Under this view, the exception would swallow the rule and render meaningless the “commitment” to provide service within stated standard intervals. Unfortunately, as the record shows, that is precisely what has happened.

9. U S WEST then maintains that, even if it has failed to provide service as “guaranteed”, that the only remedy available is a waiver of the non-recurring charges. *U S WEST Reply Brief at ¶ 58*. This interpretation would deny the Commission the authority to review and determine whether U S WEST’s practices are “just, reasonable, proper, adequate and efficient” and, if it finds to the contrary, to “fix” those practices by order or rule. RCW 80.36.140.

10. If this were a case where U S WEST was meeting its “committed to” dates 90% of the time, while AT&T was expecting 95% on-time provisioning, the definition of “reasonable” might be more difficult to reach. However, that is not the situation before the Commission. U S WEST claims that, using its numbers and its methods, DS1 circuits are still only provided on time some 74% of the time. *U S WEST Reply Brief at ¶¶ 28, 58; Ex. C-211 at 3*. Of course, this performance benefits considerably from the inclusion of “customer misses” as “commitments met.” Without that, U S WEST actually only met commitments for AT&T’s DS1 orders 55% of the time. *Id.* In fact, the data reported by

³ *In the Matter of a Petition by U S WEST Communications, Inc. for Approval of an Alternative Regulation Plan*, MN Public Utilities Commission, Docket No. P-421/AR-97-1544, January 1, 1999, Appendix B, p. 6.

U S WEST but prepared according to the methodology applied by all of the other RBOCs and GTE, puts that performance in the 50% range. *Ex. C-224, at 2.* And, again, this performance benefits from “customer misses.” Who is the Commission to believe is correct? An examination of just the data submitted by U S WEST in this case confirms that AT&T’s analysis is the appropriate one.

III. U S WEST’S OWN DATA CONFIRMS AT&T’S ANALYSIS.

A. The Universe of Orders.

11. U S WEST attempts to diminish the service quality problems being experienced by AT&T and its customers by inflating the numbers of access orders. U S WEST claims that it has processed over 20,000 access service orders for AT&T in Washington since 1996. *U S WEST Reply Brief, at ¶ 81 (citing Ex. 309).* Of course, that number includes all special projects and engineering service orders, as well as all changes and disconnections. Engineering service orders, for example, are not customer-affecting but, instead, represent continuing efforts to groom the network to maximize performance, quality and efficiency. In addition, U S WEST contended in revisions made at hearing that the volume of orders processed from AT&T in Washington for 1999, for DS0’s and DS1’s, would be about 4500 orders. *Ex. C-214-T, at fn. 1.*

12. The universe of orders needs to be focused on customer-affecting data. To measure on-time provisioning, upon which U S WEST reported on a monthly basis, the universe of orders was refined so as to focus on the appropriate information. Ms. Halvorson notes that AT&T projects and engineered service orders are excluded from the “self reported” data. *Ex. C-214-T at p. 7, fn. 2.* She states that U S WEST examined the AT&T orders for Washington for DS0’s and DS1’s for eleven months of 1999. *Id.*

Those orders are shown in her Exhibit C-216 (BAH-13). The number of orders for each type of service is **less than one-half** of the number claimed at hearing. *Compare Ex. C-214-T, at fn. 1, with Confidential Attachment 1 (Summary of Ex. C-216) (attached).*⁴ Further, the size of the universe of orders contained in Ms. Halvorson's exhibit approximates that developed by AT&T and provided by Mr. Wilson as the first report in his Exhibit C-118. *Ex. C-112-T, at p. 2, ln. 5-6; Compare, Ex. C-118 (first report) with Confidential Attachment 1 (attached).* Thus, U S WEST's data contradicts its claims and, instead, supports AT&T.

B. The Size of the Service Quality Problem

13. U S WEST contends that, "with well over 1000 DS1 service orders at issue, AT&T could only identify a few hundred "held" and "missed" orders". *U S WEST Reply Brief, at ¶ 18.* Frankly, it is difficult to understand how "a few hundred 'held' and 'missed' orders" could be described as "only." On-time provisioning for 95% of the orders would mean that "only" 50 orders would be at issue, not "a few hundred." Be that as it may, again U S WEST's exhibits confirm AT&T's numbers.

14. Exhibit 220, the "summary of held orders" for Washington was provided by U S WEST. It includes orders that, according to Ms. Halvorson, were missed or held. *T. at 552.* As shown in Confidential Attachment 3, for the years 1997, 1998, and 1999, the "missed" and "held" orders for AT&T in Washington approached 1000 per year. Confidential Attachment 4, a portion of Exhibit 220, is included to illustrate the extent to

⁴ Exhibit C-216 can be examined to compare "due dates" and "completion dates". This comparison is provided in Confidential Attachment 2 for the convenience of the Commission and the parties. First, the dates were compared by subtracting the dates in Column G from the dates in Column F. That subtraction appears in Column H. Then, the data was sorted by Column H in descending order, an Excel functionality. The column letters appear in the electronic version of Confidential Attachment 2.

which U S WEST's own data establishes AT&T's claims. Attachment 3 shows that, of the 49 orders on that spreadsheet, 33 were held (show a "yes" in Column K "was order ever held"). *T. at 548.* These orders were "held for conditioned loop," "held for conditioned pairs," "held for interoffice facility," "held for removal of load coil," "held for defective pair," "held for repeater" and "held for loop makeup." Of course, only half of the orders had explanatory entries, so there may well be additional types of reasons.

15. Attachment 3 shows that one order was for switched access (PON WEM9923000022). *T. at 569.*⁵ Two orders were for DS3 circuits and a large number were for DS1's. This spreadsheet further shows that orders for DS0 circuits were missed and held⁶. The spreadsheets in Exhibit 220 show orders for switched access, that U S WEST calls the "red herring", calculated for six months of 1997, 1998 and nine months of 1999 on Confidential Attachment 3.⁷ Finally, the central offices involved are in Spokane, Tacoma, Bellevue, Vancouver, Seattle, Bellingham, Renton, Issaquah, Auburn, Yakima, Olympia, and others.

16. The exhibit submitted by Ms. Halvorson in her rebuttal testimony analyzed orders by AT&T for DS0 and DS1 circuits in Washington for "approximately the same time period of Mr. Wilson's study." *Ex. C-216.* **For 32% of the orders for DS0 circuits and 59% of the orders for DS1 circuits shown on U S WEST's exhibit, the completion date "missed" the due date.** In other words, U S WEST's own data

⁵ Column H of Attachment 4 also shows Type of Service. For switched access, the designation is FG, for Feature Group.

⁶ Service type references to 56K and 9.6K require a DS0. Further, in the central office code, the last letters and numbers refer to "DS1" and "DS0."

⁷ Ms. Field's testimony on switched access focused on the "bulk access" facilities, that is the special access trunks that were ordered to provision switched access. *Ex. 1-T, at 25-26.*

establishes that it failed to meet its “committed to” due dates. Further, the data in U S WEST’s Exhibit C-216 shows that of the orders for DS1’s that were missed, U S WEST failed to provide service by 30 days or more for almost 30% of the orders. *Confidential Attachments 1 and 2*. Thirteen percent of the DS1 orders missed took 90 days or more to fill. *Id.* Three were not filled within 6 months and one missed by 435 days. *Id.* This is the same poor performance reported by Mr. Wilson using the AT&T data.

17. This data, according to Ms. Halvorson, was used in the monthly reporting by U S WEST. *Ex. C-214-T, at p. 7, ln. 2*. Thus, it would have been aggregated with the same data from the rest of the U S WEST region and formed the basis for the performance reported in Exhibit 6 and Exhibit C-224. So, U S WEST’s reported results in Washington – showing 40% on-time provisioning of DS1’s - were significantly worse than the regional data - showing 55% on-time provisioning of DS1’s.

18. The other criticism leveled by U S WEST, at ¶¶ 20-21 of its Reply Brief, is that the data indicates that orders were placed requesting due dates less than the standard interval or less than 10 days. An examination of the third report in Mr. Wilson’s Exhibit C-118 shows that orders that have been placed with intervals of less than the standard interval were originally placed earlier than the date shown. These orders needed to be supplemented due to provisioning issues between the two companies. *See, Third Report, C-118 (Multiple “FOD” or Firm Order Dates)*. U S WEST does not inform AT&T of provisioning problems in a timely manner. When AT&T orders service with an interval of 15 days and U S WEST waits until day 10 to indicate a problem, AT&T will send back the necessary information and request the same original due date. This

order will then look like it had a 4 day interval, when in fact it originally had a 15 day interval.

19. The evidence of record from U S WEST alone establishes that service quality in provisioning access is a very big problem. Time and resources limited the analysis that could be done by AT&T because AT&T had to gather the data manually while U S WEST has the systems in place to report and analyze the data. AT&T had to focus on DS1 special access orders for data analysis in this case. That did not mean, as U S WEST continually repeats, that other facilities—DS3 and DS0 special access and switched access services were “not at issue” nor that AT&T has not been experiencing serious provisioning problems with virtually every aspect of the services ordered from U S WEST. And, U S WEST’s data bears out those claims.

C. Lack of facilities: the exception eliminates the rule.

20. U S WEST also criticizes AT&T’s data analysis because AT&T does not distinguish among orders where facilities are available and those where facilities are not available. Mr. Wilson’s analysis is fair: it looks at all special access DS1 orders, tracking the provisioning intervals. The comparison with U S WEST’s standard intervals shows how far the average provisioning intervals deviate from the standard interval stated in U S WEST’s tariffs. The scatter plot (Ex. C-104) shows the very wide variation in these provisioning intervals. A quick review of that exhibit will show that very few orders are provisioned within the standard interval. The scatter plot was provided to allow the Commission to see the magnitude of the problem, independent of averages, means or any other statistical calculation that could be used. The extremely long duration of some of the provisioning intervals is precisely the problem.

21. In fact, as Mr. Wilson further testified, the U S WEST data matches the data that he used very closely. *Ex. C-112-T, at 3-4*. The data compared are contained in U S WEST's Exhibit C-216 (BAH-13) with the August-September data contained in Exhibit C-118 (Third Report). Note that none of this data set was stricken at hearing. In the data set analyzed by Mr. Wilson, 95% of the Purchase Order Numbers (PON) appeared in the U S WEST data set. The Customer Desired Due Dates had no variances (100% of the orders had the same dates between the two data sets). With the exception of a handful of orders, the Firm Order Date or "APP" Dates were either no different or 1 day apart when looking at the last FOD issued. Again, with the exception of a handful of orders, the Completion Dates were either no different or had 1 day difference. Given the 3 P.M. cutoff by U S WEST, this one day difference in the records of AT&T is easy to understand. Similarly, in view of the "business day" rule, variations of 3 days, all because of weekends, are also observed. None of these variances are material. *Compare, Exhibit C-216 to Exhibit C-118 (Third Report)*.

22. Further, despite U S WEST's assertions, at paragraph 54 of its Reply Brief,⁸ AT&T is not notified that facilities are not available. U S WEST's brief, lines 10-15, recites verbatim Ms. Halvorson's testimony. *Ex. 214-T, at 12, lns. 2-5*. U S WEST should be immediately informing AT&T that facilities are not available, as soon as the RID/DLR check is made on day 1. U S WEST is not doing this. The Firm Order Confirmation does not issue for, on average, 3.6 days. *Ex. C-112-T, at 19-20*. When a response is finally given, the FOC contains a commitment date—just as it would when

⁸ U S WEST describes a process in this paragraph of its brief that is not contained in the evidence to which it cites. Nor is that process, as described, consistent with the Service Interval Guide ("the customer will be notified promptly").

facilities are available—but, that date is generally inaccurate. While U S WEST argues that it is not—despite the chart set forth in the Service Interval Guide—required to provide a Firm Order Confirmation within 24 hours, it has not refuted with any data or analysis Mr. Wilson’s testimony based upon actual order records of what is really happening. *Ex. C-112-T, at 7-9.*

23. In all cases, according to the Service Interval Guide, U S WEST should know if facilities are available during day 1 after the order is placed. U S WEST should be responding back to AT&T with either (1) a confirmation date of the due date (generally, the longer of the customer’s date or the standard interval) or (2) a notice that the order is ICB. The data shows that this is not happening. *Ex. C-112-T.* Only on those orders where AT&T specifically calls U S WEST to inquire about the status of an order—as shown in Exhibit 220 (summary of held orders)—does AT&T learn that an order is held and that facilities are not available.⁹ Once again, U S WEST’s own data refutes its assertions.

D. Discrimination by U S WEST

24. U S WEST maintains that AT&T has failed to produce evidence supporting its allegations of discrimination. In large part, this result is dictated by U S WEST: U S WEST possesses the information and simply refuses to produce it. Various witnesses before the Commission in other cases have referred to this as the “information rents” extracted by the incumbents. In Exhibit C-211, U S WEST provided only region-wide data, not Washington-specific data, as AT&T had requested in discovery.

⁹ Ms. Halvorson noted that the Exhibit “only” includes orders that AT&T called about an that there may be more orders “held.” T. at 553.

25. The evidence submitted by U S WEST establishes that U S WEST has discriminated against AT&T in the provisioning of access services. Exhibit C-211 was prepared by U S WEST to compare the provisioning performance for retail and wholesale services. The data is comparable for both retail and wholesale customers—it includes special projects and the like for both sets. *T. at 569-571*. Thus, the substantial differences in provisioning intervals noted by Mr. Wilson are valid. *Ex. C-101-T, at 14-15*.

26. The other data by U S WEST show the prioritization of wire centers as Gold-Silver-Bronze. Mr. Wilson showed that provisioning intervals are longer in the Bronze wire centers. Further, as Staff points out, this information was not made available to AT&T. The evidence of record establishes discrimination. U S WEST has information that has not been provided. *See, AT&T's Motion to Re-Open the Record*. U S WEST should not be allowed to benefit from its refusal to provide information and then claim that evidence is inadequate.

IV. STAFF'S RECOMMENDATION WILL IDENTIFY BUT NOT SOLVE THE SERVICE QUALITY PROBLEMS IN WASHINGTON.

27. Commission Staff, in its Reply Brief, maintains that U S WEST has failed to provide service in a timely manner to AT&T and that U S WEST has discriminated against AT&T by withholding information on lack of facilities as well as in prioritizing its wire centers. Staff then recommends that the Commission order U S WEST to comply with its tariffs, to report on held orders and to notify where facilities are anticipated to be unavailable. As Staff notes, providing this information to AT&T will enable AT&T to make business decisions. *Staff's Response to AT&T's Brief, at 9*. However, without the

performance standards used by the parties, this information will only identify the extent of the problems just as the reports included in the record do. Knowing that only 40% of its orders for DS1 circuits will be filled on time will not *solve* the problems experienced by AT&T and its customers. Only by enforcing standards¹⁰ for reasonable and adequate service will the Commission be able to assure that Washington consumers are provided service by U S WEST comparable to that enjoyed by consumers throughout the rest of the country.

CONCLUSION

28. The telephone network has always been a “network of networks”, with networks formerly owned by the Bell System, General Telephone and the multitude of independent companies “interconnected” in order to permit customers of one company to call those of another. Of particular significance, however, was the status of each of these companies: monopoly-providers serving adjacent territories. With the divestiture of the Regional Bell Operating Companies in 1984, AT&T had to “interconnect” its long distance network with the local exchange network. The structural separation of the local and long distance networks was intended to enable competition in the interexchange market. Again, however, the Bell Companies were not competing with the long distance companies and, indeed, benefited from the sale of exchange access at prices far in excess of economic cost.

29. In that environment, AT&T and U S WEST worked to provide quality services to customers. The companies developed processes for monitoring and reporting on the quality of performance, to facilitate providing service. The other RBOCs and GTE

¹⁰ Staff is also of the view, in Docket No. UT-990261, the rulemaking for carrier-to-carrier service quality standards, that it is not going to address standards for provisioning access services.

have been and continue to be consistently able to meet or exceed the performance standards. With the “re-engineering” by U S WEST, designed to reduce costs in anticipation of competition—discussed in the Commission’s 1995 decision on U S WEST’s general rate case—performance by U S WEST began to deteriorate. *Fifteenth Supplemental Order, Docket No. UT-950200, at 10, 14-24 (April, 1996).* Efforts by AT&T to resolve U S WEST’s failure to timely provide service in a business-to-business manner have been unavailing. Without the Commission’s action, the consumers of this state will continue to receive less than U S WEST is obligated to provide and less than consumers served by other companies enjoy: reasonable and adequate service.

Respectfully submitted on April 4, 2000.

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