BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Application of U S WEST,	)	
INC., and QWEST COMMUNICATIONS	)	Docket No. UT-991358
INTERNATIONAL, INC., for an Order	)	
Disclaiming Jurisdiction, or in the Alternative,	)	
Approving the U S WEST, INC. – QWEST	)	
INTERNATIONAL, INC., Merger	)	
	)	

RESPONSE TESTIMONY

OF

REX KNOWLES

On Behalf of

NEXTLINK Washington, Inc.

February 1, 2000

Q. PLEASE STATE YOUR NAME, EMPLOYER, AND BUSINESS ADDRESS.

A. My name is Rex Knowles. I am a Director Regulatory and External Affairs for NEXTLINK, 111 East Broadway, Suite 1000, Salt Lake City, Utah 84111.

I. BACKGROUND

Q. PLEASE IDENTIFY AND DESCRIBE THE PARTY ON WHOSE BEHALF YOU ARE TESTIFYING.

A. I am testifying on behalf of NEXTLINK Washington, Inc. ("NEXTLINK"), a competitive local exchange company ("CLEC") that provides facilities-based local and long distance telecommunications services in Washington in competition with U S WEST Communications, Inc. ("U S WEST").

Q. WHAT ARE YOUR RESPONSIBILITIES?

A. I am responsible for all regulatory, legislative, municipal, and incumbent local exchange carrier ("ILEC") initiatives on behalf of NEXTLINK and other affiliates in several western states, including Washington and other states in the U S WEST region.

Q. WHAT IS YOUR BUSINESS AND EDUCATION BACKGROUND?

A. I graduated from Portland State University in Portland, Oregon, with a degree in Business Administration/Finance Law in 1989. I was employed by United Telephone of the Northwest from 1989 to 1993 as a regulatory staff assistant and product manager responsible for incremental cost studies and creation and implementation of extended area service ("EAS") and 911. From 1993 to 1996, I was employed by Central Telephone of Nevada as manager of revenue planning and research and was responsible for supervising cost study preparation and developing and implementing regulatory reform, including opening the local exchange market to competition and alternative forms of regulation for ILECs. I joined the NEXTLINK organization in my current position in the Spring of 1996.

Q. HAVE YOU PREVIOUSLY TESTIFIED IN OTHER REGULATORY PROCEEDINGS BEFORE THE COMMISSION?

A. Yes, I have provided testimony on costing, pricing, and policy issues in the Commission's generic costing and pricing proceeding, Docket Nos. UT-960369, *et al.*, and in the universal service proceeding, Docket No. UT-980311(a).

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. The purpose of my testimony is to discuss the public interest impacts of the proposed merger between U S WEST and Qwest from a CLEC perspective. More specifically, my testimony summarizes the problems NEXTLINK is experiencing with U S WEST in Washington as an example of U S WEST's continued hostility to the development of local exchange competition and refusal to devote adequate resources to the local exchange market in this state. I will then discuss the failure of Section 271 of the Telecommunications Act of 1996 to provide adequate incentive for improvement in U S

WEST's service provisioning following the merger, the merged company's countervailing incentives to devote resources to broadband, data, and other advanced services at the expense of basic local exchange service, and Qwest's refusal to stand behind its chairman's promises to regulators. I then propose conditions on the approval of the proposed merger that would improve the chances that the merger will be consistent with the public interest and beneficial to the ratepayers in this state.

II. PUBLIC INTEREST IMPACT

Q. WHAT IS NEXTLINK'S INTEREST IN THIS PROCEEDING?

A. NEXTLINK obtains a variety of services and facilities from U S WEST, including interconnection, collocation, unbundled loops, and other facilities between a U S WEST central office and customer premises. Timely and efficient provisioning, maintenance, and repair of these facilities and services is critical to NEXTLINK's ability to provide service to its customers. U S WEST, however, is the incumbent local service provider in virtually all of the areas where NEXTLINK offers service and thus is NEXTLINK's primary competitor, as well as major source of necessary wholesale facilities and services. Accordingly, U S WEST has a strong economic incentive to maintain its current monopoly market share, in part, by not providing necessary facilities and services to NEXTLINK and other competing carriers in a timely and efficient manner.

The proposed merger between U S WEST and Qwest represents both a potential opportunity for improvement in U S WEST's wholesale service provisioning and a threat that the merged company will maintain or expand U S WEST's anticompetitive practices. NEXTLINK is participating in the Commission's review of the proposed merger to assist the Commission in determining whether and under what conditions the proposed merger would be in the public interest. My testimony focuses on the public interest as it relates to the development of effective local exchange competition. NEXTLINK has extensive experience with U S WEST, both as a customer and as a competing service provider, and that experience typifies the type of public interest concerns and inquiry into the impact of the merger on competition that the Commission should address as part of its review.

A. Public Interest Concerns With Respect to Development of Effective Local Exchange Competition

Q. WHAT HAS BEEN NEXTLINK'S EXPERIENCE WITH U S WEST TO DATE?

A. NEXTLINK is a facilities-based provider of local exchange service and, as such, deals extensively with U S WEST to interconnect the companies' respective networks and to obtain collocation, unbundled loops, and other facilities needed to access customer premises. NEXTLINK has experienced substantial problems in virtually every aspect of the companies' dealings, including provisioning, maintenance, and repair of U S WEST facilities.

Q. WHAT IS NEXTLINK'S EXPERIENCE WITH RESPECT TO U S WEST FACILITIES NEEDED FOR ACCESS TO CUSTOMER PREMISES?

A NEXTLINK obtains unbundled loops, high capacity circuits, and other facilities from U S WEST that NEXTLINK uses to obtain access to customer premises from equipment collocated in U S WEST central offices. U S WEST fails to provision these facilities in a timely and efficient manner. Of the total number of orders NEXTLINK has submitted to U S WEST for Spokane since August 1, 1999, between 25% and 70% per month are "held," *i.e.*, not provisioned when due. Of those held orders, the average amount of time that these orders remain held is 45 days.

Increasingly, U S WEST claims that the reason NEXTLINK's orders are held – or unilaterally cancelled by U S WEST – is because U S WEST has insufficient facilities or capacity in existing facilities to provision the orders. I am not aware that this Commission has ever accepted lack of facilities as an excuse for not providing requested service to retail customers, at least when those customers are located within U S WEST's service territory. U S WEST, however, apparently believes that it may refuse to provide facilities to competitor customers even though U S WEST would be compelled to provide those same facilities to an end-user customer. In response to a data request from NEXTLINK, AT&T and ATG seeking an explanation of how U S WEST funds construction and provisioning of facilities between a U S WEST central office and a customer premises used by competing carriers, U S WEST stated,

> If the requested facilities between the central office and the customer premises already exist, then U S WEST will provide them under the terms and conditions of the interconnection agreement with that CLEC. *When there are no facilities between the central office and the customer premises, the CLEC then has two choices: either, build the facilities itself, or request that U S WEST build them as "special construction" as defined in the interconnection agreement and built on an Individual Case Basis (ICB).*

Ex. ___ (RK-1) at Request No. AT&T, et al, 01-068S1 (emphasis added). NEXTLINK's interconnection agreement with U S WEST requires provisioning of loops and other facilities to customer premises on the same basis that U S WEST provides such facilities to itself and makes no reference to any requirement for "special construction." Indeed, in the TCG/U S WEST arbitration that resulted in the agreement NEXTLINK adopted, the Commission rejected U S WEST's proposal for imposing "special construction" charges. Yet, U S WEST is now taking the position that it may nevertheless refuse to provision facilities unless and until U S WEST agrees to undertake "special construction" on a case-by-case basis.

Even when (or if) U S WEST provides the ordered facilities, U S WEST's maintenance and repair has been abysmal. For example, between November 1, 1999, and January 28, 2000, NEXTLINK customers experienced 195 outages or other service interruptions attributable to U S WEST on facilities it provides to customer premises, and many of these interruptions occurred repeatedly on the same facility. Of those service interruptions, the average time U S WEST took to correct the problem was 57 hours. For example, facilities U S WEST provided to medical offices served by NEXTLINK failed more than a dozen times. U S WEST acknowledged that the outages were caused by problems on U S WEST's network, but U S WEST never fixed those problems. The medical offices continued to experience outages until NEXTLINK constructed its own facilities to the customer premises.

Q. WHAT ABOUT COLLOCATION?

A. Collocation continues to be a problem with U S WEST. Like provisioning of facilities to customer premises, the primary issue (other than U S WEST's exorbitant charges) is the availability of facilities, particularly access to DC power. U S WEST claims that it "does not delay orders on power" associated with collocation, Ex. ___ (RK-1) at Request No. AT&T, et al, 01-038S1, but this claim is demonstrably untrue. In an August 9, 1999 status update concerning collocation in U S WEST's Bellevue Glencourt central office, U S WEST stated that while some space for collocation was available, provisioning would be delayed by the availability of sufficient power. Ex. ___ (RK-2) at 2. U S WEST has also delayed provisioning collocation for NEXTLINK in other central offices based on the unavailability of sufficient power and, on occasion, has added insult to injury by insisting that NEXTLINK pay recurring charges for other collocation facilities even though NEXTLINK has been unable to use those facilities while awaiting the power augmentation.

The lack of facilities raises the more fundamental issue that U S WEST "'[c]orporate policy dictates that [it] will not proactively engineer for CLEC interconnection.'" Ex. ___ (RK-3). U S WEST has tried to explain away this admission as the "inaccurate and uninformed comment of a midlevel employee' that was 'not approved as a statement of company policy.'" *Id*. NEXTLINK's experience with U S WEST, however, is fully consistent with the policy as stated by that employee. U S WEST frequently fails or refuses to plan for CLEC facility needs, resulting in unnecessary and inexcusable provisioning delays.

For example, U S WEST agreed to make cageless collocation available in the Bellevue Glencourt central office in January 1999, and spent the next several months negotiating terms and conditions with the first carrier in line, knowing that several other carriers were waiting for space. U S WEST also knew, or should have known, that its power supply in that central office was at or near capacity and that requests from waiting carriers would exceed that capacity. U S WEST, however, apparently made no effort to augment its power supply – or even to notify waiting carriers that the unavailability of sufficient power was a possibility – until space was finally made available, causing further unnecessary delay to carriers that had literally been waiting years for collocation in that central office.

Q. WHAT ABOUT U S WEST'S PROVISIONING OF INTERCONNECTION FACILITIES?

A. NEXTLINK has tried to minimize the interconnection provisioning problems that have beset MCImetro by collocating in as many U S WEST central offices as possible and thus avoiding reliance on U S WEST tandems and their limited capacity. NEXTLINK nevertheless has experienced some of the same problems with U S WEST's alleged lack of capacity for interconnection trunking that MCImetro has experienced. Another interconnection problem that is emerging now, however, is U S WEST's apparent retaliation for being compelled to pay NEXTLINK reciprocal compensation for traffic bound for Internet Service Providers (“ISPs”).

In an order dated September 9, 1999, in Docket No. UT-990340, the Commission ordered U S WEST to pay NEXTLINK reciprocal compensation for ISP-bound traffic, concluding that such traffic is considered “local traffic” for purposes of compensation under the parties’ interconnection agreement. During the course of that proceeding, NEXTLINK had explained that the parties treated ISP-bound traffic as local, in part, by routing it over local interconnection trunks and that NEXTLINK has requested local trunks dedicated to the NXX codes NEXTLINK uses to serve ISP customers. Shortly after the Commission’s decision (and a similar decision from the Utah Public Service Commission), U S WEST informed NEXTLINK that U S WEST will no longer provision local interconnection trunks to NEXTLINK in U S WEST central offices to route ISP-bound traffic. Instead, NEXTLINK will be required to order long distance trunks and route ISP traffic through U S WEST’s access tandems. Not only have NEXTLINK’s engineers assured me that such routing would be inefficient and expensive, but U S WEST opposed MCImetro’s and TCG’s efforts to be able to route local traffic through the access tandem, claiming that such a requirement would cause network disruption and increase U S WEST’s interconnection costs. Apparently, U S WEST is willing to live with that disruption and additional cost if it causes the same disruption and additional costs to NEXTLINK.

Again, this issue illustrates U S WEST's extraordinary efforts to thwart the development of effective local exchange competition. Not willing to accept adverse Commission and judicial decisions, U S WEST seeks to avoid or undermine those decisions and to penalize CLECs for having prevailed. The management change that U S WEST and Qwest have proposed cannot be in the public interest in fostering development of effective local exchange competition if the new management continues such policies.

B. Need for Conditions on Approval of Proposed Merger

Q. WHY DOESN'T NEXTLINK FILE A COMPLAINT IF IT IS EXPERIENCING SUCH PROBLEMS WITH U S WEST?

A. NEXTLINK may find it necessary to file one or more such complaints, but these issues should also be considered more broadly, and be subject to broader efforts to facilitate the development of effective local exchange competition. A major constraint on the ability of NEXTLINK or any other CLEC to bring a service quality complaint against U S WEST is the absence of any measuring or reporting requirements, much less remedies for nonperformance. The Commission has yet to establish carrier-to-carrier service quality rules and has consistently refused to impose any but the most general requirements when arbitrating interconnection agreements. In the arbitration between TCG Seattle and U S WEST in Docket No. UT-960326 that resulted in the interconnection agreement that NEXTLINK adopted, TCG proposed service quality standards and remedies for nonperformance. The Commission rejected TCG's proposal, fearing that U S WEST would provide preferential treatment to competitors over end-users. The result has been the opposite – U S WEST provides far lower service quality to NEXTLINK than it provides to its end-user customers, at least based on the information that NEXTLINK has compiled and the scant data that U S WEST has provided.

Q. DOESN'T SECTION 271 PROVIDE U S WEST AND QWEST WITH SUFFICIENT INCENTIVE TO IMPROVE SERVICE QUALITY TO COMPETITORS?

A. Section 271 certainly has not provided much of an incentive to date. U S WEST apparently does not even maintain retrievable records of the service quality it provides CLECs, much less satisfy its nondiscrimination obligations. In response to data requests asking for CLEC held orders based on lack of available facilities, U S WEST stated that "such information is not readily available and would require significant effort and review of each and every order, numbering in the thousands." Ex. ___ (RK-1) at Request No. AT&T, et al., 01-034S1 and 67S2. The fact that U S WEST has yet to develop reports that detail the quality of the service it provides to competitors in the nearly four years since passage of the Telecommunications Act of 1996 should speak volumes to the Commission about how ineffective incentives, without more, have been in ensuring U S WEST's compliance with its legal obligations. Indeed, the Commission in the 1995 U S WEST rate case, Docket No. UT-950200, attempted to encourage U S WEST to improve its service quality by establishing a rate of return at the low end of the range of reasonable alternatives with the opportunity to seek an increase if U S WEST improved its service. Rather than take advantage of the Commission's offer, U S WEST has repeatedly sought to sidestep the Commission and have the legislature deregulate or reduce the regulation of services that U S WEST provides.

The Commission should also recognize the difference between U S WEST's incentive to obtain interLATA operating authority and the incentive to comply with the requirements of Section 271. The merged company certainly will want to offer interLATA services, but U S WEST and Qwest have already demonstrated that they are willing to explore every option for doing so without complying with Section 271. The FCC invalidated a previous joint marketing agreement between U S WEST and Qwest as a violation of Section 271. U S WEST is pursuing state commission endorsement of interLATA authority in Nebraska, Arizona, and Colorado even though U S WEST does not maintain adequate service quality records and has yet to undergo third party testing of competitors' access to its operations support systems ("OSS"). The merged company's incentive to obtain that authority, therefore, is unlikely to result in improved service quality but is much more likely to spawn greater creativity in avoiding, evading, or minimizing its obligations to competitors.

Q. HAVE U S WEST AND QWEST OFFERED ANYTHING OTHER THAN SECTION 271 INCENTIVES TO ENSURE THAT THE MERGER IS CONSISTENT WITH THE PUBLIC INTEREST?

A. No. To the contrary, the Applicants have made every effort to avoid providing the Commission or interested parties with anything other than vague assurances of nebulous public benefits. Despite the temptation to believe that any change in U S WEST's current management would be an improvement, the Commission should carefully consider the track record of both Applicants and the demonstrated need for conditioning Commission approval of the merger to protect the public interest.

U S WEST and Qwest generally represented in their Application that the proposed merger will bring benefits to Washington consumers. Application at 2 & 11. Qwest CEO Joseph Nacchio was somewhat more specific when addressing the U S WEST

Regional Oversight Committee conference in September, promising improvements in service quality following the merger as reported by Telecommunications Reports Daily the following day:

> QWEST CEO NACCHIO PROMISES MORE INVESTMENT AFTER U S WEST TAKEOVER
>
> Qwest CEO Joseph Nacchio has told regulators of U S West (USW) states that they can expect increased investment in traditional phone service after the $48 billion Qwest-USW merger is complete. Nacchio, speaking at a meeting of the U S West Regional Oversight Committee in Colorado yesterday, said customers can expect better basic phone service from the post-merger company. He acknowledged that "service issues" and local competition issues exist in many of USW'S 14 states, but said he expects the merger will "improve both." He said the merged company's plans call for spending $5.3 billion over the next 5 years on service development, and stressed that some of that spending will go to improve basic phone service as well as to Internet, high-speed data and video service. Nacchio said the merged Qwest-USW won't be as hostile to competition and market expansion traditional local phone companies.

I attended the ROC meeting, heard Mr. Nacchio's speech, and believe that this news report fairly and accurately reports his remarks. When subsequently asked to quantify the amount of the investment in service development that would be dedicated to local exchange facilities, Qwest disowned Mr. Nacchio's promise to invest $5.3 billion in service development. Qwest objected to the request as "an incomplete mischaracterization of the purported statement by Mr. Nacchio" that was "taken out of context," and stated that savings resulting from decreasing U S WEST's dividend might "possibly" be invested in service development, but "the budget for the new combined company has not yet been determined." Ex. ___ (RK-1) at Request No. AT&T, et al., 01-020 & 21.

The Applicants' effective denial of the new CEO's informal promise to regulators to increase investment and reduce hostility to local competition should be of serious concern to the Commission. U S WEST also denies ever having promised this Commission to undertake additional investment in local exchange facilities, *id*. at 01-022S1, as well as ever having been ordered to make additional investment outside of arbitration and related proceedings under the Telecommunications Act. *Id*. at 01-023S1. In addition, U S WEST and Qwest repeatedly assert that "no decisions have been made with respect to how the combined company will address specific operational issues, nor have any decisions been made regarding construction and provisioning of facilities or 'improvements to services' post-merger." *Id*. at 01-024. U S WEST and Qwest further state, "The merged company has not yet made specific plans for how it will conduct its local competition activities," *id*. at 01-050, and "No decisions have been made with respect to positions the merged company will take on specific regulatory or legal issues after the merger has been completed." *E.g., id.* at 01-048.

This lack of knowledge, plans, or decisions about how the merged company will fund, operate, and conduct – much less improve – its local exchange network stands in sharp contrast to its proposed deployment of advanced services. With respect to broadband and other data services, U S WEST and Qwest have extensive plans, including deployment in 25 specific cities outside the U S WEST region and a commitment to investors to fund the merged company's expansion into these new areas and services. The Commission cannot ignore the merged company's incentive to use merger cost savings, as well as revenues collected from captive ratepayers, to fund this expansion, rather than to improve local service. Particularly if the FCC continues down the path of insulating facilities used to provide broadband and other advanced services from Section 251 and 252 requirements and waives interLATA restrictions on Internet and data services, the merged company's incentive to invest in and deploy those services and facilities is likely to be much stronger than its incentive to obtain Section 271 authority or improve basic local exchange service.

The bottom line is that without conditions on approval of the proposed merger, the Commission and Washington ratepayers will get exactly what U S WEST and Qwest have given an enforceable promise to provide – nothing.

III. RECOMMENDATIONS

Q. WHAT CONDITIONS DO YOU RECOMMEND THAT THE COMMISSION ADOPT?

A. NEXTLINK has participated with Advanced TelCom Group, Inc. ("ATG"), McLeodUSA Telecommunications Services Inc. ("McLeod"), Covad Communications Company ("Covad"), and Rhythms Links, Inc. ("Rhythms") in developing a list of conditions that would increase the possibility that the proposed merger would be consistent with the public interest. These conditions are included as Exhibit ___ (RK-4). NEXTLINK fully supports these conditions and urges the Commission to adopt them.

Q. PLEASE SUMMARIZE THE CONDITIONS AND PROVIDE A BRIEF EXPLANATION OF WHY THEY ARE NECESSARY.

A. There are 8 conditions in the list of proposed conditions developed by NEXTLINK, ATG, McLeod, Covad, and Rhythms, each of which I discuss below.

Improve Service Quality and Reporting. The first condition would require U S WEST to adhere to FOC and provisioning intervals and be subject to financial remedies for noncompliance. The proposed intervals are similar to intervals in U S WEST tariffs and address those facilities that are most crucial to competitors. The remedies are two-fold: first, competitors would be entitled to waiver of non-recurring charges and recurring charges for FOC and provisioning delays; and second, U S WEST would be required to pay penalties to the state treasury for general noncompliance. These standards and remedies represent a more concrete incentive for the merged company to provide adequate service quality to competitors than Section 271 has provided to date.

Increase Central Office and Outside Plant Investment. The proposed merger threatens to divert funding for local exchange facilities to the merged company's advanced services and out-of-region ventures. Accordingly, this condition would require that the merged company maintain an adequate level of investment by (1) requiring that U S WEST maintain an average of 85% fill in its outside plant at the risk of incurring investment failure penalties payable to the state; and (2) requiring that U S WEST pay additional penalties for delayed provisioning of orders caused by lack of facilities. Again, these penalties will provide the merged company with a financial incentive to invest adequate amounts in local exchange infrastructure.

Improve Access to Databases and Network Information. Competitors are entitled to access to U S WEST OSS and data bases that is equivalent to the access U S WEST provides to itself. This condition requires the merged company to invest the resources necessary to ensure that competitors are granted such access, again as an incentive to undertake necessary system modification rather than divert the funds necessary to other ventures.

Future Network Access. This condition requires that, as U S WEST expands its network in Washington, U S WEST will include CLEC needs in the planning process. This condition mirrors the FCC's requirement with respect to collocation but expands its scope to include other network construction that will impact CLECs. This condition would minimize the ability of the merged company to act anticompetitively by constructing network facilities that effectively prevent CLECs from obtaining access to the network.

Region-wide MFN. U S WEST currently requires CLECs to litigate disputed issues in every state in which the CLEC operates, creating unnecessary delay and expense. This condition would minimize the merged company's ability to continue such practices by permitting carriers to adopt terms and conditions from agreements both in Washington and the other states in U S WEST's region. SBC and Ameritech agreed to a similar condition on their recent merger.

UNE Combinations. U S WEST has yet to comply with the requirement that it provide unbundled network elements in combinations to requesting carriers – particularly a loop and transport bundled as an "extended loop." This condition implements this requirement and holds the merged company to its Chairman's promise to be less hostile to competition.

Structural Separation of Retail and Wholesale Services. U S WEST has yet to provide adequate data comparing its provisioning of services and facilities to competitors with the service it provides to its retail customers, but the available evidence indicates that U S WEST is not complying with its nondiscrimination obligations. This condition would facilitate the Commission's ability to ensure that U S WEST provides the same level of service to CLECs as it provides to its retail operations.

Ensure Current Compliance with InterLATA Restrictions. Qwest has yet to provide any concrete information on how it will "divest" its interLATA customers or account for its facilities used to provide interLATA services. This condition requires the Applicants to provide that information, as well as to ensure that customers will not be harmed as a result of the "divestiture." This condition also requires the Applicants to provide information sufficient to demonstrate that the merged company will not use revenues from captive monopoly ratepayers to fund facilities that will be used to provide interLATA services at some indefinite point in the future.

Q. DOES THAT CONCLUDE YOUR TESTIMONY?

A. Yes, it does.