

Before the

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the )  
 )  
Merger of the Parent Corporations of Qwest ) Docket No. UT-991358  
Communications Corporation, LCI International )  
Telecom Corp., USLD Communications, Inc., )  
Phoenix Network, Inc., and U S West )  
Communications, Inc. )  
\_\_\_\_\_ )

*DIRECT TESTIMONY OF JO GENTRY  
ON BEHALF OF RHYTHMS LINKS INC.*

February 1, 2000

**Q: PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

A: My name is Jo Gentry. I work at 6933 South Revere Parkway, Englewood, Colorado 80112.

**Q: BY WHO ARE YOU EMPLOYED AND IN WHAT CAPACITY?**

A: I am Director of National Deployment for Rhythms Links, Inc. (“Rhythms”), a data CLEC providing xDSL services in Washington and elsewhere.

**Q: WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS MATTER?**

A: The purpose of this testimony is to explain that neither U S West or Qwest has demonstrated a commitment to ensuring that service quality to carrier customers will be maintained or improved following the merger. Indeed, the record indicates that the exact opposite is true: neither U S West nor Qwest has made any plans at all to ensure service quality for carrier-to-carrier relationships. This is particularly dangerous because the merged entity plans to redirect resources that would normally be dedicated to carrier customers and other customer operations in Washington and throughout the U S West territory. The testimony also explains how the proposed merger threatens the competitive landscape in Washington, particularly for advanced services, and to propose certain merger conditions that, if implemented, would mitigate the potential for damage.

**Q: PLEASE SUMMARIZE YOUR TESTIMONY**

A: U S West and Qwest have ambitious goals for their post-merger entity. These goals demand significant capital investment and human resource talent. Following the merger, the new company intends to redirect capital and key skilled employees from U S West operations to a post-merger deployment plan that is not focused on Minnesota or any other U S West state. This shift in resources will place a substantial burden on the already strained, and often deficient, service levels that Rhythms and other carrier customers now receive from U S West.

Yet the merger plan lacks any meaningful commitments by, or incentives for, the merged entity to ensure that this resource shift does not further jeopardize -- let alone improve -- services to carrier customers. The enticing goal of funding and supporting its new CLEC/DLEC relationship with Qwest underscores the need to address this failure in the merger plan. Indeed, by U S West’s own admission, very little, if any, pre-merger planning has addressed how the merged entity (in view of increased resource demands and competing deployment goals) will meet service **requirements** to carrier customers. Nor has there been any planning to ensure compliance with

local competition provisions of the Telecommunications Act of 1996,<sup>1</sup> and implementing WUTC and FCC orders. This is an unfortunate oversight given that preparation and implementation of carrier service improvement plans would mitigate the negative impact of the post-merger resource reallocation, thus promoting the public interest in fostering competition. Therefore, in absence of U S West/Qwest planning and action in this regard, it is up to the Commission to place conditions on the merger that ensure improved service, including the proper allocation of service support and resources, to the carrier customers of the merged entity.

Specifically, the Commission should adopt the following conditions: (1) require U S West/Qwest to detail its plans for ensuring that service quality to carrier customers will not decrease, specifying the resources that will support unaffiliated CLEC operations as compared to its own CLEC operations and current levels of support for carrier customers; (2) establish minimum service quality performance standards based on the competitive policy requirements of the 1996 Act and set monetary remedies for failure to meet these standards; and (3) provide a mechanism for ensuring nondiscriminatory treatment of carrier customers by requiring U S West/Qwest to provide its DSL services through a separate subsidiary.

**Q: PLEASE DESCRIBE RHYTHMS AND THE NATURE AND SCOPE OF ITS TELECOMMUNICATIONS BUSINESS.**

A: Rhythms is a competitive local exchange carrier (“CLEC”) that provides high speed data communications, including high speed Internet access, through the deployment of digital subscriber line (“DSL”) services in Washington. These DSL services utilize the existing copper wire loop network of the incumbent local exchange carriers (“ILECs”), including U S West. Rhythms obtained approval as a competitively classified telecommunications company by Order of this Commission.<sup>2</sup>

**Q: DOES U S WEST COMPETE WITH RHYTHMS’S DSL SERVICE?**

A: Rhythms’ provision of DSL services competes directly with U S West’s DSL services. U S West recently rolled out its retail DSL offering, called Megabit™ DSL service. In addition, for years most ILECs have provisioned 1.544 mbps “T - 1” services using high bit rate DSL (“HDSL”) technology. When DSL is deployed to its full capacity, it can often compete with much higher-priced ILEC T - 1 offerings. Thus, U S West clearly has the incentives, recognized by the FCC, to impede rapid, full-scale deployment of DSL. Washington consumers, on the other hand, stand to garner substantial benefits from competitive high-speed data offerings.

**Q: WHAT IS THE STANDARD OF REVIEW FOR APPROVAL OF THE PROPOSED MERGER?**

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<sup>1</sup> Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 5b *codified at* 47 U.S.C. § 151 (“1996 Act”).

<sup>2</sup> Docket No. UT-980791 on October 14, 1998.

A: The Commission's charter is to protect the public interest, and in doing so, to enhance the telecommunications services available to customers at reasonable prices. This public interest standard is the benchmark for its review of merger applications.<sup>3</sup>

The public interest is directly impacted by the status of local competition.<sup>4</sup> Highly competitive local markets increase the types of services that are available to the public at reasonable rates. Moreover, competitive local markets are the direct result of compliance with the pro-competitive obligations of the 1996 Federal Telecommunications Act to provide timely, quality interconnection and unbundling services to carrier customers. Thus, to the extent that the merger jeopardizes interconnection and unbundling services to carrier customers, local competition is reduced and the public interest is compromised.

Accordingly, the Commission has clear authority to review the proposed merger and its impact upon interconnection and unbundling services for carrier customers in Washington, and to reject and/or condition any approval of the merger to ensure carrier service levels. Indeed, the Commission has clearly recognized that it should not limit its public interest inquiry to the financial synergies promised by the merger, but rather should carefully examine other issues, including the impact on the availability of facilities necessary for viable competition in local and long distance markets, OSS, service quality at the wholesale and retail levels, and the impact on investment in Washington. The Commission also stated that it would be concerned whether the merger might distort or impair the development of competitive markets.<sup>5</sup> Obviously, any outcome that could reduce competition by jeopardizing services to carrier customers, and hence reduce the benefits of competition enjoyed by Washington consumers would not be in the public interest.

A negative impact on the development of competition for advanced services is a particular concern, because Congress has effectively declared that the deployment of advanced services providing broadband facilities is in the public interest. Indeed, the 1996 Act in its § 706 mandate and § 254 provisions on universal service require the FCC and each state commission to "enhance... access to advanced telecommunications and information services"<sup>6</sup> for public classrooms and institutions and "encourage deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans... by utilizing, in manner consistent

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<sup>3</sup> *In re PacifiCorp and Scottish Power PLC.*, Docket No. UE-981627, Third Supplemental Order on Prehearing Conference (April 2, 1999) ("*Third Order*"), at 3.

<sup>4</sup> *Id.*

<sup>5</sup> *Third Order* at 4-5.

<sup>6</sup> 1996 Act § 254.

with the public interest, convenience, and necessity, ... measures that promote competition in the local telecommunications market... ”<sup>7</sup>

**Q: ARE THERE AREAS OF INQUIRY THAT ARE ESPECIALLY IMPORTANT FOR CARRIER CUSTOMERS OF U S WEST?**

A.: Yes, there are two areas of inquiry that are especially important for the carrier customers of U S West. First, will the merged entity divert capital and employee resources that normally support interconnection and unbundling services to carrier customers without replacing or enhancing those resources? Second, will the merged entity foster increased competition, as envisioned by the 1996 Act, by meeting its service provisioning and other nondiscriminatory obligations to carrier customers? For carrier customers like Rhythms, these obligations specifically extend to provisioning line sharing, access to loop qualification information, access to remote terminals, and access to collocation and transport on a timely, nondiscriminatory and reasonable cost basis.

Rhythms believes that, upon such an inquiry, the Commission will recognize that: (1) U S West/Qwest will be diverting capital and employee resources that could normally support interconnection and unbundling services to carrier customers without replacing or enhancing those resources; and (2) U S West/Qwest has made no plans whatsoever for post-merger compliance with the provisioning and nondiscriminatory obligations to carrier customers.

**Q: DO YOU BELIEVE THAT SERVICE QUALITY IS THREATENED BY THE PROPOSED REDIRECTION OF RESOURCES?**

A: Yes. U S West will be providing a significant portion of the resource support to achieve the deployment goals of the merged company. First, the stated intention of the merging companies is to rely significantly on U S West financial resources. The U S West dividend to shareholders has already been reduced in order to support the merged company’s deployment operation.<sup>8</sup> In the U S West/Qwest merger proceeding conducted before the Minnesota PUC, Qwest’s senior vice president testified in his deposition that the costs of Qwest’s newly announced DSL operations will be funded and supported by U S West. U S West will bear the costs of installing DSLAMs in central offices and deploying DSL.<sup>9</sup> In essence, U S West is providing the cash to fund Qwest’s expansion. In the U S West/Qwest merger proceeding conducted before the Minnesota PUC, Qwest’s senior vice president testified in his deposition that the costs of Qwest’s newly announced DSL operations will be funded

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<sup>7</sup> 1996 Act § 706(a).

<sup>8</sup> U S West’s Response to AT&T’s Information Request 01-005S1, attached as *Exhibit No.* \_\_\_\_ (JG-1.1); Solomon D. Trujillo, Chairman, President and CEO of U S West, Remarks at Shareholder Meeting for Approval of Qwest Merger at 3 (Nov. 2, 1999), attached as *Exhibit No.* \_\_\_\_ (JG-1.2).

<sup>9</sup> Deposition of Augie Cruciotti, State of Minnesota Public Utilities Commission, MPUC Docket Nos., p. 3009, 3052, 5096, 421, 3017/PA-99-1192 (Dec. 15, 1999) (“Cruciotti Deposition”) p. 51 line 12 to p. 52 line 2, attached as Exhibit No.\_\_(JG-2.0).

and supported by U S West. U S West will bear the costs of installing DSLAMs in central offices and deploying DSL.

Second, the merged entities have already indicated that U S West employee resources normally dedicated to U S West needs will be diverted to Qwestlink<sup>10</sup> operations. “There are several areas of skill and knowledge that Qwest doesn’t have today to make Qwestlink successful, and those are the ones that I mentioned, central office, engineering, planning local loop. The value that U S West brings is that they have subject matter experts in those . . . [a]nd that opportunity then allows us to not have to go out and hire people and hope they’re good and hope they have the right knowledge.”<sup>11</sup> These are “critical skill sets, subject matter experts” that Qwest will rely on.<sup>12</sup> Specifically, these skill sets include the laying of fiber and related network planning, interconnection, building collocation space<sup>13</sup> — all skills that CLECs like Rhythms would normally rely upon for their interconnection and collocation needs. Because U S West carrier customers rely on U S West’s use of these personnel to meet their needs, U S West should indicate how it will replace this employee support or ensure that the additional tasks will not unduly burden existing employees. Yet the Joint Applicants have presented no plans to ensure that the merged company can continue to meet even the current needs that these skilled experts are serving, much the increased needs as CLEC operations expand in Washington.<sup>14</sup>

This transfer of financial and human resources is occurring at a time when U S West is not currently meeting its obligations to competitors like Rhythms. In addition, Rhythms is concerned that the reduction of these resources will adversely affect the level of services that Rhythms and other carrier customers receive. U S West is currently struggling to meet its obligations under the Act in several ways. U S West rarely provides competitors with timely and accurate firm order confirmations. U S West rarely provides timely loop installations. Moreover, U S West’s new loop qualification tool does not provide competitors with full nondiscriminatory access to its loop make-up information; it has decided to limit the amount of information that it provides to CLECs from its loop make-up databases, and it restricts the manner in which CLECs may use the data to serve customers, even though U S West’s own retail operations have the full range of uses for that data available to it.

Rhythms is thus increasingly concerned that the reallocation of financial and employee resources to Qwest will further exacerbate the difficulties that carrier customers face in receiving interconnection and unbundling services under the Act. This concern is further heightened by the fact that the merger plans of

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<sup>10</sup> Qwestlink is a business unit of Qwest that will be, among other things, a facilities-based carrier providing local broadband access for the merger entity.

<sup>11</sup> Cruciotti Deposition p. 84 line 19 to p. 85 line 5.

<sup>12</sup> Cruciotti Deposition p. 82 lines 20-23.

<sup>13</sup> Cruciotti Deposition p. 85 line 15-20.

<sup>14</sup> Cruciotti Deposition p. 83 line 22 to p. 84 line 3.

U S West/Qwest do not include any specific plans to compensate for the redirection of U S West capital and human resources, and no specific plans for maintaining and improving services to carrier customers. For instance, no determinations have been made with respect to which part of the merged entity will be responsible for maintaining existing loops and copper facilities in the merged environment.<sup>15</sup> This absence could impact services to Rhythms. For example, to provide DSL services Rhythms requires that the customer's copper loops be free of load coils and excessive bridged taps, and thus may require loop maintenance in the form of de-conditioning the loop. Without sufficient resources for loop maintenance planning, this de-conditioning process and other loop maintenance will unnecessarily delay the deployment of advanced services in Washington and throughout the U S West region.

**Q: ARE THERE OTHER INDICATIONS THAT U S WEST/QWEST HAVE MADE NO PROVISIONS FOR ENSURING QUALITY OF SERVICES TO RHYTHMS AND OTHER CARRIERS?**

A: Yes. In the U S West/Qwest merger proceeding in Minnesota, a U S West/Qwest witness, Mr. Cruciotti, was asked "what organization within the merged company is going to handle wholesale operations . . . the selling of services to other carriers and/or the sale of unbundled network elements?" He responded that "to my knowledge I don't think any discussions have begun on that."<sup>16</sup> In response to an AT&T inquiry about post-merger investment in carrier-to-carrier services, U S West admitted that "detailed planning on combining performance measures and standards, and on a post-merger plan for wholesale and retail service quality standards has not yet begun."<sup>17</sup> and "no decisions have been made with respect to how the combined company will address specific operational issues, nor have any discussions been made regarding construction and provisioning of facilities or 'improvements to service' post merger."<sup>18</sup>

Indeed, the Joint Applicants' failure to address how the merged entity will ensure that reallocated resources will not negatively impact carrier services is part of a larger failing on the part of the companies to make plans to address one of their most fundamental obligations going forward – demonstrating that U S West has opened its bottle-neck facilities to local competition in Washington and throughout its region. Certainly Joint Applicants have claimed commitment to meeting the local competition checklist requirements of 271. Specifically, the Joint Applicants have stated that local competition is a high priority and that the merged entity will focus

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<sup>15</sup> Cruciotti Deposition at 138 line 23 to 139 line 5.

<sup>16</sup> Cruciotti Deposition 144 lines 12-20.

<sup>17</sup> U S West Response to AT&T's Information Request 01-088S1, attached as *Exhibit No. \_\_\_*(JG- 3).

<sup>18</sup> U S West Response to AT&T's Information Request 01-024, attached as *Exhibit No. \_\_\_*(JG-4.1); U S West Response to AT&T's Information Request 01-044S2, attached as *Exhibit No. \_\_\_*(JG-4.2); U S West Response to AT&T's Information Request 01-042, attached as *Exhibit No. \_\_\_*(JG-4.3); U S West Response to AT&T's Information Request **01-087S1**, attached as *Exhibit No. \_\_\_*(JG-4.4); U S West Response to AT&T's Information Request **01-039**, attached as *Exhibit No. \_\_\_*(JG-4.5); .

on ensuring access to competitors, particularly with an eye toward 271 approval, so that the merged company can again offer long-distance services and fill in this gap in the bundled services promised by the merger.<sup>19</sup> Yet, no concrete plans support the desire that the merged company has not made specific plans for how it will conduct its local competition activities.”<sup>20</sup> The Joint Applicants have no definite plans with regard to 271 compliance.<sup>21</sup> The lack of plans establishes the Joint Applicants’ statements as wishful thinking and empty promises.

**Q: HAVE THE JOINT APPLICANTS OFFSET THIS ABSENCE OF SPECIFIC POST-MERGER ACTIONS TO IMPROVE CARRIER SERVICES AND TO COMPLY WITH THE 271 CHECKLIST BY BRINGING OTHER IMMEDIATE BENEFITS TO WASHINGTON CONSUMERS?**

A.: No. The Commission should note that the focus of U S West’s initial resource deployment and redirected resources will not be on local services in Washington. Thus, the general statements that the merger will bring “advanced voice, data and broadband Internet services to customers in Washington”<sup>22</sup> are belied by the reality that the focus of the merged company will be on out-of-region services. The Joint Applicants have no plans in the immediate future to accelerate the rollout of broadband services in the U S West region, including Washington, as a result of the merger.<sup>23</sup> Moreover, of the purported \$5.3 billion savings resulting from the merger, the Joint Applicants have no plans to dedicate any of those resources to ensuring the quality of basic local service in Washington, to constructing and providing interconnection and other facilities used by competitors in Washington, to improving service to carriers, or to increase the availability of services in Washington.<sup>24</sup> In its registration statement to the Securities and Exchange Commission for the proposed merger, Qwest specifically stated that most of the merged entity’s new investments will not be made in the U S West region:

“We believe we will be able to redeploy our capital in the years 2000 through 2005 in the aggregate amount of approximately \$7.5 billion toward new investment in Internet applications and hosting, out-of-region facilities based competitive local exchange service, out-of-

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<sup>19</sup> Solomon D. Trujillo, Chairman, President and CEO of U S West, Remarks at Shareholder Meeting for Approval of Qwest Merger at 3 (Nov. 2, 1999), attached as *Exhibit No. \_\_\_* (JG-1.2).

<sup>20</sup> US West Response to AT&T’s Information Request 01-061S1, attached as *Exhibit No. \_\_\_* (JG-5.0).

<sup>21</sup> *Id.*; US West Response to AT&T’s Information Request 01-015 attached as *Exhibit No. \_\_\_* (JG-6.0).

<sup>22</sup> Joint Application at 2.

<sup>23</sup> Cruciotti Deposition p. 109 lines 4-10.

<sup>24</sup> U S West’s Response to AT&T’s Information Request 01-017 attached as *Exhibit No. \_\_\_* (JG-7.0).



region broadband access and Internet services, wireless expansion and video entertainment. We believe we can fund this redeployment of capital with approximately \$5.3 billion of savings from capital expenditure synergies.”<sup>25</sup>

**Q: ARE THERE CONDITIONS THAT THE COMMISSION CAN IMPOSE ON THE MERGER THAT WOULD MITIGATE THE POTENTIAL FOR DAMAGE TO THE COMPETITIVE ADVANCED SERVICES MARKET IN U S WEST’S SERVICE TERRITORY?**

A: In view of the merged entity’s incentive to discriminate against its competitors, particularly competitors offering DSL services, its intent to redirect U S West capital resources and personnel, and in view of the merged entity’s lack of planning with regard to ensuring that sufficient resources are dedicated to compliance with interconnection and unbundling obligations, the Commission should impose conditions for merger approval that will address these provisioning and discrimination concerns and set the merged entity on the right path for eventual 271 approval.

Rhythms agrees with the merger conditions that the other CLECs in this proceeding are proposing and recommends that the Commission impose them on the merger. Specifically, the Commission should impose the following conditions:

1. Improve Service Quality and Reporting. Improve UNE, interconnection, and collocation installation intervals tied to incident-based liquidated damages for non-performance and more significant penalties for continued non-performance.

(a) U S West will adopt the following standards pending completion of the Commission’s carrier-to-carrier service quality rulemaking:

(i) Firm Order Confirmations (“FOCs”), which provide CLECs the installation date for a loop, will be delivered within 24 hours or the time specified in the CLEC’s interconnection agreement, whichever is shorter. U S West will determine facility availability within 48 hours of committing to an FOC and will tag and reserve the available facilities needed to provision the CLEC’s request until (a) U S West provisions the facilities or (b) the CLEC cancels the order.

(ii) Analog (or DS-0) loops, xDSL loops, four-wire and other DS-1 capable loops, and sub-loops will be installed within 3 business days of receipt of order (or in parity with U S West’s loop

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<sup>25</sup> U S West’s Response to AT&T’s Information Request 01-017S1, Attachment A, Joint Proxy Statement and Prospectus at I-18 (Sept. 17, 1999), attached as *Exhibit No. \_\_\_* (JG-8.0).

provisioning to affiliates or its own loop provisioning for retail customers if less than 3 business days). All such loops requiring conditioning should be installed within 7 business days of receipt of order (or in parity with U S West's loop provisioning to affiliates or its own loop provisioning for retail customers if less than 7 business days). If no facilities are available to fill the CLECs order at the time the order is placed, U S West will construct or otherwise make the requested facilities available and install the loops within 10 business days of receipt of the order (or in parity with U S West's loop provisioning to affiliates or its own loop provisioning for retail customers if less than 10 business days).

(iii) DS-1 or DS-3 circuits will be installed within 5 business days in high density locations and 8 business days in low density areas following receipt of order (or in parity with U S West's own loop provisioning for retail customers if less than the applicable 5 or 8 business days). If no facilities are available to fill the CLECs order at the time the order is placed, U S West will construct or otherwise make the requested facilities available and install the loops within 12 business days in high density areas and 15 business days in low density areas following receipt of the order (or in parity with U S West's loop provisioning to affiliates or its own loop provisioning for retail customers if less than the applicable 12 or 15 business days).

(iv) U S West will provide coordinated cut-overs for facilities U S West is providing to the CLECs that are currently being used to provide service to an end-user customer in a manner that ensures that the end-user customer is not out of service for both incoming and outgoing calls for a period not to exceed 15 minutes if during regular business hours and one hour if after regular business hours.

(v) Interconnection trunks will be installed within 5 business days in high density locations and 8 business days in low density areas of receipt of order if included in prior CLEC forecast provided to U S West.

(vi) Central office collocation and remote terminal access will be provided within 45 days of U S West's receipt of an order from the CLEC for both caged and cageless physical collocation.

(b) U S West will provide a monthly report to each CLEC that identifies the average intervals for the facilities and coordinated cut-overs referenced above separately for (1) the CLEC receiving the report; (2) all CLECs in the aggregate; (3) U S West affiliates; and (4) U S West retail operations.

(c) Liquidated damages for each missed interval will be the nonrecurring charges (“NRCs”) for that element or service. For each additional late business day, an additional 10% of the NRC(s), or one month’s recurring charge, whichever is greater, will be credited to the CLEC. U S West will also reimburse the CLEC for all expenses the CLEC incurs to comply with any and all Commission’s retail service guarantees as a result of the missed interval. For loops and high capacity circuits, these damages apply once U S West misses the initial provisioning interval, regardless of whether the missed interval is due to a lack of available facilities or whether U S West has complied with the time period applicable when facilities are not initially available.

(d) For each 30-day period that U S West fails to meet intervals for 10% or more of its total UNE orders (excluding orders to affiliates), U S West will pay competitive incentive penalties to the general fund of \$1,000 per delayed UNE order per day or \$250,000, whichever is greater. The same competitive incentive penalties shall apply separately for total interconnection trunk orders and for collocation orders. For loops and high capacity circuits, these competitive incentive penalties apply once U S West misses the initial provisioning interval, regardless of whether the missed interval is due to a lack of available facilities whether U S West has complied with the time period applicable when facilities are not initially available.

2. Increase Central Office and Outside Plant Investment. U S West will increase investment in facilities necessary for interconnection sufficient to ensure that no CLEC is denied or delayed in obtaining interconnection based on its forecasted demand. U S West will also increase investment in outside plant necessary to ensure that no feeder distribution interface (“FDI”) and/or terminal in Washington is served by a transport facility that has greater than an average 85% fill rate.

(a) U S West will file semi-annual reports, supported by affidavits from the Executive Vice President of Operations (or the equivalent), identifying for each wire center in Washington (1) the line-side switch and interconnection trunk capacity, and (2) the six-month average fill rate for the transport facilities serving every FDI and or terminal in the outside plant. The report will include the methodology employed by U S West for calculating these figures.

(b) For each six month period in which the average fill rate for transport facilities serving any FDI and/or terminal in Washington exceeds 85%, U S West will pay competitive incentive penalties to the general fund in the amount of \$250,000 per non-compliant cable.

(c) U S West will separately account for and report as required above on loops (including high capacity circuits) and interconnection

trunks that are delayed due to lack of available facilities. For each 30-day period in which U S West fails to meet intervals for 10% or more of its total UNE orders (excluding orders to affiliates) due to lack of available facilities, U S West will pay investment failure penalties to the general fund, in addition to the penalties referenced above, of \$1,000 per delayed UNE order per day or \$250,000, whichever is greater. The same additional penalties shall apply separately for total interconnection trunk orders.

3. Improve Access to Databases and Network Information. U S West will improve access to U S West OSS and network information to provide network information and data needed in the planning and provisioning of local exchange and advanced services.

(a) These improvements would include direct pre-order and order electronic access to network information databases, including but not limited to LFACS and TIRKS. U S West's OSS generally will improve electronic access to information necessary to provide advanced services like DSL. For instance, CLECs should be provided pre-order access to loop information, including Design Layout Records ("DLRs").

(b) U S West will provide CLECs, upon request, with network design information, including but not limited to the location, service capacity of, and space availability in, remote terminals.

(c) Changes to the LFACS and other computer support systems necessary to implement DSL line sharing fully. *This is consistent with the FCC's recent determination in its Line Sharing Order that incumbent LECs must provide competitors with the OSS to support line sharing, and that efforts to delay access to these systems based on time and cost considerations are "significantly overstated."*<sup>26</sup>

(d) Manual processes would be automated over time; until those processes are automated, U S West must provide a 25% discount on all recurring and nonrecurring charges that would otherwise be applicable to loops.

(e) U S West will make the information in its databases available to requesting CLECs on the same terms and within the same time intervals the information is available to itself or to its affiliates,

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<sup>26</sup> Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147, Third Report and Order (rel. Dec. 9, 1999) ("*Line Sharing Order*") ¶ 99-110.

including but not limited to the advanced services company, whichever is more favorable.

4. Future Network Access. U S West will ensure that the architecture of any future network build-outs permits interconnection by CLECs.

(a) U S West will include CLECs in network planning to ensure that all remote terminal sites are built with sufficient space to permit collocation where requested.

(b) U S West will deploy only electronics and equipment that permit interconnection to all loops (for example, U S West will deploy IDLC equipment only if it permits CLEC interconnection).

5. Region-wide MFN. U S West will permit all CLECs operating in Washington to adopt, pursuant to Section 252(i) and in whole or in part, the terms of any interconnection agreement entered into by U S West, Qwest or the merged entity in any state within the 14 state U S West region, whether as ILEC or CLEC, whether arbitrated or negotiated.

6. UNE Combinations. U S West will provide combinations of UNEs to any requesting carrier. Specifically, U S West will provide combinations of loop and transport (known as “Extended Local Loops”) at the combined Commission-approved TELRIC-based prices of those elements and pursuant to the service standards and remedies listed above. U S West will also provide UNE combinations sufficient to provide local exchange service (known as the “UNE Platform”) at the combined Commission-approved TELRIC-based prices of those elements and pursuant to the service standards and remedies listed above and in the Commission’s retail service quality rules, for a period of not less than three years following closure of the merger.

7. Structural Separation of Retail and Wholesale Services. Structurally separate provisioning of wholesale and retail operations of the merged entity.

(a) Structural separation should be complete. The new retail and wholesale companies would have separate officers, separate employees and separate physical locations. Both companies would continue to be subject to Commission regulation, including, but not limited to, restrictions on affiliated interest transactions.

(b) The retail company must obtain all services and elements (including but not limited to, collocation, unbundled loops, DSL line sharing, remote terminal access, sub-loop elements, and access to OSS) from the wholesale company pursuant to the same rates, terms, and conditions applicable to CLECs. The retail company must use only the same OSS interfaces that CLECs use to order services and elements and must be subject to the same charges (including OSS development and maintenance charges) imposed on CLECs.

- (c) The retail company must comply with imputation standards. Specifically, the company's retail prices must exceed the recurring and nonrecurring rates it pays to the wholesale company for collocation, unbundled loops, DSL line sharing, etc. that a similarly-situated CLEC would face plus a reasonable amount for the costs of other network functions and retailing expenses.
  - (d) The wholesale company must measure and separately report the service quality it provides to the retail affiliate. This data must be included as a separate and distinct category in service quality reports the wholesale company provides to CLECs and the Commission.
8. Ensure Current Compliance with InterLATA Restrictions. The Applicants will file an InterLATA Compliance Certification. Included in that certification will be an inventory of all Qwest assets in the state of Washington and all services that Qwest currently provides to customers in Washington using those assets. The Applicants will then identify which services it will discontinue in order to comply with interLATA service restrictions, as well as when and how those services will be discontinued. The Applicants will also describe and undertake all measures necessary to ensure that performance under existing contracts between Qwest and other entities for interLATA services will continue without interruption or degradation of service quality. The Applicants will identify all of the Qwest assets that will be used to provide intraLATA services and by which business entity. With respect to assets that will not be used to provide intraLATA services, the Merged Company will separately account for those assets and until the Merged Entity is granted authority under Section 271, will file semi-annual reports with the Commission sufficient to demonstrate that the costs of those facilities and their maintenance are not included in U S West's intrastate rate base

**Q: WHY HAVE YOU RECOMMENDED STRUCTURAL SEPARATION OF THE MERGED ENTITY'S WHOLESALE AND RETAIL OPERATIONS?**

- A: As a primary matter, structural separation is a critical tool to allow the Commission and the industry as a whole to measure whether U S West is living up to its obligation to, at a minimum, treat competitors as favorably as it is treating itself. In addition to providing a means for ensuring parity of treatment, a separate subsidiary also provides an incentive for overall improved services to carriers. It would be a compelling incentive for U S West/Qwest to improve its services to carriers if its own retail unit had to face the same difficulties that Rhythms and other carriers now face, including the difficulties in collocating with U S West's network, minimal

access to loop make-up databases, and lack of automatic flow through for loop provisioning orders.

**Q: IF THE COMMISSION IS UNWILLING TO ORDER STRUCTURAL SEPARATION OF THE ENTIRETY OF THE MERGED ENTITY'S WHOLESALE AND RETAIL OPERATIONS, DO YOU RECOMMEND THAT THERE STILL BE COMPLETE SEPARATION OF THE ENTITY'S RETAIL DSL SERVICES FROM THE COMPANY'S WHOLESALE OPERATIONS?**

A: Absolutely because the merged entity presents significant potential for discriminatory behavior against its DSL competitors. For example, one of the heralded aspects of the merger is to allow Qwestlink, a Qwest business unit, to provide facilities-based CLEC services, including local broadband access for the merged company. Indeed, the merged company will be particularly focused on DSL operations, which is one of the few areas where competitors are making inroads on U S West's monopoly. As a result, there is heightened incentive for U S West to discriminate against DSL competitors in favor of its own operations.

The potential for discrimination by U S West/Qwest against DSL competitors is particularly significant, because U S West is able to place those competitors in a price squeeze by charging them a significant amount to access the high-frequency portion of the loop, while accounting for no loop costs in its own operation. There are also other avenues available for U S West to discriminate against competitors. For instance, U S West provides its retail operations with a fully automated flow-through capability when ordering and provisioning MegaBit DSL services which allows MegaBit to be provided on a mass market basis to customers. In contrast, CLECs like Rhythms are not even offered the option to order DSL-capable loops on a fully automated, flow-through basis, and each loop is provisioned manually by U S West. Similarly, U S West continues to delay firm order confirmations, loop installation, loop conditioning or collocation for competitors, while providing those services at a much faster pace for its own retail operations. A separate subsidiary requirement for U S West/Qwest's DSL operations would assist the Commission in ensuring competitors are treated fairly.

**Q: HAVE THESE BENEFITS OF STRUCTURAL SEPARATION BEEN RECOGNIZED BY OTHER STATE COMMISSIONS OR THE FCC?**

A: These benefits of structural separation have been recognized both by other state commissions and the FCC.<sup>27</sup> For instance, recently, the Pennsylvania Public

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<sup>27</sup> *In the Matter of Application by Bell Atlantic New York for Authorization Under 271 of the Communications Act to Provide In-Region, InterLATA Services in the State of New York*, Memorandum Opinion and Order, CC Docket No. 99-293 (rel. Dec. 22, 1999); *In the Matter of Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from Ameritech Corporation, Transferor, to SBC Communications, Inc. Transferee*, CC Docket No. 98-141, Memorandum Opinion and Order (Oct. 8, 1999).

Utilities Commission imposed a separate subsidiary requirement on Bell Atlantic's wholesale and retail operations.<sup>28</sup> “[S]tructural separation is the most efficient tool to ensure local telephone competition where a large incumbent monopoly controls the market. . . . This overwhelming presence and concomitant ability to exercise market power, including the ability to provide itself with anti-competitive cross-subsidies and the opportunity and incentive to discriminate against competing telecommunications carriers in the provision of wholesale services, strongly supports our conclusion that structural separate is necessary to provide local service competition. . . .”<sup>29</sup> Also, other states are currently considering imposing separate subsidiary requirements. For instance, the Massachusetts Department of Telecommunications and Energy is currently considering this option for Bell Atlantic,<sup>30</sup> and the New Mexico Economic Development Department recently recommended in a report to the state governor that U S West structurally separate its wholesale and retail operations.<sup>31</sup>

**Q: IF STRUCTURAL SEPARATION IS ORDERD FOR DSL SERVICES ONLY, ARE THERE ADDITIONAL REQUIREMENTS FOR THE SEPARATE SUBSIDIARY THAT SHOULD BE IMPOSED?**

A: Yes. It is critical that any separate subsidiary requirement be meaningful and significant. There would have to be additional restrictions on joint marketing by the incumbent LEC and the new DSL affiliate. At a minimum, any arrangements between the companies would have to be in writing and made publicly available, just as other affiliate transactions of fully regulated telecommunications companies are.

**Q: SHOULD THE COMMISSION SIMPLY ADOPT THE SEPARATE AFFILIATE CONDITIONS THAT WERE APPROVED IN THE SBC/AMERITECH MERGER?**

A: No. The Commission should adopt a “fix-it-first” approach requiring establishment of a truly separate advanced services affiliate as a pre-condition of this merger. The SBC/Ameritech conditions fail to create a fully separate affiliate. The flaws in those conditions include: their rapid expiration; their unduly long

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<sup>28</sup> Joint Petition of Nextlink Pennsylvania, Inc. et al. Docket No. P-00991648; Joint Petition of Bell Atlantice Pennsylvania, Inc. et. Al. Docket No. P-00991649., PA PUC Opinion and Order at 220-242 (August 26, 1999), relevant portions attached as *Exhibit No. \_\_\_\_* (JG-9.0), available in its entirety at: [http://puc.online.com/Telephone/Global/Global\\_Telephone\\_order.htm](http://puc.online.com/Telephone/Global/Global_Telephone_order.htm).

<sup>29</sup> *Id.* at 228.

<sup>30</sup> Nextlink Communications, Memorandum in Support of the Consideration of the Structural Separation of Bell Atlantic's Wholesale and Retail Operations, New England Telephone and Telegraph Company d/b/a Bell Atlantic-Massachusetts-Section 271 of the Telecommunications Act of 1996 Compliance Filing DTE 99—271, attached as *Exhibit No. \_\_\_\_* (JG-10.0).

<sup>31</sup> Office of Science and Technology, New Mexico Economic Development Department, An Executive White Paper on Telecommunications for The State of New Mexico (Dec. 1999), attached as *Exhibit No. \_\_\_\_* (JG-11.0).



“transition” period; the distinct lack of separation of capital and operations between SBC and the affiliate; and the potential for anti-competitive cross-subsidization between SBC and the affiliate.

The Commission should require that the affiliate be truly organizationally and operationally *separate*. In addition, it should reject granting an overly generous “transition” and “grace” periods that would permit U S West/Qwest to delay the transfer of operations and facilities for a period of several months. Instead, the Commission should require the Joint Applicants to create a fully separate affiliate for the provision of advanced services as a *pre-condition* to their merger. By making this requirement a pre-condition of merger, the Commission will give U S West/Qwest far greater incentive to form the separate affiliate. It would also encourage the development of a vibrant and competitive advanced services market. The requirement for a separate affiliate should have no sunset provision (or at least should require Commission approval prior to sunset) in order that pro-competitive benefits of the separate affiliate requirement not be reversed by the merged entity’s subsequent liquidation of the affiliate.

**Q: WHY WOULDN’T THE BARE REQUIREMENT OF AN ADVANCED SERVICES AFFILIATE SUFFICE?**

A: The bare requirement of an advanced services affiliate without a specific structure would not cure the problems that are being addressed. Rather, a firm set of separations criteria is needed that will govern the formation and behavior of the affiliate. That is why Rhythms and the other CLECs recommend that the Commission apply the affiliate separation requirements of Section 272 of the 1996 Act in creating the separate affiliate for U S West/Qwest.

Under Rhythms’ “fix-it-first” approach, these maximum separation rules are of utmost importance. If U S West/Qwest establishes an advanced services affiliate without complete structural separation, it could complete its entire DSL rollout by putting the affiliate first in line for all necessary DSL facilities, including loops and collocation, thereby artificially subsidizing the affiliate’s market entry. This result would entirely circumvent the purpose for the separate affiliate requirement in the first place. For example, without these maximum separation requirements, U S West/Qwest could perform all of the collocation build-out on its own premises on behalf of its affiliate. This build-out would in all likelihood take precedence ahead of CLECs that have applied or will apply for collocation space on U S West premises, thus, giving the affiliate valuable collocation space that would have been taken by CLECs. In addition, all collocation costs could be absorbed by U S West/Qwest, relieving the affiliate of the greatest financial outlay that CLECs presently face in entering the market. The final result would be a “separate” affiliate for which the parent company organized, completed and subsidized advanced services deployment. Section 272 separation rules will prevent U S West/Qwest from favoring its affiliate in this way.

**Q: WHY MUST U S WEST PROVIDE FULL ACCESS TO LOOP MAKEUP DATABASES?**

A: Pursuant to its obligation to “provide competitive LECs with sufficient detailed information about the loop so that competitive LECs can make an independent determination about whether the loop is capable of supporting the xDSL equipment they intend to install”<sup>32</sup>, U S West must be compelled to provide full access to the raw data populating its loop makeup databases, similar to the Order the Pennsylvania PUC recently released.<sup>33</sup> (See, Attachment A).

One of the most aggravating problems encountered by competitive advanced service providers such as Rhythms is the inefficient and impractical operations support system offered by U S West. Automated solutions must be provided to allow carriers full access to loop makeup databases.<sup>34</sup> Without full access to the raw data that populates U S West’s existing loop makeup databases, competitors are stymied in offering innovative broadband services and instead are, at best, limited to mimicking the services that U S West provides.<sup>35</sup>

Unlike U S West, Rhythms is currently unable to determine with accuracy whether or not it can provision its services over a given loop and is able to provision services to a much broader range of customers than can U S West. Therefore, by imposing its own limited view of these services on Rhythms, U S West denies service to consumers Rhythms is able and willing to serve.

The arbitrary determinations made by U S West in systems provisioning loops, coupled with competitors inability to obtain accurate loop make up information, prevents competitors from gaining the same automatic flow-through of loops for advanced services that U S West’s retail function enjoys. In contrast to the fully automated flow-through from ordering to installation, competitors’ loop orders fall-out and must be manually processed introducing delay and opportunities for errors to arise. This is frustrating to competitors; it is incomprehensible to their customers. In sum, the state of U S West’s OSS for advanced services is woefully inadequate, since it limits the information available to Rhythms (and the resulting services the public is able to buy from Rhythms) and discriminates in the provisioning of DSL capable loops by design and adds considerable delay not suffered by its own retail advanced services arm.

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<sup>32</sup> Advanced Services NPRM, ¶ 157.

<sup>33</sup> PA PUC Decision at 111.

<sup>34</sup> Competitors must have access to information, including databases and records, necessary for interoperability of both carrier’s networks. S.Rep. No. 104-23, at 19-20 (1995).

<sup>35</sup> **1, 1** SBC/Ameritech has obligated itself to provide access to such information as a merger condition. See, *In the Matter of Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations form Ameritech Corporation, Transferor, to SBC Communications, Inc., Transferee*, CC Docket No. 98-141, Proposed Conditions for FCC Order Approving SBC/Ameritech Merger, ¶ 23 (July 1999).

**Q: WHAT SPECIFIC TYPES OF PRE-ORDERING INFORMATION DO RHYTHMS AND OTHER xDSL PROVIDERS REQUIRE TO OFFER COMPETITIVE TELECOMMUNICATIONS SERVICES IN WASHINGTON?**

A: Rhythms must have access to existing electronic, automated operations support systems and databases that allow rapid and efficient access to pre-ordering information about the technical make-up of a potential customer's loop, and to on-line ordering and maintenance systems. Thus, Rhythms will need specific information and data about U S West's outside plant during the pre-ordering and ordering process to make effective business decisions so that we can provision the best possible service to our customers. As I will explain more fully below, Rhythms requires real-time, fully electronic information about the physical makeup of the loop including loop length, wire gauge, presence and numbers of repeaters, load coils and bridged taps and existence of digital loop carrier. U S West's loop qualification database does not meet this need.

Rhythms plans to deploy a variety of xDSL technologies, depending upon the particular characteristics of U S West's loop plant serving individual customers. Accordingly, Rhythms needs complete loop make-up information about each loop. This loop make-up information is required so that Rhythms can determine which implementation of xDSL technology is appropriate, or indeed if the loop in question is capable of supporting any particular xDSL technology. Based on the loop make-up information, Rhythms will use a different technology to provide service to an end user with a very long loop, or a loop served by digital loop carrier, than one with a short, clean loop.

Also, to allow Rhythms to make service guarantees to its customers regarding speed of digital transmission and reliability, Rhythms must know the loop makeup information. Rhythms must have this information to make its own business decision about the choice of appropriate DSL-based service for the particular loop.

The access to information about the physical characteristics of the loop that we propose will allow Rhythms' customer service representatives to notify customers in a timely manner regarding the Rhythms services for which they are eligible. Without complete loop make-up information, Rhythms has to "guess" as to the loop's characteristics and associated capabilities each time it orders a loop, and if we guess wrong, we would have to keep guessing until we got it right. By the time the guessing game is complete, precious time elapses and Rhythms could lose a potential customer. If Rhythms' potential customers are forced to wait several days before learning whether they can get service from Rhythms, and what services are available, the customers will likely not choose Rhythms, but will instead go with a carrier that has the information required to make a quick judgement, such as U S West.

The availability of loop make-up information for the initial contact with potential customers is critical to Rhythms' ability to win new customers and enable Rhythms to compete on an equal footing with U S West.

Rhythms strongly supports electronic access to loop make-up and other pre-ordering information. Electronic access allows CLECs greater flexibility in structuring their

workforce, because on-line systems could be used 24-hours per day to research the suitability of customer loops to support DSL. Electronic systems can also support much greater volumes of inquiries than will manual systems. In addition, ILECs may have internal electronic pre-ordering and ordering systems available, thereby giving them an advantage in serving customers over competitors such as Rhythms. Time is of the essence in providing pre-ordering information, because the market for high-speed data services, in particular DSL-based services, is growing larger and more competitive every day.

An electronic ordering system should provide 24-hour on-line access to an ILEC database via a computer. Any CLEC trying to determine whether a customer's loop is suitable for DSL should be able within a few seconds to access information about the technical make-up of a particular customer's loop. Loop make-up information should identify equipment and technical characteristics associated with the loop. That information should include the following: the physical medium of the loop (i.e., copper or the specific fiber type, iDLC, uDLC, SLC 96); loop length; the length and location of bridged taps; the loop wire gauge; and the presence of load coils, repeaters, DLC systems or DAMLs. This information resides in U S West's systems such as LFACS or TIRKS. Rhythms needs real-time, electronic mediated access to these existing systems. Such technical elements affect the usability of the loop, and in some instances may preclude the provision of DSL services. Therefore, Rhythms must have access to exact loop make-up information.

**Q: DO U S WEST'S PRACTICES AFFECT RHYTHMS'S ABILITY TO COMPETE AND TO SERVE WASHINGTON CUSTOMERS?**

A: Definitely. It adds unnecessary cost and introduces delay. The impact is especially large for new niche competitors such as Rhythms, who do not yet have the customer base to justify the extra costs required by U S West and for whom time to market is critical to survival.

**Q: DOES THIS COMPLETE YOUR TESTIMONY?**

A: Yes.