

**BEFORE THE  
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

MCImetro Access Transmission Services, Inc.,	)	
	)	
Complainant,	)	Docket No. UT-971063
vs.	)	
	)	MCImetro's REPLY TO U S WEST'S
U S WEST Communications, Inc.,	)	ANSWER TO MCImetro's MOTION TO
	)	COMPEL
Respondent.	)	
	)	
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1 I. INTRODUCTION

2 MCImetro Access Transmission Services, Inc. ("MCImetro") respectfully submits, pursuant  
3 to the Commission's notice of July 9, 1999, this Reply to U S WEST's Answer to MCImetro's  
4 Motion to Compel filed on June 18, 1999 ("Answer").

5 In its Answer, U S WEST Communications, Inc. ("U S WEST") plays a number of word  
6 games and creates arguments to divert the Commission's attention from the fact that it has not  
7 complied with Paragraphs 273, 274, 275 and 276 of the Final Order. U S WEST's decision to argue  
8 rather than comply should be rewarded with an appropriate monetary penalty.

9 II. ARGUMENT

10 A. U S WEST Has Refused to Comply with Paragraph 274 of the Final Order.

11 Paragraph 274 of the Final Order reads as follows:

12 274. U S WEST must provide MCImetro access to the same information  
13 regarding current or forecasted exhaust at tandem and end-office facilities that U S  
14 WEST relies upon to make strategic network planning decisions, immediately as it  
15 becomes known.

16 U S WEST has refused to comply with this paragraph. It has not provided MCImetro with any  
17 information on exhaust--current or forecasted--at any facilities.

1           Although it is difficult to follow U S WEST's arguments in its Answer, U S WEST does  
2 acknowledge its noncompliance with Paragraph 274: It states that it has "complied with this  
3 provision via establishment of a web site" (Answer at p. 5, lines 11-12; see Answer at p. 11, line 3),  
4 but does not dispute MCImetro's assertion that the web site has never provided any information on  
5 facilities exhaust, current or forecasted. See Paragraph 16 and Attachment 3 to MCImetro's Motion  
6 to Compel. Even after MCImetro filed its Motion to Compel on June 10, 1999, and U S WEST  
7 claimed that "[t]he information contained on the web site has always been accurate with regard to  
8 the substantive information" (Answer at p. 6, lines 2-3), the web site continues to provide no  
9 information on facilities exhaust. As of July 19, 1999, the web site stated:

10           There is no forecasted exhaust for U S WEST's Local Tandems in the State of Washington.  
11           For the remainder of 1999.

12           A copy of the web page, printed on July 19, 1999 and apparently updated as of July 15, 1999, is  
13 attached hereto as Attachment 4.

14           U S WEST argues that it "has had some difficulty with what the Commission order meant  
15 by 'forecasted exhaust'" because U S WEST does not forecast exhaust in its planning process  
16 (Answer at p. 6, lines 4-6). It is disingenuous for U S WEST to now claim that it has not provided  
17 exhaust information because it did not know the meaning of "forecasted exhaust." The term  
18 "exhaust" is used in the Definitive Agreement. See, e.g., Definitive Agreement, Attachment 4,  
19 Section 10.4.1. The Initial Order required U S WEST to provide notice of current or forecasted  
20 exhaust and, in its Petition for Administrative Review to the Commission, U S WEST did not claim  
21 that "forecasted exhaust" was ambiguous or that it could not provide the information. Indeed, the

1 only issue before the Commission was whether the information would be provided for all end  
2 offices:

3 137. The Initial Order requires U S WEST to provide MCImetro with information  
4 regarding current or forecasted capacity exhaust at any facility where MCImetro is  
5 interconnected or has forecasted requirements on an ongoing basis. MCImetro requests that  
6 this duty be expanded to include all tandems and end-offices. MCImetro argues that this  
7 information is essential to network planning, and would indicate to MCImetro whether it  
8 should avoid certain facilities in certain locations as part of its network planning.  
9 Furthermore, MCImetro states that all exhaust information is available to U S WEST for its  
10 network planning purposes. U S WEST responds that MCImetro only needs information  
11 regarding capacity exhaust as provided for in the Initial Order, and there is no rationale for  
12 providing exhaust data for every end-office in the state.

13 Final Order, Paragraph 137. The Commission decided to require current and forecasted exhaust  
14 information for every end office. Final Order, Paragraph 138. Moreover, the Commission refers to  
15 facilities exhaust extensively in its Final Order. See, e.g., Paragraphs 38, 40, 46, 84, 90, 94, 103,  
16 104, 105, 108-116, and 122. None of these paragraphs were challenged in U S WEST's Petition for  
17 Reconsideration of the Final Order. Indeed, prior to the Motion to Compel, U S WEST did not claim  
18 that there was any disagreement about Paragraph 274 or its requirements. Paragraph 274 was not  
19 mentioned in its Petition for An Order Conference. The Commission should reject U S WEST's  
20 attempt to pull it into a semantics game. "Current exhaust" means that U S WEST does not have  
21 facilities to provision orders. "Forecasted exhaust" means that it will not have facilities to provision  
22 orders. The Definitive Agreement prescribes a six-month window. Definitive Agreement, Attach.  
23 4, Section 10.2.2.

1 U S WEST tries to divert attention from its blatant disregard of the requirements of Paragraph  
2 274 by claiming that MCImetro does not currently have any unfilled orders for interconnection and  
3 is underutilizing capacity it has already ordered. Answer at p. 6, line 21, to p. 7, line 3. These claims  
4 are irrelevant. First, the facilities exhaust information is for network planning purposes (see, e.g.,  
5 Final Order, Paragraphs 109, 114, 116 and 138), not for fulfillment of current orders. Second, there  
6 is a specific provision in the Definitive Agreement to address the issue of trunks which U S WEST  
7 believes are underutilized (Definitive Agreement, Attach. 4, Section 10.2.3). That provision  
8 complements--not replaces--the provision on notice of facilities exhaust (Definitive Agreement,  
9 Attach. 4, Section 10.2.2).

10 U S WEST acknowledges that there is "current facilities exhaust" (Answer at p. 6, line 13),  
11 but MCImetro has not received any information about that exhaust. U S WEST is now "working"  
12 on gathering that information. Answer at p. 6, line 14. The Final Order was entered over five  
13 months ago, and U S WEST apparently began working on compliance with Paragraph 274 only after  
14 the Motion to Compel was filed.

15 The Final Order concluded that U S WEST violated state statutes and the interconnection  
16 agreements with MCImetro, but did not penalize U S WEST. Another "free pass" would only  
17 encourage U S WEST's recalcitrance. The Commission should order U S WEST again to comply  
18 with its contractual obligations. It should order U S WEST specifically to comply with Paragraph  
19 274 and impose penalties for U S WEST's contempt of the Final Order.

1 B. U S WEST Has Refused to Comply with Paragraph 273 of the Final Order.

2 Paragraph 273 of the Final Order reads as follows:

3 273. U S WEST must provide MCImetro with forecasts and notice of major  
4 network projects in full compliance with the Definitive Agreement. Within 30 days  
5 of the entry of the instant Order, U S WEST must provide to MCImetro a schedule  
6 of the dates on which U S WEST and MCImetro will exchange the quarterly  
7 forecasts required by Section 10.2, Attachment 4, of the Definitive Agreement. The  
8 schedule must provide the dates through the term of the Definitive Agreement.

9 Section 10.2 of Attachment 4 of the Definitive Agreement states in relevant part:

10 10.2 The Parties shall establish joint forecasting responsibilities for traffic utilization over  
11 trunk groups. Intercompany forecast information must be provided by the Parties to  
12 each other four (4) times a year. The quarterly forecasts shall include forecasted  
13 requirements for each trunk group identified in Section 8.2.1 of this Attachment. In  
14 addition, for tandem-switched traffic, the forecast shall include the quantity of  
15 tandem-switched traffic forecasted for each subtending end office. The Parties  
16 recognize that, to the extent historical traffic data can be shared between the Parties,  
17 the accuracy of the forecasts will improve. Forecasts shall be for a minimum of three  
18 (current and plus-1 and plus-2) years and shall include:

19 . . . .

20 10.2.2 a description of major network projects anticipated for the following  
21 six (6) months that could affect the other Party. Major network projects  
22 include trunking or network rearrangements, shifts in anticipated traffic  
23 patterns, or other activities that are reflected by a significant increase or  
24 decrease in trunking demand for the following forecasting period. This  
25 planning will include the issues of network capacity, forecasting and  
26 compensation calculation, where appropriate.

27 U S WEST has refused to provide “notice of major network projects in full compliance with the  
28 Definitive Agreement” as required by Paragraph 273. It has not provided MCImetro with any  
29 information on “trunking or network rearrangements, shifts in anticipated traffic patterns, or other  
30 activities that are reflected by a significant increase or decrease in trunking demand,” as required by  
31 Section 10.2.2 of Attachment 4 of the Definitive Agreement. It has not provided a description of

1 other “major network projects anticipated for the following six (6) months that could affect”  
2 MCImetro, as required by that section.

3 U S WEST argues that it has provided the required information and relies on Attachment 1  
4 to its Answer. Answer at p. 3, line 24, to p. 4, line 1. Curiously, although U S WEST claims that  
5 Attachment 1 shows that it is in compliance with Paragraph 273, it has not filed a confidential copy  
6 of Attachment 1 so that the Commission can evaluate the adequacy of Attachment 1. This is because  
7 a complete copy of Attachment 1 would show that it is not adequate. A complete copy of U S  
8 WEST’s Attachment 1 will be filed as a confidential document and will be marked as Attachment  
9 5 to this Reply.

10 U S WEST’s Attachment 1 (MCImetro’s Confidential Attachment 5) is a “Snapshot” listing  
11 of tandem switches and end offices, percentages and dates without any explanation. Thus, the  
12 numbers in this “Snapshot” are not meaningful and do not provide information about anything, much  
13 less the required information about major network projects. Since the cover letter refers to a prior  
14 forecast meeting, the “Snapshot” is perhaps information about increases in capacity at various U S  
15 WEST tandem switches and end offices, the receipt of which was acknowledged by MCImetro in  
16 its March 25, 1999 letter to U S WEST. See Attachment 1 to MCImetro’s Motion to Compel, page  
17 2. As that letter and the Motion to Compel (paragraph 15) point out, the information is inadequate  
18 for several reasons:

19 First, U S WEST only provides the projected completion dates for increases in  
20 capacity at the switches and information on trunk utilization. No information is  
21 provided on whether capacity is exhausted at a specific tandem or end office. No  
22 information is provided on major network projects that may delay the installation of

1 new interconnection trunks or affect traffic congestion at a specific tandem or end  
2 office. No information is provided on projects similar to the permanent number  
3 portability project that should have been disclosed to MCImetro, under the  
4 contractual duty confirmed by the Commission in Paragraph 112 of the Final Order.  
5 No information is provided on “trunking or network rearrangements, shifts in  
6 anticipated traffic patterns, or other activities that are reflected by a significant  
7 increase or decrease in trunking demand for the following forecasting period,” as  
8 required by the Definitive Agreement.  
9

10 Second, the information is provided only in response to the service orders and  
11 forecast MCImetro sends to U S WEST. No information is provided on the tandem  
12 switches and end offices that are not specifically included in our forecasts. However,  
13 the Commission expressly recognized in its Final Order that information on these  
14 tandem switches and end offices is important for network planning purposes. For  
15 example, paragraph 138 of the Final Order states:  
16

17 MCImetro is entitled to compete with U S WEST, not just *when* network  
18 capacity is available, but *where* network capacity is available. To achieve  
19 that end, MCImetro is entitled to interconnect at any U S WEST tandem or  
20 end-office in the state, and must have nondiscriminatory access to all  
21 information relating to the feasibility of interconnection. MCImetro’s request  
22 for modification is granted.  
23

24 MCImetro may decide to interconnect to an end office that was not previously  
25 forecasted because that end office is not adversely affected by a major network  
26 project.

27 Attachment 1 to MCImetro’s Motion to Compel, pages 2-3. After four months, U S WEST  
28 continues to ignore these points and continues to refuse to provide the information.

29 U S WEST has tried to divert attention to the key issue by referring to hypothetical wasted  
30 time in providing information on Yakima and Colville. See Answer at p. 5, lines 4-6. MCImetro  
31 would not have brought this motion if U S WEST were refusing to provide information on Yakima  
32 or Colville. MCImetro brought this motion because U S WEST is refusing to provide information  
33 on major network projects in Seattle and Tacoma. MCImetro brought this motion because U S

1 WEST is only providing information on increases in network capacity. MCImetro brought this  
2 motion because U S WEST is refusing to acknowledge its explicit contractual obligation to provide  
3 “a description of major network projects anticipated for the following six (6) months that could  
4 affect” MCImetro, including “trunking or network rearrangements, shifts in anticipated traffic  
5 patterns, or other activities that are reflected by a significant increase or decrease in trunking demand  
6 for the following forecasting period.” This is the information the Commission ordered U S WEST  
7 to provide in February. This is the information U S WEST has refused to provide. The Commission  
8 should order U S WEST again to comply with its contractual obligations. It should order U S WEST  
9 specifically to comply with Paragraph 273 and impose penalties for U S WEST’s contempt of the  
10 Final Order.

11 C. U S WEST Has Refused to Comply with Paragraphs 275 and 276 of the Final Order.

12 Paragraphs 275 and 276 of the Final Order read as follows:

13 275. U S WEST must provide sufficient capacity within its own network  
14 which guarantees that the blocking probabilities set forth in WAC 480-120-515 will  
15 not be exceeded. In the event that blockage occurs due to a lack of capacity at its  
16 local tandem or end-office where MCImetro seeks interconnection or to increase  
17 existing interconnection capacity, U S WEST shall route local traffic through its  
18 access tandem to whatever extent and for however long necessary in order to  
19 alleviate blockage.  
20

21 276. U S WEST must allow MCImetro to route local traffic through its  
22 access tandem switch whenever facilities are unavailable at its local tandem switch  
23 or end-office where MCImetro seeks interconnection or to increase existing  
24 interconnection capacity. U S WEST must allow such interconnection to whatever  
25 extent and for however long necessary in order to alleviate the unavailability of  
26 facilities.

27 U S WEST has refused to comply with these paragraphs. If call blockage occurred today, U S

1 WEST would not be able to immediately route MCImetro's local traffic through its access tandem.  
2 U S WEST has done nothing but talk about compliance. It has not implemented the network  
3 changes required for the routing of MCImetro's local traffic through the access tandem.

4 In its Motion to Compel, MCImetro seeks the detailed schematics and engineering designs  
5 on how U S WEST intends to comply with Paragraphs 275 and 276. Forcing U S WEST to provide  
6 the details will force U S WEST to design a route which will work in the event of call blockage or  
7 facilities exhaust when MCImetro seeks interconnection. MCImetro wants to review the design to  
8 ensure that U S WEST's solution (i) will work promptly when there is blockage or facilities exhaust,  
9 (ii) will not adversely impact MCImetro's network, (iii) will not create other problems for  
10 MCImetro, and (iv) will be equal in quality to the access that U S WEST provides itself.

11 In response to MCImetro's repeated requests for details, U S WEST provided the March 31,  
12 1999 Memorandum attached as part of Attachment 2 to the Motion to Compel. U S WEST relies  
13 on that Memorandum as evidence of its compliance. See Answer at p. 8, lines 13-18. In the four  
14 months since that Memorandum was sent, U S WEST has made no progress toward implementation.  
15 Moreover, even U S WEST acknowledges that the Memorandum reflects only a "plan." Answer at  
16 p. 8, line 13. It gives no details for the routing. U S WEST wants an order conference (Answer at  
17 p. 8, lines 12-13), but without the details, a conference would be unproductive.

18 It is important to note that this is not a petition for reconsideration. U S WEST did not  
19 challenge these provisions of the Final Order. It could not. U S WEST can route, and has routed,  
20 local traffic through its access tandem. See Hearing Exhibit C-8. The only issues here are whether

1 U S WEST should be required to demonstrate how it intends to comply with Paragraphs 275 and  
2 276, and whether penalties should be assessed for its refusal to comply.

3 U S WEST points out that neither call blockage nor facilities exhaust has occurred which  
4 would trigger the access tandem routing. See Answer at p. 11, lines 9-12. This is true. It is also true  
5 that U S WEST has not implemented the network changes required for the routing of MCImetro's  
6 local traffic through the access tandem. MCImetro should not have to wait until it suffers another  
7 loss as a result of U S WEST's failure to implement access tandem routing before it can complain  
8 about U S WEST's noncompliance with the Final Order. The Commission should order U S WEST  
9 to comply with Paragraphs 275 and 276 and specifically to provide MCImetro with detailed  
10 schematics and engineering designs on how U S WEST intends to comply with those paragraphs of  
11 the Final Order. It should impose penalties for U S WEST's failure to comply.

12 D. U S WEST Must Comply with the Entire Final Order.

13 U S WEST has attempted to confuse the issues by arguing that it has complied with certain  
14 provisions of the Final Order and submitting attachments which demonstrate compliance with those  
15 provisions.<sup>1</sup> MCImetro agrees that U S WEST has complied with certain portions of the Final Order.  
16 However, compliance with a part of the Final Order does not relieve U S WEST of its obligations  
17 to comply with the remainder of the Final Order. A party cannot decide that it will comply only with  
18 provisions of an order which are convenient, but ignore other provisions which may require some

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<sup>1</sup>For example, U S WEST has submitted Attachments 3 and 4 to its Answer to demonstrate compliance with Paragraphs 277, 278 and 279 of the Final Order. However, those paragraphs are not the subject of MCImetro's Motion to Compel. Paragraphs 273, 274, 275 and 276 are the focus of the Motion to Compel.

1 effort. U S WEST only asked for reconsideration and a stay of the provisions of the Final Order  
2 relating to the confidentiality of certain documents. It never challenged the provisions of the Final  
3 Order which are the subject of MCImetro's Motion to Compel. U S WEST's argument that it has  
4 complied with certain provisions of the Final Order is not only irrelevant, but arrogant. U S WEST  
5 is required to comply with those provisions of the Final Order, as well as all other provisions which  
6 have not been stayed.

7 The Commission found that U S WEST violated state statutes and interconnection  
8 agreements numerous times, and fashioned an order to remedy those violations. The Commission  
9 made it clear that "business as usual" was not sufficient to satisfy U S WEST's statutory and  
10 contractual obligations and ordered U S WEST to change the way it collected and provided  
11 information to MCImetro and handled call blocking and exhaust situations. U S WEST continues  
12 to refuse to make those changes. MCImetro is now asking the Commission to reaffirm that U S  
13 WEST must change the way it does business with MCImetro and to compel compliance. MCImetro  
14 is also asking the Commission to assess penalties to ensure compliance.

### 15 III. CONCLUSION

16 MCImetro respectfully requests the following relief:

- 17 1. Entry of an order holding U S WEST in violation of Paragraphs 273, 274, 275 and  
18 276 of the Commission's Final Order.
- 19 2. Entry of an order directing U S WEST to provide MCImetro written forecasts and  
20 notice of major network projects, in full compliance with Paragraph 273 of the Final Order and

1 Section 10.2, Attachment 4 of the Definitive Agreement, such forecasts to include but not be limited  
2 to:

3 a. projected completion dates for increases in capacity at all U S WEST switches and  
4 information on trunk utilization;

5 b. information on major network projects that may delay the installation of new  
6 interconnection trunks or affect traffic congestion at a specific tandem or end office;

7 c. information on projects similar to permanent number portability that may impact  
8 MCImetro's network planning;

9 d. information on trunking or network arrangements, shifts in anticipated traffic  
10 patterns, or other activities that are reflected by a significant increase or decrease in trunking demand  
11 for the forecast period to follow; and

12 e. forecasts that include information on all U S WEST tandem switches and end  
13 offices.

14 3. Entry of an order directing U S WEST to provide MCImetro the same information  
15 regarding current or forecasted exhaust at tandem and end office facilities that U S WEST relies  
16 upon to make strategic network planning decisions (including information on all U S WEST's  
17 tandem and end offices and not just the tandem or end offices identified in MCImetro forecasts),  
18 updated weekly, in compliance with Paragraph 274 of the Final Order.

19 4. Entry of an order directing U S WEST to provide MCImetro with detailed schematics  
20 and engineering designs on how U S WEST intends to comply with Paragraphs 275 and 276 of the

1 Final Order.

2 5. Entry of an order assessing monetary penalties on U S WEST for its continued  
3 refusal to comply with Paragraphs 273, 274, 275 and 276 of the Commission's Final Order.

4 6. Entry of an order directing U S WEST to comply with the requirements of the to-be-  
5 entered order within 10 days of its date of issuance.

6 7. Order such other and further relief as may be justified.

Dated this 20<sup>th</sup> day of July, 1999.

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