

[Service Date June 7, 2002]

BEFORE THE WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION

In the Matter of the Investigation into	)	
	)	DOCKET NO. UT-003022
U S WEST COMMUNICATIONS, INC's <sup>1</sup>	)	
	)	
Compliance with Section 271 of the	)	
Telecommunications Act of 1996	)	DOCKET NO. UT-003040
.....	)	
In the Matter of	)	
	)	35 <sup>TH</sup> SUPPLEMENTAL
U S WEST COMMUNICATIONS, INC's	)	ORDER DENYING
	)	PETITION FOR
Statement of Generally Available Terms	)	INTERVENTION, MOTION
Pursuant to Section 252(f) of the	)	TO REOPEN
Telecommunications Act of 1996	)	
.....	)	

**I. SYNOPSIS**

1 *In this Order, the Commission denies Touch America's Petition to Intervene and Motion to Reopen Issues for failure to demonstrate good cause for granting late intervention.*

**II. MEMORANDUM**

**Procedural Background**

2 On June 4, 2002, Touch America, Inc (Touch America) filed with the Commission a Petition to Intervene and Motion to Reopen Issues in this proceeding addressing the issues of public interest and checklist compliance. During hearings in this proceeding on June 5, 2002, the Commission denied Touch America's petition and motion for failure to demonstrate good cause for granting late intervention.

**The Petition and Motion**

3 In its petition and motion, Touch America states that it seeks an order from the Commission reopening the record to allow evidence concerning a dispute that Touch America has with Qwest Corporation (Qwest) over Indefeasible Right of Use contracts. Further, Touch America requests that the Commission stay this proceeding

<sup>1</sup> After this proceeding began, U S WEST merged and has become known as Qwest Corporation. For consistency and ease of reference we will use the new name Qwest in this Order.

pending the Federal Communications Commission's (FCC) review of Touch America's complaints against Qwest, or condition its section 271 application on the FCC's resolution of the complaints.

4 Nowhere in its pleading, however, does Touch America make a petition for intervention. The only statement of cause for its late intervention is as follows:

Because it did not want to be premature in interjecting these points in the 271 proceedings, Touch America has not previously raised these matters before this Commission. . . . Touch America realized the full panoply of 271 implications – as set forth in this motion - only after Qwest filed answers to the FCC complaints and submitted additional information in response to related discovery.

*Petition at 3.*

### **Discussion and Decision**

5 The Commission's procedural rule on intervention, WAC 480-09-430, provides, in part:

Any person, . . . who desires to appear and participate, and who does not desire to broaden the issues of the proceeding, may petition in writing for leave to intervene at least five days prior to the time it is initially called for hearing or prehearing conference, whichever occurs first; or petition orally for leave to intervene at the time of the initial hearing or prehearing conference, whichever occurs first. *No such petition shall be filed or made after the proceeding is underway, except for good cause shown.*

*WAC 480-09-430(1)(a) (emphasis added).*

6 The rule further describes the standards for determining whether the Commission should grant intervention: "If the petition discloses a substantial interest in the subject matter of the hearing, or if the participation of the petitioner is in the public interest, the commission may grant the petition orally, at the hearing or prehearing conference, or in writing." *WAC 480-09-430(3).*

7 As stated above, Touch America made no specific petition for intervention, but did assert its reasons for late intervention. We find these reasons insufficient to grant the petition for late intervention.

8 The Commission opened this proceeding over two years ago and has held numerous workshops, oral arguments, and hearings over the course of these two years. The Commission is currently holding the last of its scheduled hearings in this proceeding

this week, and is very close to the end of this proceeding. The Commission held its first set of hearings on the issue of the public interest requirement in Section 271(d)(3)(C) in July 2001. Additional hearings on the issue of public interest were held on May 13 and 14, 2002. During those May hearings, both Public Counsel and AT&T raised the issue of Touch America's FCC complaints against Qwest.

- 9 Touch America should have, at the very latest, sought to intervene prior to the May 2002 hearings at which these issues were addressed. It is simply too late in this process to request that the Commission grant the petition to intervene and reopen its proceedings when Touch America had an earlier opportunity to participate in this proceeding, and no good cause is shown for granting this last-minute petition.

### III. ORDER

- 10 IT IS ORDERED that Touch America's Petition to Intervene and Motion to Reopen Issues is denied.

DATED at Olympia, Washington and effective this 7th day of June, 2002.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARILYN SHOWALTER, Chairwoman

RICHARD HEMSTAD, Commissioner

PATRICK J. OSHIE, Commissioner