

Carole Washburn

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March 30, 2000

**VIA FACSIMILE (360) 586-1150**  
**ORIGINAL VIA FEDEX**

Carole J. Washburn, Executive Secretary  
Washington Utilities & Transportation Commission  
1300 S. Evergreen Park Drive SW  
P.O. Box 47250  
Olympia WA 98504-7250

Re: U S WEST/Qwest Merger, Docket No. UT-991358

Dear Ms. Washburn:



Pursuant to the Notice of Opportunity to Respond to Joint Applicants' Request for Revised Briefing Schedule (March 27, 2000, 12:00 noon), AT&T Communications of the Pacific Northwest, Inc., NEXTLINK Washington, Inc., Advanced TelCom Group, Inc., and McLeodUSA Telecommunications, Inc. (collectively "Joint Intervenors") provide the following opposition to Joint Applicants' request. The request is untimely, conflicts with record evidence, would impose substantial hardship on other parties, and violates the restrictions the Commission previously established for briefing in this proceeding.

The sole basis for Joint Applicants' request to substantially shorten the briefing schedule to which all parties had previously agreed is that "Joint Applicants are proposing to close the merger transaction during this second quarter, and a Commission decision by the end of May would allow the appeal period to expire before the end of the quarter, when the transaction is scheduled to close." Joint Applicant Request at 1. Mr. Pitchford testified on behalf of the Joint Applicants, however, that "the anticipated closing date is *July 30, 2000*," one month *after* the end of the second quarter. Ex. 130T (Pitchford Direct) at 5 (emphasis added). The current briefing schedule allows sufficient time for a Commission decision and the time for filing any appeal prior to the merger closing date the Joint Applicants specified on the record.

To the extent that the Joint Applicants now seek to amend the record to change the merger closing date, the Joint Applicants' request represents the latest example of their selective disclosure of information to the Commission and to the parties. The Joint Applicants do not claim that they decided to accelerate the merger closing after the hearings had concluded and the briefing schedule had been established. The Joint Applicants, therefore, should have informed the Commission through Mr. Pitchford's testimony or by representation of counsel when the briefing schedule was discussed of their plans to close the merger one month earlier than the date Mr. Pitchford stated in his sworn testimony. The Joint Applicants should not be permitted to disclose this information only when they intend to use it to alter the Commission's established procedural schedule to their advantage.

In addition, the revised briefing schedule the Joint Applicants propose would impose substantial hardship on the Joint Intervenors. The Commission has denied these parties the

ability to present additional evidence on the impact of the proposed Settlement Agreement and of recent decisions being made by the merging companies. These parties, therefore, must develop arguments in support of their position using the record as it currently exists and those documents of which the Commission may take official notice. This effort will take all of the time currently allotted for filing initial briefs. Shortening this time, therefore, would deprive the Joint Intervenors of their right and ability to participate effectively in this proceeding.

The Joint Applicants' proposed briefing schedule also would require that initial briefs be filed before the public hearings on the proposed merger have concluded and thus before the record is closed. The Joint Applicants propose that parties address any issues arising out of the April 20 public meeting in their reply briefs, but that proposal violates the Commission's restriction on addressing issues that were not raised in the initial briefs. The Commission should not adopt a briefing schedule that requires initial briefing based only on a partial record and that provides parties with an opportunity to address issues for the first time in reply briefs.

For the foregoing reasons, the Commission should deny the Joint Applicants' request.

Very truly yours,

Davis Wright Tremaine LLP

Gregory J. Kopta

Enclosures

cc: Service List  
Susan Proctor  
Rex Knowles  
Kaylene Anderson  
Kath Thomas