

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Investigation Into)	Docket No. UT-003022
U S WEST Communications, Inc.'s Compliance)	
with Section 271 of the Telecommunications Act)	
of 1996)	
.....)	
In the Matter of U S WEST Communications,)	Docket No. UT-003040
Inc.'s Statement of Generally Available Terms)	
Pursuant to Section 252(f) of the)	PUBLIC COUNSEL'S RESPONSE TO
Telecommunications Act of 1996.)	AT&T MOTION TO REOPEN
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Public Counsel files this response pursuant to the Notice of Opportunity to Respond issued by Administrative Law Judge (ALJ) Ann Rendahl on September 20, 2002.

Public Counsel supports the AT&T Motion to Reopen and Supplement the Record in this proceeding. The motion is appropriate, given that it appears Qwest's Section 271 application will be modified in response to the FCC's concerns. The Washington Utilities and Transportation Commission's verification responsibilities, therefore, apply with regard to any new application.

Public Counsel recommends, however, that any reopened proceeding not be limited to a review of Section 272 issues. To Public Counsel's knowledge, the FCC has issued no order with regard to Qwest's Washington Section 271 application stating that Section 272 compliance is the only remaining issue. This limitation appears only in press reports and in Qwest public

statements. It may well be that the FCC is reviewing other issues as well and that Qwest's application may be revised on those other issues.

In addition, as our prior filings have indicated, Public Counsel continues to be concerned about the relationship between Section 271 and other Qwest misconduct issues including the use of "secret agreements." Last Friday, in the Minnesota "secret agreement" proceeding, the ALJ issued a detailed 54-page decision which again underlines the serious nature of this issue. *In the Matter of the Complaint of the Minnesota Dept. of Commerce Against Qwest Corporation Regarding Unfiled Agreements*, Minnesota Public Utilities Commission, 6—2500-14782-2, P-421/C-02-197, Findings of Fact, Conclusions, Recommendation and Memorandum (September 20, 2002). The ALJ found a significant number of knowing and intentional violations of the federal Telecommunications Act of 1996 by Qwest that were harmful to CLECs and to the development of competition. See e.g., *Id.*, ¶¶ 368-383.

The ALJ specifically addressed the implications of his findings for the Section 271 public interest test:

There are five public interest implications arising from the unfiled agreements. First, Qwest's attempt to subvert the "pick and choose" provisions of the Act by not filing the agreements; second, Qwest's attempts to prohibit CLECs from participating in the 271 proceedings; third, Qwest's attempts to prohibit CLECs from participating in the Qwest/US West merger proceeding; fourth, Qwest's attempt to prevent disclosure of negative performance information in the 271 proceeding; and fifth, Qwest's attempt to have a CLEC become an advocate for Qwest in various commission proceedings whenever Qwest requested it. *Id.*, ¶ 356.

The ALJ ruled that the record in the complaint case would become part of the Section 271 public interest record.

Public Counsel continues to believe it is appropriate for this Commission to initiate an investigation of these matters as bearing on the public interest component of the Section 271 test.

While Public Counsel understands that the Commission has determined previously that these

issues are not germane to the Section 271 review, in the event that the record is reopened, the Commission should establish a scope for the proceeding which at minimum allows it to respond to further developments at the FCC or in other state proceedings which may warrant revisiting the question.

DATED this 23rd day of September, 2002.

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