

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In re the Application of

U S WEST, INC., and QWEST  
COMMUNICATIONS  
INTERNATIONAL INC.

For an Order Disclaiming Jurisdiction  
or, in the Alternative, Approving the U  
S WEST, INC.-QWEST  
COMMUNICATIONS  
INTERNATIONAL INC. Merger

NO. UT-991358

PUBLIC COUNSEL  
MEMORANDUM REGARDING:

CONFIDENTIALITY OF  
INTERVENOR AGREEMENTS

## I. INTRODUCTION

Public Counsel files this memorandum pursuant to the Commission's May 11, 2000, Notice of Additional Process in order to address confidential treatment of intervenor agreements. A separate memorandum has been filed under seal addressing the AT&T agreement. That memorandum was served only upon U S West, Qwest, AT&T and Staff. This memorandum addresses other intervenor agreements for which confidential treatment is sought.<sup>1</sup> Because the points made are general in nature, and no reference is made to specific confidential material within an agreement, this document is not filed under seal, and is being served on all parties.

## II. ARGUMENT

To the extent that the agreements between intervenors, U S West, and Qwest are interconnection agreements, or amendments to interconnection agreements, or address related subjects going to U S West compliance with its obligations under Section 251 of the Telecommunications Act of 1996, Public Counsel submits that confidentiality is not warranted for the documents at issue here. Section 252 of the Act provides that interconnection agreements

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<sup>1</sup> It is Public Counsel's understanding that no party now objects to any agreement being made a part of the record in this docket. Admission to the record is therefore not addressed in this memorandum.

be submitted to the Commission for approval. This includes fully negotiated agreements which do not require arbitration. 47 U.S.C §252(a). These agreements are required by law to be made public. 47 U.S.C. §252(h). The Commission should treat the agreements here no differently. Indeed, a number of the intervenors, in apparent recognition of this fact, do not seek confidential treatment for their agreements.

While there are many reasons why persons, including businesses, may wish to keep certain information or documents confidential, it is declared public policy in Washington state that government be conducted in public, RCW Ch. 42.30, and that the records of public agencies be open. RCW 42.17.250 *et seq.* These general policies are subject only to certain specified and carefully drawn exceptions. The statutes do provide for confidential treatment of certain commercial information filed with the Commission. RCW 42.17.310(1)(q); RCW 80.04.095. Commission protective orders are authorized under WAC 480-09-015. Information for which protection is sought under such an order, however, must meet the statutory definitions of RCW 80.04.095. The statute, in pertinent part, provides protection for:

valuable commercial information, including trade secrets or confidential marketing, cost, or financial information, or customer specific usage and network configuration and design information

Any request for protection in this case must meet that standard as well as the terms of the specific protective order, which require showing that ability to compete fairly will be compromised, or that there is true business risk. First Supplemental Order, ¶A.1, p.2. Public Counsel urges the Commission to apply these standards strictly to the subject documents.

DATED this \_\_\_\_ day of May, 2000.

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