BEFORE THE WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION

In Re Application of U S WEST, Inc., And QWEST COMMUNICATIONS INTERNATIONAL, Inc.,	)	DOCKET NO. UT-991358
For An Order Disclaiming Jurisdiction, or in the Alternative, Approving the U S WEST, INC.--QWEST COMMUNICATIONS INTERNATIONAL, INC. Merger	)	NINTH SUPPLEMENTAL ORDER APPROVING AND ADOPTING SETTLEMENT AGREEMENTS AND GRANTING APPLICATION
. . . . .	)	

I. SUMMARY

1 **SYNOPSIS:** The Commission approves the merger of U S WEST, Inc., and Qwest Communications International, Inc., after finding it has jurisdiction over matter and after approving two proposed settlement agreements.

2 **PROCEEDINGS:** On August 31, 1999, U S WEST, Inc., and Qwest Communications International, Inc. (Joint Applicants), jointly filed an application requesting that the Commission issue an order disclaiming jurisdiction over their proposed merger transaction, or in the alternative, approving the merger. Following a lengthy continuance granted in response to a request by Joint Applicants and others, the Commission, on due and proper notice, conducted hearing proceedings on March 14-17, and 22, 2000, on April 10, 12, and 20, 2000, and on May 23, 2000, before Chairwoman Marilyn Showalter, Commissioner Richard Hemstad, Commissioner William R. Gillis, and Administrative Law Judge Dennis J. Moss.

3 In proceedings on March 14, 2000, the Commission received Exhibit No. 320, a proposed partial settlement agreement among Joint Applicants, Public Counsel, and Commission Staff ("Retail Settlement Agreement"). These Parties propose that the Commission approve the Retail Settlement Agreement as a fair, just, and reasonable resolution of issues related to the retail services and operations of the post-merger company. The Retail Settlement Agreement is unopposed.

4 In proceedings on May 23, 2000, the Commission received Exhibit No. 465, a second partial proposed settlement agreement between Joint Applicants and Commission Staff ("Competitive Settlement Agreement"). These Parties propose that the Commission approve the Competitive Settlement Agreement as a fair, just, and reasonable resolution of issues related to the wholesale services and operations of the post-merger company and other issues that concern the post-merger company's role and responsibilities in the context of national, regional, and statewide initiatives to

open telecommunications markets to competition. The Competitive Settlement Agreement is unopposed.

5 **PARTIES:**[1] Lisa A. Anderl, Senior Attorney, U S WEST, Inc. (Seattle), and James M. Van Nostrand, Stoel Rives, LLP, Seattle, Washington, represent U S WEST, Inc. Ronald Wiltsie, Mace Rosenstein, and Gina Spade, Hogan & Hartson L.L.P., Washington, D.C., represent Qwest Communications International, Inc. Gregory J. Kopta and Dan Waggoner, Davis Wright Tremaine, Seattle, represent AT&T Communications of the Pacific Northwest, Inc. Gregory J. Kopta, Davis Wright Tremaine, Seattle, also represents Advanced Telecom Group, Inc., Nextlink Washington, Inc., and Northpoint Communications, Inc. Andrew O. Isar, Director-State Affairs, Telecommunications Resellers Association, represents that organization. Arthur A. Butler, Ater Wynne LLP, Seattle, represents Rhythms Links, Inc., and, during early stages of the proceeding, represented SBC National, Inc., a/k/a SBC Telecom, Inc. Richard A. Finnigan, Attorney, Olympia, represents the Washington Independent Telephone Association (WITA) and, by notice of substitution of counsel filed late in the proceeding, SBC National, Inc. Mark P. Trinchero, Davis Wright Tremaine, Portland, Oregon, represents McLeodUSA Telecommunications Services, Inc. Brooks E. Harlow, Miller, Nash, Wiener, Hager & Carlson LLP, Seattle, represents Covad Communications Company, Northwest Payphone Association, and Metronet Services Corporation. Clay Deanhardt, Attorney, Santa Clara, California, also represents Covad Communications Company. Robert Nichols, Nichols and Associates, Boulder, Colorado, represents Level 3 Communications, Inc. Simon ffitch, Assistant Attorney General, Seattle, represents the Public Counsel Section, Office of Attorney General. Sally G. Johnston, Assistant Attorney General, Olympia, represents the Commission's regulatory staff (Staff).

6 **COMMISSION:** The Commission has jurisdiction. The Commission approves the two Settlement Agreements as a full and final resolution of the issues in these proceedings, adopts the Settlement Agreements and makes them part of this Order. The Commission authorizes and requires the corporate parties to these proceedings that conduct jurisdictional activities in Washington State on behalf of U S WEST, Inc., and Qwest Communications International, Inc., to make appropriate compliance filings to effectuate the terms of the Settlement Agreements and this Order.

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[1] Among the parties listed, the following sought leave to withdraw late in the proceeding: AT&T Communications of the Pacific Northwest, Inc.; Nextlink Washington, Inc.; Rhythms Links, Inc.; McLeodUSA Telecommunications Services, Inc.; Covad Communications Company; MetroNet Services Corporation; Level 3 Communications, Inc.; and SBC National, Inc. d/b/a SBC Telecom, Inc. These Parties' requests to withdraw are the subject of our Eighth Supplemental Order, entered today.

II. MEMORANDUM

A. Background and Procedural History

7 U S WEST, Inc., and Qwest Communications International Inc. ("Qwest Inc."), entered into an Agreement and Plan of Merger ("Merger Agreement") on July 18, 1999. The boards of directors of each company approved the merger and placed it before their respective shareholders via a Joint Proxy Statement that urged shareholder approval. The shareholders of the respective corporations approved the Merger Agreement and Plan of Merger on November 2, 1999.

8 Under the terms of the Merger Agreement, upon closing, U S WEST, Inc., is to be merged into Qwest Inc., with Qwest Inc., continuing as the Surviving Corporation. The separate corporate existence of U S WEST, Inc., then will cease. The direct and indirect wholly-owned subsidiaries of Qwest Inc., and U S WEST, Inc., that hold operating certificates or other authorizations will survive as direct or indirect wholly-owned subsidiaries of post-merger Qwest Inc. The Merger Agreement provides that "all the property, rights, privileges, powers and franchises of U S WEST . . . shall . . . vest in . . . the Surviving Corporation [(i.e., Qwest Inc.)]." Exh. No. 321 at Exhibit C (Merger Agreement), p. 2. Thus, for example, control over all the property of U S WEST Communications, Inc. (USWC), the U S WEST, Inc., subsidiary that provides regulated local exchange telecommunications service to approximately 2.5 million customers in Washington State, will vest in Qwest Inc., if the merger is consummated according to the Merger Agreement.

9 The proposed merger is to be effectuated via an exchange of stock. U S WEST, Inc., and Qwest, Inc., intend that the merger will be treated for U.S. federal income tax purposes as a reorganization within the meaning of Section 368(a) of the Internal Revenue Code.

10 The Merger Agreement recognizes that various regulatory approvals are required (Exh. No. 321 at Exhibit C (Merger Agreement), p.41) and the receipt of those approvals is a condition of the proposed merger. Exh. No. 321 at Exhibit C (Merger Agreement), p.47. The Merger Agreement can be terminated by either U S WEST, Inc., or Qwest Inc., if it is not consummated on or before July 30, 2000, but that date is automatically extended to December 31, 2000, if the only reason(s) for failing to consummate the transaction relate(s) to Hart-Scott-Rodino Act waiting periods and/or a failure to have all required regulatory approvals in place. Exh. No. 321 at Exhibit C (Merger Agreement), p.49. The Merger Agreement also provides that a

> Required Regulatory Approval will not be deemed to have been obtained if in connection with the grant thereof there shall have been an imposition by any Governmental or Regulatory Authority of any condition, requirement, restriction or change of regulation, or any other action directly or indirectly related to such

> grant taken by such Governmental or Regulatory Authority, which would reasonably be expected to cause the Maximum Revenue Reduction Amount or Incremental Capital Investment Amount [as defined in Section 6.03(c)(ii) of the Agreement] to be exceeded.

11 Thus, the merger will not occur until all necessary governmental and regulatory approvals and reviews have been obtained and are satisfactory to the merging corporations under the terms of the Merger Agreement. At the federal level, this included review by the Department of Justice, which approved the merger on September 7, 1999. The Federal Communications Commission approved the transaction subject to the companies first satisfying certain conditions by its Memorandum Opinion and Order in CC Docket No. 99-272, dated March 10, 2000. Exh. No. 452. Various state regulatory agencies also have undertaken review of the transaction; those processes are complete in some jurisdictions and continue in others.

12 USWC and various subsidiaries of Qwest Inc., that provide regulated telecommunications services in Washington State, acting on behalf of U S WEST, Inc., and Qwest Inc., filed their application for merger approval in Washington State on August 31, 1999. Exh. No. 321. The Washington Utilities and Transportation Commission gave notice on September 10, 1999, that a prehearing conference would be convened in the matter on September 23, 1999. On that date, the Commission conducted a prehearing conference in Olympia, Washington, before Chairwoman Marilyn Showalter, Commissioner William R. Gillis, and Administrative Law Judge Dennis J. Moss. Among other things, the Commission set a procedural schedule including January hearing dates for the presentation of evidence and development of a full and complete record for decision.

13 On December 21, 1999, USWC, Qwest Inc., Public Counsel, and Commission Staff filed a Stipulation Regarding Scheduling. The Commission treated this filing as a request for continuance under WAC 480-09-440. According to the request, the signatory parties had agreed that an extension of the procedural schedule was necessary to permit them time to discuss possible settlement. No opposition to the request was heard during the time allowed for responses. The Commission found the requested continuance to be in the public interest and granted it. The procedural schedule was revised, including new dates reserved for hearings to commence March 13, 2000.

14 On Friday, March 3, 2000, Joint Applicants, Commission Staff, and Public Counsel filed a Settlement Agreement (Exhibit No. 320) by which they proposed to resolve certain issues previously identified as germane to this proceeding. The Parties refer to the set of issues proposed to be resolved by this Settlement Agreement as the "retail issues" and refer to the issues that were not covered by the first proposed partial settlement as the "competitive issues." The Commission adopts that nomenclature here for the sake of clarity and refers to this first settlement agreement as the Retail

Settlement Agreement. The Commission announced by Notice of Revised Process on March 6, 2000, that the settling Parties would be required to present at hearing a panel of witnesses knowledgeable about the issues in the case, and the proposed settlement.

15 The Commission conducted a final prehearing conference on March 13, 2000, and held evidentiary proceedings on March 14-17 and 21, 2000. These hearings included proceedings concerning the proposed Retail Settlement Agreement, and proceedings concerning the competitive issues that remained in dispute. The Commission expressly reserved the option to conduct additional hearings if the proposed partial settlement is not approved, or is approved with conditions that cause one or more parties to exercise their right to withdraw from the Retail Settlement Agreement if it is not unconditionally approved. The Commission also conducted proceedings on March 16, April 10, 12, and 20, 2000, in various locations in Washington State, to receive comments from the public in the form of sworn statements in response to inquiry by the Public Counsel Section of the Office of the Attorney General. Written comments from the public also were received. Exh. Nos. 454 and 455.

16 At the conclusion of the evidentiary hearing phase, and following consultation with the Parties, the Commission set a briefing schedule. Initial Briefs were set for filing by April 28, 2000, and Reply Briefs were required to be filed by May 12, 2000. On April 26, 2000, Commission Staff filed a Request for Continuance of Briefing Schedule combined with its Motion for Issuance of Bench Requests. The Request and Motion were based on asserted "new developments in the case that warrant an extension of the current briefing schedule." Among other things, these "new developments" included the fact of U S WEST and/or Qwest entering into various side-agreements with certain Intervenors, one effect of which was to cause those Intervenors to file papers seeking leave to withdraw from the proceeding. Staff asserted those side-agreements should be made part of the record. Staff and Public Counsel challenged the confidential designation asserted by the parties to some of these side agreements.

17 Although Joint Applicants disputed the bases for Staff's Request and Motion, neither they, nor any other party, opposed Staff's request for a brief extension of the procedural schedule. The Commission granted a five-calendar-day extension (three business days) until May 3, 2000, for the filing of Initial Briefs to permit an opportunity for further consideration of the need for a longer extension in light of the developments that prompted Staff's Request and Motion. No change was made to the deadline for Reply Briefs. In response to Staff's Motion, the Commission issued Bench Request No. 2 and required Joint Applicants to produce by May 5, 2000, all side-agreements with any Party that required withdrawal or a change in position with respect to Commission approval of the proposed merger, or that related to the merger or merger proceeding in other ways.

18 On further consideration, including preliminary in camera review of the side-agreements, some of which were submitted as "Confidential" or "Highly Confidential" under the Protective Order in this proceeding, the Commission determined it was necessary to adjust the dates for Initial and Reply Briefs until May 19, 2000, and May 26, 2000, respectively. This was to allow adequate time for additional process to consider:

1. Staff's request that all documents filed by the Joint Applicants in response to Bench Request No. 2 be made exhibits;

2. AT&T's objection to one of the documents filed by the Joint Applicants in response to Bench Request No. 2 being made a part of the record in this proceeding;

3. Assertions of confidentiality with regard to several of the documents filed by Joint Applicants in response to Bench Request No. 2, and Staff's argument that these documents are not entitled to confidential treatment;

4. What additional process, if any, might be required prior to the Commission's resolution of disputes concerning the Joint Applicants' response to Bench Request No. 2.

19 The Commission set May 16, 2000, and May 19, 2000, as dates to receive written argument on the pending matters. The Commission also noticed hearing proceedings for May 23, 2000, to permit oral argument. The Commission's Notice provided, among other things, that "other business related to the Commission's determination of the issues in this proceeding may be conducted at [the announced] time and place." In light of this rescheduling, the dates for Initial and Reply Briefs were extended until May 26, 2000, and June 2, 2000, respectively.

20 On or about May 19, 2000, Joint Applicants and Commission Staff reported to the Presiding Administrative Law Judge that they had achieved a settlement in principle on the remaining issues in the proceeding (i.e., the competitive issues). These Parties requested that the hearing proceedings already scheduled for May 23, 2000, be used to present a witness panel to testify in support of the proposed settlement of these issues and to respond to questions from the Bench. Arrangements were made to accommodate the Parties' request including a requirement that Joint Applicants and Staff commit to contact personally all other Parties to inform them the proposed Competitive Settlement Agreement would be considered during the May 23, 2000 proceedings.

21 On May 23, 2000, the Commission received into evidence as Exhibit No. 465, the Competitive Settlement Agreement between Joint Applicants and Staff concerning the competitive issues. The Commission inquired of a witness panel concerning the proposed settlement terms. The Commission also established process and dates by

which Parties might express in writing any points in opposition to the proposed settlement. Only one Party, SBC National, Inc., indicated that it would file comments. However, on June 1, 2000, SBC Telecom, Inc., informed the Commission via a letter to the Secretary that it "has reached an agreement with U S WEST Communications, Inc./Qwest under which SBC Telecom, Inc." committed that it would not file comments.

22 In light of the process conducted in connection with the two unopposed settlement proposals, which together would resolve all previously disputed issues in the proceeding, the Commission determined to take the Settlement Agreements under advisement without any requirement for briefs. The Commission has considered the two Settlement Agreements and the full record, including prefiled direct and rebuttal testimony by more than 20 witnesses, more than 1,500 transcribed pages of cross-examination and other colloquy, and more than 125 exhibits. On the basis of its review and deliberations, the Commission here determines it should approve the settlement terms as a resolution of the previously contested issues, as discussed below.

B. Discussion and Decision

1. Jurisdiction.

23 U S WEST and Qwest filed a joint legal memorandum to challenge our jurisdiction in this matter. Intervenor WITA stated on the record its assertion that the Commission lacks jurisdiction, but did not brief the issue. Public Counsel and Staff each filed a response to U S WEST and Qwest and argued that the Commission has jurisdiction. Intervenors NEXTLINK, ATG, McLeodUSA, Covad, Metronet, and Northwest Payphone Association filed a joint response to U S WEST and Qwest and these parties also argued that the Commission has jurisdiction.

24 The Commission considered and decided the precise jurisdictional issues and arguments briefed here in two recent cases. In the Matter of the Application of GTE CORPORATION and BELL ATLANTIC CORPORATION for an Order Disclaiming Jurisdiction or, in the Alternative, Approving the GTE CORPORATION–BELL ATLANTIC CORPORATION Merger, Docket No. UT-981367, Fourth Supp. Order (December 16, 1999); In the Matter of the Application of PacifiCorp and Scottish Power PLC, Docket No. UE-981672, Second Supp. Order, 192 PUR4th 143 (March 1999). In those Orders, the Commission concluded it has jurisdiction over transactions closely similar in all pertinent aspects to the transaction before us in this proceeding. As in those cases, and for the same reasons stated in the Orders cited above, we conclude that the Commission has jurisdiction here both as to the subject matter and the Parties.

2. Governing Statutes and Rules

25 The following statutory provisions and rules apply:

RCW 80.01.040. The utilities and transportation commission shall:

> (1) Exercise all the powers and perform all the duties prescribed therefor by this Title . . .
>
> (3) Regulate in the public interest, as provided by the public service laws, the rates, services, facilities, and practices of all persons engaging within this state in the business of supplying any utility service or commodity to the public for compensation, and related activities; including, but not limited to, . . . telecommunications companies . . .
>
> (4) Make such rules and regulations as may be necessary to carry out its powers and duties.

RCW 80.12.020. No public service company shall sell, lease, assign or otherwise dispose of the whole or any part of its franchises, properties or facilities whatsoever, which are necessary or useful in the performance of its duties to the public, and no public service company shall, by any means whatsoever, directly or indirectly, merge or consolidate any of its franchises, properties or facilities with any other public service company, without having secured from the commission an order authorizing it so to do . . . .

WAC 480-143-120 Transfers of property. A public service company may not complete a transfer of property necessary or useful to perform its public duties unless the company first applies for, and obtains, commission approval. Transfers include sale, lease, assignment of all or part of a public service company's property, and merger or consolidation of a public service company's property with another public service company. . . .

WAC 480-143-170 Application in the public interest. If, upon the examination of any application and accompanying exhibits, or upon a hearing concerning the same, the commission finds the proposed transaction is not consistent with the public interest, it shall deny the application. [Note: this section was formerly WAC 480-143-150].

26 In order to approve the proposed transaction, the Commission must determine whether it is consistent with the public interest. There is no bright line against which

to measure whether a particular transaction meets the public interest standard. As we observed in another recent merger case, "the approach for determining what is in the public interest varies with the form of the transaction and the attending circumstances." In Re PacifiCorp and Scottish Power PLC, Docket No. UE-981627, Third Supplemental Order on Prehearing Conference (April 2, 1999), p. 3.

27 As in prior merger cases, we must be concerned here with whether the transaction might distort or impair the development of competitive markets where such markets can effectively deliver affordable, efficient, reliable, and available service. Applicants contend through their application and supporting material that the proposed transaction is procompetitive. Applicants state that the merger will provide "substantial benefits" to Washington consumers. Application at 10. The Settlement Agreements would establish conditions to our approval of the merger application that the Parties assert are sufficient to ensure such benefits are realized in a fashion that is consistent with the public interest. We turn now to a review of what is proposed, mindful that the transaction, if approved, should strike a balance among the interests of customers, shareholders, and the broader public that is fair and that preserves affordable, efficient, reliable, and available telecommunications service to Washington consumers.

3. Summary of Settlement Terms

28 We summarize here, for convenience, the essential terms of the two Settlement Agreements. We attach to this Order as Appendixes "A" and "B" the Settlement Agreements themselves, and adopt those Settlement Agreements as part of our Order. Accordingly, to the extent of any arguable deviation in our summary from the terms of the Agreements, we intend that the Agreements will control.

a. Retail Issues

29 There are pending two settlement agreements, as previously discussed. The first, the Retail Settlement Agreement (Exhibit No. 320), would resolve by its terms the contested issues in this proceeding regarding quality of service, required investment and other service improvement measures to be undertaken after the merger, rates, accounting and rate treatment of merger-related costs and synergies, and on-going access to the company’s books and records. The retail issues settlement expressly preserved for adjudication the "competition-related" issues as testified to by Dr. Blackmon (Exhibit No. 260-T, pp. 3-15; Exhibit No. 453), subject to continuing negotiations to attempt resolution via further settlement.

30 More specifically, the Retail Settlement Agreement states the terms summarized below:

1. Thirty days after the merger closes, USWC (i.e, the principal corporate operating subsidiary in Washington State both pre- and post-merger) will file tariff revisions to include a Consumer Bill of Rights. The proposed Consumer Bill of Rights is to include statements of customer rights such as privacy, accuracy, courtesy, and good service. In addition, the proposed Consumer Bill of Rights will state, or restate, certain specific customer service credits or service alternatives, and the availability of an order confirmation number so customers may more easily track service commitments. Joint Applicants commit that they will not seek tariff revisions to eliminate the customer credits or alternatives for a period of three years from the merger closing date.

2. Joint Applicants commit that they will retain existing held order customer service guarantee program (e.g., installation charge waiver, wireless loaner phone), as currently tariffed (USWC Tariff WN-U31, Section 2, Sheets 27 and 27.1.

3. USWC will retain the existing $50 missed appointment and commitment credit (USWC Tariff WN-U31, Section 2, Sheets 27.2 and 27.3) for an indefinite period.

4. Effective thirty days after the merger closing date, any customer who experiences an out-of-service condition (i.e., no dial tone) for more than two days (excluding Sundays and holidays) and less than eight calendar days will receive a $5.00 credit. If such a condition that lasts more than seven days, the affected customer(s) will receive credit for the full month's recurring charges (local exchange service and associated regulated features). Out-of-service conditions caused by force majeure and related causes, or by customer premises equipment, are expressly excepted from this commitment.

5. Effective thirty days after the merger closing date, all customers within a given wire center will receive a credit of one month's recurring charges (local exchange service and associated regulated features) during any month in which customers within the wire center are unable to obtain a dial tone within three seconds on at least ninety percent of calls placed during a normal busy hour. There are certain exceptions for wire centers that use analog switches, force majeure conditions, holidays, and disruptions caused by third parties.
6. Effective thirty days after the merger closing date, all customers in any exchange that falls out of compliance with the trouble report rate of 4.0 per hundred access lines in a given month will receive a $0.25 credit per line, per month.

7. By October 1, 2000, USWC will complete all orders for local exchange service and retail intraLATA private line service that on February 29, 2000, were pending and had been held due to company reasons for more than sixty days.

There is an exception for held orders that require fiber optic capabilities and USWC may petition by June 1, 2000, to be relieved of its obligation with respect to held orders shown to be "unreasonably expensive" to complete.

8. Effective thirty days after the merger closing date, USWC will use Washington-based employees to respond to customer complaints lodged with the Commission, and will do so within two business days of an inquiry.

9. Within sixty days after the conclusion of each calendar year, for at least three years, USWC will provide its customers with a service quality performance report for the preceding year. The first report will be filed in 2002 for calendar year 2001. The Retail Settlement Agreement states eight service quality performance measures and requires the establishment of baseline performance levels against which performance will be measured and reported to the Commission on a monthly basis. These reports will be the basis for calculating the amount of credits payable to customers each month. The December report will include a calculation of any calendar year credits due to customers under the Service Quality Performance Program, subject to a petition for mitigation based on demonstrable "unusual or exceptional circumstances" that USWC will have the burden to show. USWC may petition to terminate the Service Quality Performance Program that is not required of all telecommunications carriers operating in exchanges in which USWC operates after calendar year 2003, and will not be obligated to continue the program after calendar year 2005, in any event.

10. Any credits paid will be excluded from USWC's regulated results of operations and hence will not be recovered through prospective rates established following a rate case.

31 In addition to these commitments, USWC agrees under the settlement terms to replace every analog central office switch with digital central office equipment by June 30, 2001, and to employ fiber optic interoffice transmission facilities to every office not currently served by such facilities by September 30, 2002. The expenditures required for these improvements are included in USWC's commitment to maintain historic capital investment levels in Washington State for three calendar years after the merger closing date. Capital investment is measured on an average investment per access line served of approximately $133 and thus may vary from the present approximate annual outlay of $335 million, which is based on USWC's average annual investment in Washington during recent years. USWC will file quarterly investment reports with the Commission and meet annually with the Commission to review the prior year's network investment and preview planned network capital investment for the following year.

32 USWC also commits to spend at least $1 million per year, for three years following the merger closing date to extend local exchange service to areas inside its exchange boundaries, subject to other requirements of tariff, rule, or law. Such expenditures are to be considered universal service costs and may be recovered by USWC using an unserved area rate additive applied in the same manner as USWC uses to recover universal service costs. USWC agrees to withdraw its challenge in Thurston County Cause No. 99-2-01953-6, and to not institute any further challenge, to the use of such mechanism for recovery of costs to extend service to unserved areas.

33 In connection with these commitments, USWC may file a tariff revision seeking to define circumstances in which it may provide basic telephone service for second or additional residential lines using alternative technologies. Finally, in this connection, the Retail Settlement Agreement provides for good faith discussions among USWC, Public Counsel, and Staff regarding the possible modification or elimination of USWC's obligation to provide basic telephone service in areas where a wireless or cable TV company is designated under 47 CFR 214 as an eligible telecommunications carrier.

34 Turning to the issue of post-merger rates, the Retail Settlement Agreement neither requires nor prohibits USWC from seeking a rate decrease. On the other hand, the Retail Settlement Agreement would prohibit Staff or Public Counsel from initiating or supporting a third-party complaint proceeding regarding USWC's overall revenue or earnings level until January 1, 2004. USWC, for its part, will not seek to increase any tariffed rate or charge in Washington State except USWC may seek to raise rates to implement universal service support or similar programs, to effect revenue-neutral or revenue-negative rate rebalancing, adjust revenues for increases in reciprocal compensation, adjust for changes in mandated costs or recover unfunded mandates imposed by federal, state, or local governments, or to make individual or minor rate adjustments in the normal operation of its business (including, for example, individual case basis contracts, new service offerings, and price listed services). Commission Staff and Public Counsel also may seek rate changes in connection with universal service or similar programs, to accomplish revenue-neutral rate rebalancing, to adjust for changes in reciprocal compensation, or to adjust for changes in mandated costs. USWC will not seek to recover from customers the transaction costs of the merger, including financial advisor costs, legal advisor costs, consultant costs, filing fees and other non-recurring charges (e.g., change in control payments, goodwill or goodwill amortization, acquisition premiums), and any negative effect on capital costs.

35 The Retail Settlement Agreement also would require the Commission to commit not to take any action to change USWC's retail prices or access charges prior to January 1, 2004, except in connection with voluntary rate reductions filed by USWC. This, however, would not preclude the Commission from approving an alternative form of regulation (AFOR) for USWC that is supported by Public Counsel and Staff.

Indeed, the Retail Settlement Agreement provides that the parties to it will discuss in good faith the possibility of an AFOR for USWC's Washington regulated operations. These discussions are to be open to other interested persons.

36 In response to the issue of Staff and Public Counsel access to books and records, the Retail Settlement Agreement provides that USWC will make those available, as required to verify or examine USWC Washington State regulated operations, in Washington State, to the extent feasible. If access in Washington State is infeasible, USWC will reimburse the Commission and Public Counsel for the reasonable expenses incurred in traveling to a more distant location, subject to any legal restrictions or prohibitions.

37 The Retail Settlement Agreement provides that if USWC disposes of any or all of its Washington State operations during the term of the Retail Settlement Agreement, adherence to its terms by any successor in interest will be required as a condition of transfer.

38 Finally, USWC commits to work with "relevant, interested parties to develop a proactive program designed to inform eligible low-income population consumers of the state's Washington Telephone Assistance Program and to improve participation in the Program.

b. Competitive Issues

39 The Competitive Settlement Agreement (Exhibit No. 465) concerns the competitive issues. This settlement agreement between Joint Applicants and Staff proposes to resolve issues raised early in the proceeding principally by various Intervenors, but also of concern to Staff and Public Counsel. In a development of significant concern to the Commission, all of the Intervenors who actively pursued these issues throughout the case entered into various side-agreements with U S WEST and or Qwest. Exhibit Nos. 456HC-464. One term of each of these side-agreements required the Intervenor to withdraw from this docket. The Intervenors dropped their advocacy that conditions be imposed in connection with any Commission approval of the merger and took no position on the Competitive Settlement Agreement.

40 Nevertheless, the competitive issues remain a part of the case that must be determined. Indeed, at hearing, Staff witness Blackmon provided what was entered into the record as Exhibit No. 453, a mark-up of Exhibit No. 184 (duplicate exhibit at Nos. 212 and 222), which is a list of conditions several Intervenors had proposed earlier as necessary to ensure the proposed merger is not contrary to the public interest. Thus, at the end stage of the proceeding Staff essentially promoted the Intervenors' earlier advocacy, but without the support of the Intervenors. Prior to briefing, however, Joint Applicants and Staff negotiated the Competitive Settlement Agreement that is proposed as a means to resolve the competitive issues formerly advocated by the Intervenors and adopted in part by Staff as its own position.

41 The Competitive Settlement Agreement, by its terms, is interim in nature. It is effective upon merger closing and until December 31, 2002, or sooner if the Commission adopts permanent wholesale services standards for telecommunications companies. Moreover, various provisions in the Competitive Settlement Agreement have specific timelines for application. The provisions of the Competitive Settlement Agreement apply generally to services provided Qwest's and USWC's wholesale service customers, who are considered to be synonymous with those companies commonly referred to as competitive local exchange companies (CLECs) and are intended to apply to Qwest and USWC's provisioning of services to such companies.

42 The Competitive Settlement Agreement states three conditions that are prerequisites to its effectiveness. First, the Commission must enter an order approving the Competitive Settlement Agreement and the merger must close. Second, the Commission must endorse the Parties' assertion that the Competitive Settlement Agreement satisfies Section 3 of RCW 80.36.135 as "a proposal for ensuring adequate carrier-to-carrier service quality . . .." Third, Staff agreed to withdraw its challenge to the confidentiality of the side-agreements to which we previously have referred and which are the subject of our Eighth Supplemental Order entered today.

43 The substantive provisions of the Competitive Settlement Agreement are set forth in six principal sections. The first of these is a "loop conditioning program." Under this provision, Qwest and USWC (the "Company," to adopt the Competitive Settlement Agreement's shorthand) commit to devote resources to a program to address loop conditioning issues, including removal of bridged taps and load coil encumbrances. The Company will implement the program in 47 of its 110 Washington central offices (Exhibit No. 466) and will complete the project within 9 months after the merger closes. Priorities for the work will be determined in consultation with Washington CLECs and at no cost to the CLECs. The goal is to "significantly increase the inventory of nonloaded unbundled loops and eliminate conditioning charges for those loops included in the program."

44 The second section of substantive terms sets forth "interim provisioning standards for interconnection facilities, where facilities are available." "Interconnection facility" is defined to include unbundled loops and/or unbundled dedicated interoffice transport (UDIT). Complete and error-free wholesale customer orders for interconnection facilities are subject to the interval requirements stated in the Competitive Settlement Agreement so long as: (1) the order was provided in forecasts as required under a separate term of the Competitive Settlement Agreement, (2) the order is not for an entire non-loaded or DSL capable unbundled loop and the customer can offer the specific service it seeks to provide through a line sharing agreement with the Company, and (3) the order does not seek unbundled loop capacity to provide DSL either through purchasing an entire loop or purchasing a portion of the spectrum on a loop under a line-sharing agreement and either the loop is longer than 18,000 feet, the

loop contains digital loop carrier facilities (including pair gain), or the loop needs conditioning and is in a central office scheduled for grooming under the loop conditioning program described above.

45 Subject to the stated conditions summarized in the preceding paragraph, the Competitive Settlement Agreement sets forth provisioning intervals for interconnection facilities, where facilities are available, for (1) two and four wire voice grade analog loops, (2) two and four wire non-loaded loops, (3) digital capable unbundled loops (e.g., DS1 capable, ISDN capable), (4) digital capable unbundled loops (DS3 capable), (5) unbundled dedicated interoffice transport - DSO, (6) unbundled dedicated interoffice transport - DS1, and (7) unbundled dedicated interoffice transport - DS3. Entire non-loaded or DSL capable unbundled loops that are available and that do not require conditioning will be provided on the same intervals as for two and four wire non-loaded loops. Entire non-loaded or DSL capable unbundled loops order for DSL that are available but that need conditioning will be provided within 15 days of the date ordered. Finally, intervals for line-sharing will be the same as those in a certain Regional Line Sharing Agreement, dated April 21, 2000 (Exhibit No. 463).

46 The third set of substantive provisions establishes interim held order standards for interconnection facilities. This section of the Competitive Settlement Agreement establishes a schedule of payments that will be due from the Company and payable to the Washington State Treasury if the Company fails to achieve certain levels of success in meeting orders for wholesale services within 30 days after the time frames established under the Competitive Settlement Agreement standards for interconnection facility provisioning intervals. The Company is liable for payments of up to $2,500,000 quarterly if the aggregate number of interconnection facility orders held for 30 days or more on the last day of the quarter divided by the total number of qualifying interconnection facility order during the quarter is 15 percent or higher. There are lesser payments required for held order percentages between 5 and 15 percent. These payment obligations are in addition to any other penalties or remedies, including any penalties or remedies payable by the Company under its interconnection agreements. Any disputes concerning whether the Company has met the standards that trigger a payment obligation will be resolved by the Commission under the expedited procedures for dispute resolution established under WAC 480-09-530.

47 The held order standards provisions also provide that the Company will provide certain information about available facilities and customer location to assist CLECs to develop reasonable forecasts. Forecasting is required and customer orders not provided in a forecast will not be included in the determination of whether the Company has met the Competitive Settlement Agreement's held order standards for purposes of any payment obligation the Company might incur on a quarterly basis. Other orders excluded from the standards-met determination are those for an entire

non-loaded or DSL capable unbundled loop if the wholesale customer can offer the specific service it seeks to provide through a line-sharing agreement with the Company, or the customer order seeks loop capacity exclusively to provide DSL either through purchasing an entire loop or purchasing a portion of the spectrum on a loop under a line-sharing arrangement and one of several specific engineering conditions applies. Finally, the Company may petition to exclude from the standards-met calculation any interconnection facility orders it deems to be "unreasonably expensive to complete."

48 Under this section of the Competitive Settlement Agreement, the Company also commits to clear all interconnection facilities held orders by December 31, 2000, to the extent of orders pending on April 30, 2000 and held for more than 60 days. There are exceptions for DSL orders for loops longer than 18,000 feet or which contain digital loop carrier facilities, and the Company may petition the Commission for relief from its obligation to complete any existing orders that "would be unreasonably expensive to complete."

49 The fourth set of substantive provisions in the Competitive Settlement Agreement establishes customer specific remedies that apply whenever the Company fails to complete a forecast-based order within the intervals required. In such cases, the customer will receive a credit of the nonrecurring charge and an additional credit of one month's recurring charge for each group of 15 consecutive business days beyond the due date under the provisioning intervals. CLECs have the option to obtain remedies under their interconnection agreements or the Competitive Settlement Agreement.

50 The fifth and final set of substantive provisions in the Competitive Settlement Agreement establishes reporting requirements. The Company is obligated to provide monthly data each quarter, both aggregated and on an individual CLEC basis, including: (1) the total number of interconnection facility orders for each category identified in the Competitive Settlement Agreement, (2) the percentage of interconnection facility orders provisioned within the timeframes established by the Competitive Settlement Agreement, (3) the number of unbundled loop orders, where facilities are available, requiring conditioning and the number conditioned within 15 days, (4) the number of unbundled loop and UDIT orders held for Company reasons, where facilities are available, for 0-30 days, 31-60 days, 61-90 days, and more than 90 days, (5) the number of unbundled loop and UDIT orders held more than 30 days as a percentage of total unbundled loop and UDIT orders, and (6) the number of CLECs or other customers that receive a credit of the nonrecurring charge, and the amount of those credits.

51 The Commission held hearing proceedings on March 14 and 15, 2000, to consider the Retail Settlement Agreement. The parties to this settlement–U S WEST, Qwest, Staff, and Public Counsel--each presented a witness to participate as part of a panel.

The witnesses made brief introductory statements and responded to inquiry from the Bench and from the non-settling parties.

52 Ms. Jensen for U S WEST testified that the Retail Settlement Agreement (Exhibit No. 320) provides for rate stability for Washington consumers in that it imposes a moratorium on any general rate increase filing during the settlement period, or until January 1, 2004. TR. 371. On the subject of rates, Ms. Jensen also testified that the Joint Applicants had agreed to bear the transaction costs associated with the merger. *Id*. Ms. Jensen testified that "with respect to concerns that have been raised about the quality of service and investment in this state, . . ., the applicants have stepped up to some very stiff requirements with respect to service quality and performance . . .." *Id.* Dr. Blackmon testified that the imposition of a rate moratorium is appropriate given the many financial adjustments that are expected to occur in connection with the merger. TR. 448.

53 Ms. Jensen stated that the parties paid attention in structuring the Retail Settlement Agreement in a fashion that balances Joint Applicants' interests against consumer interests. TR. 372. She testified that under the Retail Settlement Agreement the merged company would be able to make necessary post-merger transitions, to incorporate the "best practices of both Qwest and U S WEST", and to progress toward the goal of satisfying the requirements of Section 271 of the Telecommunications Act of 1996, 47 U.S.C. §271. On the customer-benefit side of the asserted balance, Ms. Jensen testified that the combination of investment to improve service quality and deliver advanced services, customer service standards and remedies (including penalties), and education and information programs, would provide significant benefits to consumers. TR. 372-74.

54 Mr. Davis, for Qwest, testified that his company participated in the settlement negotiations and is fully behind the Retail Settlement Agreement. Qwest, he testified, "pledges its compliance with the terms of [the Retail Settlement Agreement] on a going-forward basis if it's adopted by the Commission." TR. 375. Mr. Davis stated that even without the Retail Settlement Agreement the Joint Applicants believe their merger is in the public interest because both companies are committed to increased service and availability, increased competition, and are dedicated to achieving Section 271 compliance "on a much more expeditious basis than I think has existed in the past . . .." Mr. Davis testified the Retail Settlement Agreement is consistent with these plans and "the principles that we intend to pursue as the new company going-forward, as the new Qwest . . .."

55 Dr. Blackmon testified for Commission Staff that by adopting the Retail Settlement Agreement the Commission would effectively impose conditions on the merger adequate to ensure that consumers are protected while the merger goes forward. He testified that in Staff's view, with the Retail Settlement Agreement's terms in place as

conditions to Commission approval, the merger could go forward without risk of harm to the public interest. TR. 376-77.

56 Later, in response to questions from the Bench, Dr. Blackmon testified specifically in connection with the continuation and expansion of bill credits to compensate customers who experience less than satisfactory service from U S WEST. TR. 385. Dr. Blackmon testified that the existing program appears to be working both as a means to encourage higher service quality performance by U S WEST and to compensate customers for the inconvenience of missed appointments, malfunctioning equipment, or other service-related problems. Dr. Blackmon stated his expert opinion that the bill credits program, which is more or less self-executing, is more effective in providing incentive to improved service quality than the threat of penalties that might be "remote." TR. 385. Ms. Jensen agreed with Dr. Blackmon's assessment and cited specific improvements in meeting service quality standards under existing programs. TR. 386.

57 The focus of Mr. Steuerwalt's testimony for Public Counsel was on "the pro-consumer elements of the proposed settlement." TR. 377. He testified that under the Retail Settlement Agreement various customer service guarantees would continue and even be expanded, that there would be improved information flowing to customers, and that there would be improved infrastructure given the companies' investment commitments. He stated Public Counsel's view that the most important element of the Retail Settlement Agreement is its establishment of a service quality performance program that "provides a significant incentive to the company to provide excellent service and will provide customers with the right compensation if that goal is not achieved." TR. 378. Mr. Steuerwalt also testified that the telephone assistance program was an important commitment from Public Counsel's perspective because it satisfies the "concern with the continued affordability and access to telecommunications for low-income customers in this state." *Id.*

58 Ms. Jensen and Dr. Blackmon both testified in response to questions from the Bench that the investment commitments under the Retail Settlement Agreement promise benefits both to retail customers and others, including competitors, who use the U S WEST network. TR. 400-404. As noted above, the fundamental investment commitment is to maintain recent historic levels at approximately $133 per access line or $335 million annually, rather than adding significant new investment as advocated by Staff in its prefiled testimony. Dr. Blackmon testified at the settlement hearing that performance-based conditions backed up by penalty provisions to which U S WEST voluntarily commits under the Retail Settlement Agreement, and which are significantly higher than what current authority would allow the Commission to impose, is a superior alternative to higher mandated investment levels that might produce little in the way of material results, in any event. TR. 400-402. Dr. Blackmon also testified that performance credits and investment commitments under the Retail Settlement Agreement are superior to rate reductions as a means to capture for Washington consumers the alleged benefits and efficiencies of the merger.

TR. 422. Moreover, Dr. Blackmon testified that based on the ongoing review the Commission staff undertakes with respect to U S WEST's financial performance, there being no rate reduction as a part of the Retail Settlement Agreement is a reasonable outcome. TR. 428.

59 We consider this testimony against the backdrop of a record that includes significant evidence from a number of expert witnesses and anecdotal evidence from U S WEST's customers who appeared at our public comment hearings or filed written comments (Exhibit Nos. 454 and 455) that U S WEST's service quality in recent years is less than satisfactory. Some of these witnesses expressed concerns that matters may not improve, or may worsen, if U S WEST merges with Qwest. Other of these witnesses expressed support for the merger, speculating that things may improve with a change in ownership and management. We make no specific findings in this connection. We do find, however, that the evidence offered relative to the Retail Settlement Agreement supports its adoption as a means to help ensure the merger is not inconsistent with the public interest. The Retail Settlement Agreement establishes financial and other incentives for the post-merger company that should promote service quality improvements, and provides mechanisms by which the Commission can monitor and enforce U S WEST and Qwest's commitments during the first several years after the merger is consummated. Considering the record as a whole, we find the Retail Settlement Agreement is a fair and reasonable resolution of the retail service issues as presented principally by Staff and Public Counsel. We conclude that our approval and adoption of the Retail Settlement Agreement (Exhibit No. 320) is in the public interest.

60 We turn next to the Competitive Settlement Agreement (Exhibit No. 465). The Commission held hearing proceedings on May 23, 2000 to consider this Competitive Settlement Agreement. The parties to this settlement–U S WEST/Qwest, and Staff–each presented a witness to participate as part of a panel. The witnesses made brief introductory statements and responded to inquiry from the Bench and from Public Counsel. Other non-settling parties elected not to participate actively in the proceedings.

61 Dr. Blackmon testified to his view that the Competitive Settlement Agreement addresses Staff's concern that the Retail Settlement Agreement alone posed a risk that the post-merger company would focus the company's attention on retail customers and relationships to the detriment of Washington consumers who wished to obtain services from CLECs that depend in some way on using U S WEST's network. TR. 1564. He explained that Staff therefore "looked for parity in terms of any incentives that we are trying to create here for U S WEST to provide good service to consumers, whether they go to U S WEST directly or whether they choose to go through a CLEC." *Id.* Dr. Blackmon testified that, like the Retail Settlement Agreement , the Competitive Settlement Agreement requires the post-merger company to clear U S WEST's existing backlog of held orders. TR. 1565. Again in

parallel to the Retail Settlement Agreement, the Competitive Settlement Agreement provides for credits to be paid to CLECs that place orders if the post-merger company fails to fill those orders on a timely basis. Dr. Blackmon testified that another balance between the retail and wholesale commitments is struck by the fact that under each Agreement, the combined company will have $20 million at risk if it fails to meet performance standards that are established by the Agreements. TR. 1566. At bottom, it is Staff's view that the two Agreements present "a comprehensive package of commitments and incentive mechanisms that . . . are sufficient to let the merger go forward." *Id.*

62 Mr. Reynold's, for U S WEST, testified that the inclusion of "robust forecasting requirements" in the Competitive Settlement Agreement will make it easier for the post-merger company to provide good service to "competitive customers." TR. 1566. Later, in response to questions from the Bench, Mr. Reynolds testified that this provision actually provides for an exchange of information so that there is a mutual undertaking to improve communication between the ILEC and the CLECs that will promote competition. TR. 1579. Both Mr. Reynolds and Dr. Blackmon testified that the type of information specified in the forecasting requirements section of the Competitive Settlement Agreement is the type that will foster the ability of CLECs to compete and of the ILEC to perform. TR. 1580-81. Dr. Blackmon confirmed Staff's view that the information specified for exchange between the CLECs and ILEC is sufficiently comprehensive to allow both CLECs and the ILEC "to deploy resources most effectively . . .." TR. 1581. Dr. Blackmon stated that Staff had "done the best [it] could given the amount of participation from the CLECs that we had." TR. 1582. We note in this connection that by this stage of the proceeding, the previously vocal CLECs had withdrawn from active participation in this proceeding, having agreed to mute themselves in consideration of the various side-agreements that are the subject of our Eighth Supplemental Order, entered today.

63 Mr. Reynolds also testified that the Agreement's loop conditioning program will promote the ability of competitors to deliver data services, which he views as being of central importance to CLECs. Mr. Reynold's acknowledged that the post-merger company also will benefit from this program, but he asserted that this merely puts both the ILEC and the CLECs "on kind of a level playing field." TR. 1567.

64 Mr. Davis, for Qwest, testified to his view that the two settlements "will bring very substantial benefits to our customers, whether wholesale [or] retail . . .." Mr. Davis stated that the various commitments and service guarantees under the Settlement Agreements are ones "that we as a company should and are willing to step up to and then see that they live up to the terms of both Agreements . . .." TR. 1567-68.

65 Questions from the Bench included concerns that there is no express enforcement mechanism in the Agreement if the post-merger company fails to meet its loop conditioning commitments. Mr. Reynolds testified that the requirement to complete

the program within nine months after the merger closes "would hold our feet to the fire." TR. 1570. Ms. Johnston, Staff's counsel, responded to the Bench's legal inquiry on this point by confirming that if the company fails to meet the nine-month deadline, it would be in violation of a Commission order, assuming the order is one approving and adopting the Competitive Settlement Agreement. TR. 1573.

66 Public Counsel confirmed through his questions to the panel that the Competitive Settlement Agreement does not address issues related to requirements under federal law that Qwest divest itself of interLATA operations as a condition of FCC merger approval. Dr. Blackmon testified to Staff's view that this is a matter for the FCC. Dr. Blackmon also testified, however, to Staff's view that "the plan [Joint Applicants have] filed with the FCC is sufficient to meet the concern that Qwest comply with Section 271 of the Telecommunications Act of 1996 in this specific regard. TR. 1606. Mr. Davis, for Qwest, testified that the FCC has imposed various requirements in connection with the divestiture of Qwest's interLATA services and will continue to review that matter closely via independent audits performed annually for three years after the merger is consummated. Mr. Davis stated the company "will be happy to share any of that information with the Commission." TR. 1607-08.

67 At the conclusion of the proceedings on May 23, 2000, the Commission provided for additional process to permit any party that might oppose the Competitive Settlement Agreement to have an opportunity to file written comment. SBC Telecom indicated that it might file such comment. Later, however, SBC followed the pattern established by U S WEST, Qwest, and other Intervenors, struck a side-deal with U S WEST (Exhibit No. 464), and filed to withdraw from the proceeding. The few remaining Intervenors that apparently have not affirmatively agreed to mute themselves with respect to the merger application elected nevertheless not to state any opposition to the Competitive Settlement Agreement. Public Counsel stated on the record that it does not object to the Commission's adoption of the Competitive Settlement Agreement. TR. 1613. Thus, the Competitive Settlement Agreement is unopposed.

68 As in the case of the Retail Settlement Agreement, we consider testimony about the Competitive Settlement Agreement against the backdrop of a record that includes expert testimony from a number of witnesses and anecdotal evidence both from witnesses who are employed by CLECs and from participants who appeared at our public comment hearings or filed written comments (Exhibit Nos. 454 and 455). Some of these witnesses expressed concerns that the realization of a competitive telecommunications market as envisioned by the Telecommunications Policy Act of 1996, and related federal and state policy initiatives, has been hampered by U S WEST and that matters may not improve, or may worsen, if U S WEST merges with Qwest. Other of these witnesses expressed support for the merger, and insist, or at least hope, that things will improve with a change in ownership and management. We again refrain from making specific findings in this connection. Our focus at this

juncture is on the question of whether the Competitive Settlement Agreement (Exhibit No. 465) is a reasonable resolution of the competitive issues. That is, do the conditions that would be imposed by our approval of the merger under the terms of the Competitive Settlement Agreement offer adequate assurance that the merger is not "inconsistent with the public interest." WAC 480-143-170. We find that the evidence offered relative to the Competitive Settlement Agreement supports its adoption as a means to help ensure that result. The Competitive Settlement Agreement establishes financial and other incentives for the post-merger company that should promote competition, and provides mechanisms by which the Commission can monitor and enforce U S WEST and Qwest's commitments after the merger is consummated. The Competitive Settlement Agreement, like the Retail Settlement Agreement, is grounded in basic concepts of performance based regulation and improved disclosure. Considering the record as a whole, we find the Competitive Settlement Agreement is a fair and reasonable resolution of the competitive issues as presented principally by Intervenors, with support from Staff and Public Counsel. We conclude that our approval and adoption of the Competitive Settlement Agreement (Exhibit No. 465) is in the public interest.

III. FINDINGS OF FACT

69 Having discussed above all matters material to our decision, and having stated general findings and conclusions, the Commission now makes the following summary findings of fact. Those portions of the preceding discussion that include findings pertaining to the ultimate decisions of the Commission are incorporated by this reference.

1. The Washington Utilities and Transportation Commission is an agency of the State of Washington, vested by statute with authority to regulate rates, rules, regulations, practices, accounts, securities, property transfers, and mergers of public service companies, including telecommunications companies.

2. U S WEST Communications, Inc., a wholly owned subsidiary of U S WEST, Inc., is engaged in the business of furnishing telecommunications services within Washington State as a public service company.

3. U S WEST, Inc., is a holding company, incorporated in Delaware. Its principal offices are located in Denver, Colorado. U S WEST, Inc., provides regulated telecommunications services in Washington State through its wholly owned subsidiary, U S WEST Communications, Inc. Disposition of the entirety of U S WEST Communications, Inc's property and facilities necessary or useful to its performance of its public duties in Washington State is a matter wholly within the control of U S WEST, Inc. In connection with U S WEST, Inc's activities that are part of U S WEST Communications, Inc's operations in Washington State, including decisions reserved to the parent under the company's corporate

structure, the activities, decisions, and acts of the parent necessarily are the activities, decisions, and acts of the subsidiary.

4. On August 31, 1999, U S WEST Communications, Inc., Qwest Communications Corporation, LCI International Telecom Corp. (d/b/a Qwest Communications Services), USLD Communications, Inc., and Phoenix Network, Inc., on behalf of their respective parent corporations, U S WEST, Inc., and Qwest Communications International, Inc., jointly applied for an order from the Commission disclaiming jurisdiction over their proposed merger transaction or, in the alternative, approving the merger.

5. The proposed merger transaction is to be effected through an exchange of stock. Under the terms of the Applicants' Merger Agreement, Qwest Inc., will survive as the parent corporation and U S WEST, Inc., will be a wholly owned subsidiary of Qwest Inc.. U S WEST Communications, Inc., will become a second-tier wholly owned subsidiary of Qwest Inc.

6. On March 3, 2000, Joint Applicants, Commission Staff, and Public Counsel filed a settlement agreement (Exhibit No. 320–the "Retail Settlement Agreement") by which they proposed to resolve issues related to retail services previously identified as germane to this proceeding.

7. On May 23, 2000, the Commission received into evidence Exhibit No. 465, a settlement agreement between Joint Applicants and Staff concerning the competitive issues (i.e., the "Competitive Settlement Agreement") that were not part of the Retail Settlement Agreement (Exhibit No. 320).

8. The Commission finds that Exhibit Nos. 320 and 465, taken together with testimony and exhibits related specifically to the settlement terms, and considered in light of the full record, are sufficiently comprehensive to provide reasonable resolutions of the issues pending in this proceeding, including the ultimate issue of whether the proposed merger is "inconsistent with the public interest." WAC 480-143-170.

IV. CONCLUSIONS OF LAW

70 Having discussed above in detail all matters material to our decision, and having stated general findings and conclusions, the Commission now makes the following summary conclusions of law. Those portions of the preceding detailed discussion that state conclusions pertaining to the ultimate decisions of the Commission are incorporated by this reference.

1. The Washington Utilities and Transportation Commission has jurisdiction over the subject matter of, and all parties to, these proceedings. Title 80 RCW.

2. The Settlement Agreements (Appendices "A" and "B" to this Order), considered together, fully and fairly resolve the issues pending in this proceeding, and are in the public interest.

3. The merger transaction, subject to the requirements stated in the Settlement Agreements, which are attached to this Order as Appendices "A" and "B", respectively, and which are adopted by reference into the body of this Order, is not inconsistent with the public interest. WAC 480-143-170. There is, therefore, no legal basis upon which to deny the pending application for merger approval. U S WEST and Qwest's application for merger approval should be granted subject to the conditions described in the Settlement Agreements.

4. The Commission retains jurisdiction over the subject matter and the parties to effectuate the provisions of this Order.

V. ORDER

71 THE COMMISSION ORDERS That it has jurisdiction over the subject matter and the parties to these proceedings.

72 THE COMMISSION ORDERS FURTHER That the Settlement Agreements, attached to this Order as Appendices "A" and "B," are approved and adopted as part of this Order as if set forth fully in the body of this Order.

73 THE COMMISSION ORDERS FURTHER That the Joint Application of U S WEST, Inc., and QWEST COMMUNICATIONS INTERNATIONAL, Inc., for approval of their merger transaction is granted subject to the conditions stated in the body of this Order, including those conditions set forth in the Settlement Agreements that are attached to this Order as Appendices "A" and "B."

74 THE COMMISSION ORDERS FURTHER That the corporate parties to these proceedings that conduct jurisdictional activities in Washington State on behalf of U S WEST, Inc., and Qwest Communications International, Inc., must make appropriate compliance filings and such other filings as are required to effectuate the terms of the Settlement Agreements and this Order.

75 THE COMMISSION ORDERS FURTHER That it retains jurisdiction over the subject matter and the parties to effectuate the provisions of this Order.

DATED at Olympia, Washington, and effective this 19th day of June, 2000.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARILYN SHOWALTER, Chairwoman

RICHARD HEMSTAD, Commissioner

WILLIAM R. GILLIS, Commissioner

NOTICE TO PARTIES: This is a final Order of the Commission. In addition to judicial review, administrative relief may be available through a petition for reconsideration, filed within 10 days of the service of this Order pursuant to RCW 34.05.470 and WAC 480-09-810, or a petition for rehearing pursuant to RCW 80.04.200 or RCW 81.04.200 and WAC 480-09-820(1).