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BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

NEW EDGE NETWORK, INC.,)	
)	DOCKET NO. UT-000141
Complainant,)	
vs.)	U S WEST'S ANSWER TO
)	COMPLAINT
U S WEST COMMUNICATIONS, INC.,)	
)	
Respondent.)	
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Pursuant to RCW 80.04.110 and WAC 480-09-420, U S WEST Communications, Inc. (U S WEST) answers the complaint in this matter as follows. U S WEST denies all allegations of the complaint not expressly admitted herein.

INTRODUCTION

1. The allegations set forth in the introductory paragraphs 1, 2 and 3 of the complaint are characterizations of complainant's claims that require neither an admission nor a denial. However, U S WEST specifically denies that it has any policy, or otherwise engages in any practice, that denies nondiscriminatory access to required loop prequalification information,

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2 discriminates against New Edge Communications, constitutes anti-competitive conduct, or violates
3 either the Telecommunications Act of 1996, Washington state law, federal regulations, decisions
4 of the FCC, or breaches the interconnection agreement between U S WEST and New Edge.

5 **I.PARTIES**

6 2. U S WEST admits the allegations set forth in paragraph 4.

7 3. U S WEST admits the allegations set forth in paragraph 5, except that U S WEST
8 does not admit that it is appropriate to include the reference to "U S WEST," any and all
9 predecessors, successors, subsidiaries, affiliates and divisions of U S WEST as the context
10 requires.

11 **II.JURISDICTION**

12 4. U S WEST admits that the Commission has jurisdiction over some but not all of
13 complainant's claims.

14 **III.BACKGROUND**

15 5. U S WEST admits the allegations set forth in paragraph 7.

16 6. U S WEST is without knowledge or information sufficient to form a belief as to the
17 truth of the allegations set forth in paragraph 8, and therefore denies the same.

18 7. U S WEST admits that some businesses and individuals seek high speed
19 connections as they increase their usage of the Internet and local area networks, and that
20 characteristics listed in the third sentence of the allegation are important to customers. U S WEST
21 is without knowledge or information sufficient to form a belief as to the truth of the allegations set
22 forth in the second sentence of paragraph 9, and therefore denies the same.

23 8. U S WEST admits the allegations set forth in paragraph 10, except that the
divestiture order is "Modification of Final Judgment" not "Modified Final Judgement."

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9. U S WEST denies the allegations set forth in paragraph 11.

10. U S WEST denies the allegations contained in the first sentence of paragraph 12.

U S WEST admits that it operates a network in the state of Washington consisting of physical facilities, including loops, central offices, transmission facilities between those central offices, and operations support systems (OSS). U S WEST denies any remaining allegations in paragraph 12.

11. U S WEST denies the allegations set forth in paragraph 13.

12. U S WEST denies the allegations contained in the first sentence of paragraph 14.

With regard to the remainder of the allegations contained in paragraph 14, U S WEST is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the remainder of paragraph 14, and therefore denies the same. U S WEST admits that service could be provided by New Edge as described in paragraph 14 over facilities leased from U S WEST.

13. The allegations set forth in paragraph 15 are legal conclusions, or attempts to draw certain conclusions of law, to which neither an admission or denial is required.

FACTUAL ALLEGATIONS

A. The Interconnection Agreement Between the Parties

14. U S WEST admits the allegations set forth in paragraph 16.

15. U S WEST admits the allegations set forth in paragraph 17.

16. U S WEST admits the allegations set forth in paragraph 18, except that the copy of the interconnection agreement provided with the complaint does not appear to be complete.

17. U S WEST admits the allegations set forth in paragraph 19.

18. U S WEST admits the allegations set forth in paragraph 20.

19. U S WEST admits the allegations set forth in paragraph 21.

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B. The Loop Pre-Qualification Dispute

20. With regard to the allegations in paragraph 22, U S WEST admits that New Edge purchases unbundled loops from U S WEST to provision xDSL service to at least some of its end users. However, U S WEST does not serve all end users with copper facilities, and therefore denies that all end users are served with copper loops or connected to U S WEST's central offices via such loops.

21. The allegations in paragraph 23 are legal conclusions, or attempts to draw certain conclusions of law, to which neither an admission nor a denial is required. U S WEST states that its obligation to provide nondiscriminatory access to unbundled network elements is defined in various provisions of the Telecommunications Act of 1996 and various FCC rules and orders. U S WEST admits that loops are an unbundled network element to which U S WEST must offer non-discriminatory access, if such access is technically feasible. U S WEST specifically denies that unbundled network elements includes all of the separate parts of U S WEST's local telephone network. U S WEST is required to provide access only to its existing network, not to a yet unbuilt superior network. *Iowa Utilities Board v. FCC*, 120 F.3d 753, 813 (8th Cir. 1997), *aff'd in part, rev'd in part on other grounds ***U.S.**** (1999).

22. U S WEST admits that section 8.1.3 of the interconnection agreement between New Edge and U S WEST contains the language set forth in paragraph 24, but denies that such language is the only relevant language in the agreement, or that the cited section is dispositive of any issues in this case.

23. U S WEST admits that section 10 of the interconnection agreement between New

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Edge and U S WEST contains the language set forth in paragraph 25, but denies that such language is the only relevant language in the agreement, or that the cited section is dispositive of any issues in this case. For example, section 10 also states that “[s]ystems capabilities will be implemented according to a mutually agreed upon and documented schedule.”

24. U S WEST admits that section 10.3.1 of the interconnection agreement between New Edge and U S WEST contains requirements related to the pre-ordering function and process as set forth in paragraph 26, but denies that these requirements are the only relevant portions of the agreement, or that the cited section is dispositive of any issues in this case. U S WEST does provide access to its operations support systems (OSS) through IMA-GUI or IMA-EDI interfaces which provide access to pre-ordering functions and processes.

25. U S WEST admits that section 10.3.1 of the interconnection agreement between New Edge and U S WEST contains the language set forth in paragraph 27 but denies that such language is the only relevant language in the agreement, or that the cited section is dispositive of any issues in this case.

26. U S WEST admits that section 10.3.1.2 of the interconnection agreement between New Edge and U S WEST contains requirements related to the pre-ordering function. However, this section is mischaracterized in paragraph 28 of the complaint. Section 10.3.1.2 of the agreement only addresses the pre-ordering information that will be returned regarding service availability for resale. New Edge does not resell U S WEST’s services, and this complaint does not address issue related to resale of U S WEST’s retail services. U S WEST further states that the U S WEST OSS pre-ordering function does provide a list of products and services available in a particular central office as set forth in section 10.3.1.2.

27. Paragraph 29 contains legal conclusions or attempts to draw conclusions of law to

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which neither an admission nor denial is required. The provisions of the FCC rules speak for themselves.

28. Paragraph 30 contains legal conclusions or attempts to draw conclusions of law to which neither an admission nor denial is required. The provisions of the FCC's UNE Remand Order speak for themselves. The sections of UNE Remand Order addressing the requirements for providing loop qualification information are not effective until May 17, 2000.

29. Paragraph 31 contains legal conclusions or attempts to draw conclusions of law to which neither an admission nor denial is required. The provisions of the FCC's UNE Remand Order speak for themselves. The sections of UNE Remand Order addressing the requirements for providing loop qualification information are not effective until May 17, 2000.

30. Paragraph 32 contains legal conclusions or attempts to draw conclusions of law to which neither an admission nor denial is required. The provisions of the FCC's UNE Remand Order speak for themselves. The sections of UNE Remand Order addressing the requirements for providing loop qualification information are not effective until May 17, 2000.

31. U S WEST denies the allegations in paragraph 33 except as set forth herein. U S WEST admits that it chooses to prequalify loops prior to provisioning it xDSL service. U S WEST does not test loops to prequalify them for xDSL service. Instead, U S WEST uses a formula to determine if the loop could support the U S WEST Megabit service.

32. Answering paragraph 34, U S WEST admits that it does have access to information about the loop characteristics of the loops in its network from which it can sometimes determine if U S WEST's xDSL service can be supported.

33. Answering paragraph 35, U S WEST denies that New Edge is not able to receive adequate prequalification information about loops from U S WEST. New Edge and all other

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CLECs are able to access loop pre-qualification information to determine if a particular loop is xDSL capable. The CLEC has access to this information through a pre-order query in IMA. It receives a “Yes” or “No” response indicating whether or not the unbundled loop is ADSL qualified along with the following ADSL associated unbundled loop information: loop length, existence of load coils, total length of bridge taps, whether service is on copper facilities or a Digital Loop Carrier (DLC) system or DAMLs, and insertion loss. U S WEST is in the process of modifying and upgrading its loop prequalification tool in order to provide CLECs with all of the information that is required by the UNE Remand Order, effective May 17, 2000.

34. U S WEST admits the allegations contained in the first two sentences of paragraph 36. U S WEST is without knowledge or information sufficient to form a belief as to how long each prequalification check takes New Edge, and U S WEST therefore denies that allegation. U S WEST further states that IMA “times-out” after approximately four minutes, and that it is therefore not possible that it takes New Edge eight minutes, on average, to prequalify a loop. U S WEST’s experience is that it takes approximately one minute from the time the request is made to the time a response is returned.

35. U S WEST admits the allegations in the first sentence of paragraph 37. The information obtained through IMA relies on information contained in LFACS. U S WEST denies that the LFACS system contains vast amounts of misinformation. To the extent that LFACS may contain inaccurate loop length information, which does occur occasionally, this information is the same information that is available to and used by U S WEST. The information provided by LFACS through IMA is sufficient to qualify loops for xDSL. New Edge has access to the following unbundled loop information from LFACS: length, existence of load coils, the number and length of bridge taps, whether service is on a Digital Loop Carrier (DLC) systems or DAMLs,

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and insertion loss. IMA does not provide access to all of the information in LFACS, nor is U S WEST required to provide access to all such information.

36. U S WEST denies the allegations in paragraph 38, except as set forth herein. New Edge's access to IMA is not prohibited by U S WEST. U S WEST currently supports New Edge's usage of IMA between 6:00 a.m. and 8:00 p.m., Monday through Friday. U S WEST does not prohibit New Edge from using IMA on weekends, or between 8:00 p.m. and 6:00 a.m., Monday through Friday. However, U S WEST wholesale service representatives are not available and all of the downstream systems required to process orders may not be available during these times. New Edge's access to the loop qualification information is dependent on access to LFACS, which is available Monday through Friday, 6:00 a.m. until midnight, Saturday 6:00 a.m. until 10:00 p.m., and Sunday 7:00 a.m. until midnight.

37. U S WEST denies the allegations in paragraph 39. U S WEST does not qualify loops based on central office tests.

38. U S WEST generally admits the allegations in paragraph 40, except that it is unclear what is meant by "itself and its retail arm" or "its xDSL retail arm." U S WEST is able to perform "bulk" loop prequalifications for its own xDSL service. The prequalification tool uses information from the LFACS and LEIS databases, which is the same information that the CLECs have access to in order to perform individual loop qualifications.

39. Answering paragraph 41, U S WEST admits that it does not use IMA. U S WEST denies that it "tests" loops as set forth in this paragraph. U S WEST further states that it has its own loop qualification tool which obtains information from the LFACS and LEIS databases. This tool enables U S WEST to obtain loop prequalification information at any time.

40. Answering paragraph 42, U S WEST admits that New Edge has requested

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U S WEST to provide it with a bulk loop qualification information report. Whether and the extent to which New Edge is entitled to such a report under the Act, its interconnection agreement, or the FCC's UNE Remand Order are legal conclusions to which no admission or denial is required. U S WEST states that it was not, at the time the request was issued, obligated to provide New Edge with the requested information.

41. Answering paragraph 43, U S WEST states that U S WEST loop qualification information does contain the following data for each line checked: TN, dB loss, CS, USOC, address and qualification levels.

42. Answering paragraph 44, U S WEST admits that it generates bulk loop qualification information which it is not obligated to provide to any other party. New Edge has access to loop information in order to prequalify loops on an individual basis.

43. Answering paragraph 45, U S WEST states that it did refuse New Edge's request for "bulk" loop qualification information. U S WEST was not, at the time the request was issued, obligated to provide New Edge with the requested information described in paragraph 42 of the complaint.

C. U S WEST's No Facilities Claims

44. U S WEST denies the allegations contained in the second sentence of paragraph 46. U S WEST is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the first sentence of paragraph 46, and therefore denies the same.

45. U S WEST denies the allegations contained in paragraph 47, except that U S WEST admits that New Edge sometimes requests copper facilities where no such facilities are in place. Under those circumstances, New Edge would be advised that no facilities were available.

46. U S WEST is without knowledge or information sufficient to form a belief as to the

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truth of the allegations set forth in paragraph 48, and therefore denies the same.

47. U S WEST is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 49, and therefore denies the same.

48. U S WEST is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 50, and therefore denies the same.

49. Answering paragraph 51, U S WEST denies that New Edge has requested dispatch of a technician. U S WEST further states that such dispatch is not required and that U S WEST would not dispatch under these circumstances for either wholesale or retail customers.

50. U S WEST is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 52, and therefore denies the same. With regard to the allegations contained in paragraphs 50-52, U S WEST states that it has asked New Edge for customer-specific information, or specific order information, in order to confirm or deny these allegations. New Edge has refused to provide such information, stating that U S WEST will have to obtain such information during the discovery process in this proceeding. U S WEST further states that it is not always necessary to have a “second copper pair” in place in order to provide a customer with a second line. There are technologies available and in use in the U S WEST network which allow the provision of a second (voice) line to a customer even if there is not a second copper pair in place to that customer.

D. Unbundled Transport Provisioning Issues

51. U S WEST is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 53, and therefore denies the same. U S WEST admits that New Edge has collocated DSLAMs in some of U S WEST’s central offices in Washington.

52. U S WEST denies the allegations set forth in paragraph 54. However, when New

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Edge originally ordered collocations (28) in Washington, there was no discussion about how New Edge would “feed” or “hook” them up.

53. U S WEST is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 55, and therefore denies the same.

54. U S WEST admits the allegations contained in paragraph 56. U S WEST is not required to have pre-ordering systems capabilities for UDIT facilities.

55. U S WEST is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 57, and therefore denies the same.

56. Answering paragraph 58, U S WEST admits that New Edge cannot order UDIT until its collocation is completed. New Edge needs a connecting facility assignment (a CFA, which is supplied by U S WEST) to place the order. The CFA is a complex address which identifies where the U S WEST facility will terminate to the New Edge collocation. The CFA is not valid in U S WEST’s trunk inventory record keeping system (TIRKS) database until the collocation is completed.

57. U S WEST denies the allegations set forth in paragraph 59.

58. U S WEST denies the allegations set forth in paragraph 60. U S WEST does not input specific New Edge collocated equipment, i.e., DSLAMs, into TIRKS. See also, the discussion in paragraph 56 above.

59. U S WEST denies the allegations set forth in paragraph 61-63.

CLAIMS FOR RELIEF

60. U S WEST denies that the complainant is entitled to any of the relief sought in any of its Claims for Relief, or its Request for Relief, paragraphs 64 through 100. U S WEST further denies that Complainant has any legal basis upon which to obtain the relief sought in its Request

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for Relief.

AFFIRMATIVE DEFENSES

61. The complaint fails to state a claim upon which relief can be granted.

62. Complainant’s claims are barred by the doctrines of ripeness and/or mootness.

63. Complainant’s claims are barred by the doctrines of waiver and/or estoppel.

64. Some or all of complainant’s claims are barred for lack of jurisdiction.

65. Injunctive relief is not available to complainant; and the Commission lacks jurisdiction to award the same.

66. Some of the loop information requested by the complainant is proprietary information, confidential to U S WEST, and is not required to be provided to the complainant.

67. At all relevant times, U S WEST acted in conformance with its tariffs, applicable Commission Orders, and state and federal law.

WHEREFORE, having answered the complaint, U S WEST requests that the complaint be dismissed with prejudice; that complainant take nothing by its complaint; and that U S WEST be awarded such further relief as the Commission may deem proper.

Respectfully submitted this 24th day of February 2000.

U S WEST Communications, Inc.

Lisa A. Anderl, WSBA No. 13236