

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Investigation into)
U S WEST COMMUNICATIONS, INC.'s) Docket No. UT-003022
Compliance with Section 271 of the)
Telecommunications Act of 1996)
_____)

WORKSHOP I RESPONSE TESTIMONY
OF
KAYLENE ANDERSON

On Behalf of
NEXTLINK Washington, Inc.

May 22, 2000

1 **Q. PLEASE STATE YOUR NAME, EMPLOYER, AND BUSINESS ADDRESS.**

2 A. My name is Kaylene Anderson. I am a Regulatory Manager for NEXTLINK, 1000
3 Denny Way, Suite 200, Seattle, Washington 98109.

4 **I. BACKGROUND**

5 **Q. PLEASE IDENTIFY AND DESCRIBE THE PARTY ON WHOSE BEHALF YOU**
6 **ARE TESTIFYING.**

7
8 A. I am testifying on behalf of NEXTLINK Washington, Inc. ("NEXTLINK"), a competitive
9 local exchange company ("CLEC") that provides facilities-based local and long distance
10 telecommunications services in Washington in competition with U S WEST
11 Communications, Inc. ("U S WEST").

12 **Q. WHAT ARE YOUR RESPONSIBILITIES?**

13
14 A. I am responsible for regulatory, legislative, municipal, and incumbent local exchange
15 carrier ("ILEC") initiatives on behalf of NEXTLINK in Washington.

16 **Q. WHAT IS YOUR BUSINESS AND EDUCATION BACKGROUND?**

17 A. I graduated from Hope College in Holland, Michigan with a Bachelor of Arts degree in
18 1990. After graduating with a law degree from Wayne State University law school in
19 1993, I clerked for a federal bankruptcy judge in the Western District of Michigan from
20 1993-1995. In 1996, I became a staff attorney with the FCC, where my responsibilities
21 included resolving carrier complaints and developing rules for pricing and USF. I joined

1 the NEXTLINK organization in my current position in the Spring of 1999.

2
3 **Q. HAVE YOU PREVIOUSLY TESTIFIED IN OTHER REGULATORY**
4 **PROCEEDINGS BEFORE THE COMMISSION?**

5
6 A. No, I have not.

7 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

8 A. The purpose of my testimony is to address the checklist items scheduled for Commission
9 review in the first workshops in this proceeding. NEXTLINK understands that to the
10 extent that performance standards, measures, and remedies are being developed as part of
11 the Regional Oversight Committee (“ROC”) collaborative process, those issues as they
12 relate to the checklist items in the first workshop will be addressed at a later date.
13 Accordingly, NEXTLINK’s interest in the first workshop, and consequently my
14 testimony, is focused on two checklist items: reciprocal compensation and access to
15 poles, ducts, conduits, and rights-of-way.

16
17 I describe the concerns NEXTLINK has with U S WEST’s insistence on repeatedly
18 relitigating reciprocal compensation issues, including through provisions in its Statement
19 of Generally Available Terms (“SGAT”). I also discuss NEXTLINK’s issues with U S
20 WEST’s general reliance on its SGAT, rather than Commission-approved interconnection

1 agreements, and the conditions under which NEXTLINK believes that an SGAT could be
2 used as part of U S WEST's demonstration under Section 271.

3
4 With respect to CLEC access to poles, ducts, conduits, and rights-of-way, I address U S
5 WEST's failure to provide any evidence to prove that the recurring and nonrecurring rates
6 it charges are just and reasonable and otherwise consistent with federal and state law. I
7 also discuss the disincentive for CLECs even to request pole or conduit space in light of
8 the unjustified time and expense U S WEST imposes simply to determine whether
9 sufficient space exists.

10 II. RECIPROCAL COMPENSATION

11 **Q. IS U S WEST CURRENTLY SATISFYING ITS OBLIGATION TO PROVIDE**
12 **RECIPROCAL COMPENSATION FOR THE EXCHANGE OF LOCAL**
13 **TRAFFIC?**

14 **A.** It depends on whether the Commission relies on the interconnection agreement the
15 Commission approved between NEXTLINK and U S WEST ("Agreement") or on U S
16 WEST's SGAT. As a result of NEXTLINK's Petition for Enforcement of the
17 Agreement, U S WEST began to pay NEXTLINK for reciprocal compensation for the
18 local traffic that the companies exchange. U S WEST recently suspended those payments
19 because the parties had not yet executed a formal amendment to the Agreement to reflect
20

1 the Commission's decision, but that amendment has been executed and submitted to the
2 Commission for approval. Accordingly, NEXTLINK expects that U S WEST will now
3 pay the reciprocal compensation it owes to NEXTLINK under the parties' amended
4 Agreement.

5
6 These circumstances, however, raise two issues: (1) the extent to which U S WEST may
7 rely on its SGAT to demonstrate it has a legal obligation to provide a particular checklist
8 item; and (2) the impact of U S WEST's continued challenge to terms and conditions in
9 Commission-approved interconnection agreements and U S WEST's insistence on
10 relitigating issues the Commission has already resolved.

11 **Q. WHAT IMPACT DOES U S WEST'S SGAT HAVE ON ITS OBLIGATION TO**
12 **PROVIDE RECIPROCAL COMPENSATION?**

13
14 A. None, as far as NEXTLINK is concerned. NEXTLINK has an Agreement with U S
15 WEST, and if U S WEST is not providing a checklist item according to the terms and
16 conditions of that Agreement, U S WEST has not satisfied the requirement to be
17 providing that item from NEXTLINK's perspective.

18 **Q. WHAT CONCERNS DOES NEXTLINK HAVE IF U S WEST IS PERMITTED**
19 **TO RELY ON ITS SGAT?**

20
21 A Until the Commission has thoroughly reviewed and approved the SGAT, that document

1 is nothing more than U S WEST's standard form contract sent to CLECs that have
2 requested interconnection negotiations. Permitting U S WEST to rely on that document
3 to demonstrate that U S WEST has a legal obligation to provide checklist items is
4 tantamount to relying on U S WEST's interpretation of federal and state law. Particularly
5 if no CLEC has agreed to some or all of the terms in the SGAT, the Commission should
6 look to interconnection agreements that have been negotiated and/or arbitrated and
7 approved by the Commission, not a unilateral contract form prepared by U S WEST.

8
9 NEXTLINK's other major concern is the lack of any definition of how a CLEC with an
10 existing interconnection agreement could incorporate provisions from the SGAT into that
11 agreement. In response to a NEXTLINK data request on this issue, U S WEST referred
12 to general SGAT provisions and Section 252 – neither of which address the issue – and
13 provided the following terse explanation:

14 Because the SGAT is U S WEST's standard contract offer, CLECs with a
15 current Interconnection Agreement may opt into any provisions or portions
16 of the SGAT *in a manner that maintains the context* by executing an
17 appropriate amendment to the current Interconnection Agreement.

18 USWC Response to NEXTLINK Data Request No. 01-006 (emphasis added).

19
20 The “in the manner that maintains the context” standard U S WEST proposes is no

1 standard at all. Rather, it simply permits U S WEST to determine unilaterally how much
2 of the SGAT a carrier with an existing agreement must adopt. Such discretion is totally
3 unacceptable, especially in light of the “poison pills” U S WEST has included to make
4 sections of the SGAT unpalatable to the vast majority of CLECs.

5 **Q. HAS U S WEST INCLUDED SUCH “POISON PILLS” IN THE SGAT**
6 **PROVISIONS GOVERNING RECIPROCAL COMPENSATION?**
7

8 A. Yes. U S WEST’s SGAT ignores the Commission’s resolution of reciprocal
9 compensation issues and requires any party opting into these SGAT provisions to accept
10 U S WEST’s rejected positions. The Commission has concluded in arbitrations, petitions
11 for enforcement, and in the generic costing and pricing proceeding that reciprocal
12 compensation must be paid for traffic bound to Internet Service Providers (“ISPs”). U S
13 WEST’s SGAT, however, precludes reciprocal compensation for such traffic. Consistent
14 with FCC Rule 711(a)(3), the Commission has also consistently concluded in CLEC
15 arbitrations that a CLEC switch is treated as a tandem for reciprocal compensation
16 purposes if that switch covers a geographic area comparable to the area served by a U S
17 WEST tandem. The SGAT, however, states that the CLEC switch will be treated as an
18 end office switch for reciprocal compensation purposes.

19
20 Inclusion of these provisions not only is inconsistent with Commission decisions and

1 FCC rules but virtually guarantees that most, if not all, CLECs for whom reciprocal
2 compensation is an issue will not adopt the reciprocal compensation portion of U S
3 WEST's SGAT if it includes these provisions.

4 **Q. ARE THERE OTHER ISSUES THE COMMISSION SHOULD CONSIDER WITH**
5 **RESPECT TO THESE ISSUES?**
6

7 A. Yes. These are examples of issues on which U S WEST simply refuses to accept the
8 Commission's decision. U S WEST appealed them all the way to the Ninth U.S. Circuit
9 Court of Appeals as part of the arbitration between MFS and U S WEST, and the courts
10 affirmed the Commission's decision. U S WEST nevertheless has again appealed the
11 same decision with respect to reciprocal compensation for ISP-bound traffic in the
12 context of NEXTLINK's Petition for Enforcement and has required other carriers seeking
13 such reciprocal compensation to bring the issue before the Commission. The SGAT
14 simply reaffirms U S WEST's intention to continue to litigate issues regardless of the
15 Commission's prior determinations.

16
17 The Commission should consider U S WEST's recalcitrance on these issues as an
18 important factor in determining whether U S WEST is complying with Section 271.
19 Local markets cannot be considered to be irreversibly open to competition if U S WEST
20 continues to relitigate settled issues and to appeal every adverse Commission decision,

1 causing the Commission and competitors to devote valuable and limited resources on
2 repetitive legal wrangling, rather than on the development and expansion of effective
3 local exchange competition. At a minimum, U S WEST's entry into interLATA markets
4 is not in the public interest as long as it continues to resist its obligations to open its
5 monopoly markets.

6 **Q. DOES NEXTLINK OPPOSE ANY USE OF A U S WEST SGAT?**

7
8 A. No, but the Commission should not permit U S WEST to rely on its SGAT, in whole or
9 in part, to demonstrate that U S WEST has a concrete legal obligation to provide access
10 to, and interconnection with, its network unless the following conditions have been
11 satisfied:

12 (1) The Commission and interested parties have thorough reviewed, and the
13 Commission has approved, the SGAT or the portions on which U S WEST seeks to rely;

14 (2) A CLEC with an existing agreement is permitted to opt into any individual
15 term or selected terms of the Commission-approved SGAT or SGAT provisions; and

16 (3) The Commission-approved SGAT or SGAT provisions are included in at
17 least one Commission-approved interconnection agreement with a CLEC that is not
18 affiliated with U S WEST or any other ILEC.

19 **III. POLES, DUCTS, CONDUITS & RIGHTS-OF-WAY**

1 **Q. HAS U S WEST DEMONSTRATED COMPLIANCE WITH ITS OBLIGATION**
2 **TO PROVIDE CLECS WITH ACCESS TO ITS POLES, DUCTS, CONDUITS,**
3 **AND RIGHTS-OF-WAY?**

4
5 A. No. There are at least three areas in which U S WEST’s application is deficient with
6 respect to access to poles, ducts, conduits, and rights-of-way: (1) failure to demonstrate
7 that the rates U S WEST charges are just and reasonable; (2) inclusion of an application
8 process that imposes unnecessary expenses and delays simply to find out if U S WEST
9 has available space, particularly for conduit occupancy; and (3) various contract and legal
10 issues, to the extent that Commission review includes consideration of U S WEST SGAT
11 provisions, including the document U S WEST has referred to as “General Information
12 for Pole Attachment and Innerduct Occupancy.”

13 **Q. WHAT ARE POLES, DUCTS, CONDUITS, AND RIGHTS-OF-WAY?**

14
15 A. Poles, ducts, conduits, and rights-of-way are part of the outside telecommunications plant
16 infrastructure. U S WEST, alone or in conjunction with another utility (generally an
17 electrical company), erects poles or places conduit on or in which U S WEST installs its
18 copper and fiber optic cables. CLEC access to U S WEST poles, ducts, conduits, and
19 rights-of-way on nondiscriminatory rates, terms, and conditions permits CLECs to use
20 existing infrastructure to install their copper or fiber optic cables with the benefit of U S
21 WEST’s economies of scope and scale. Local government authorities, moreover, are

1 increasingly encouraging, if not requiring, companies to use existing infrastructure where
2 it is available, as well as to cooperate in constructing additional infrastructure –
3 particularly if that construction entails installing new poles or digging up public streets.

4 **Q. WHAT RATES DOES U S WEST CHARGE FOR ATTACHMENT TO ITS**
5 **POLES OR TO OCCUPY ITS CONDUIT?**
6

7 A. U S WEST’s initial filing indicates that U S WEST prices pole attachments and conduit
8 occupancy on an individual case basis (“ICB”). In response to a NEXTLINK data
9 request, U S WEST has stated that it intends to modify its SGAT to include prices of
10 \$2.94 per pole per year and \$0.47 per foot of conduit per year. U S WEST, however,
11 acknowledges that the Commission has not reviewed or established these or any other
12 rates, and U S WEST has provided no evidence about how these rates were developed,
13 much less whether they comply with applicable legal requirements. U S WEST has
14 promised such information by June 15, 2000, but NEXTLINK obviously cannot evaluate
15 evidence that has not been provided prior to the date on which testimony is due and will
16 not be provided until one week before the workshops are scheduled to begin. Without a
17 demonstration that U S WEST’s rates are just and reasonable, U S WEST cannot satisfy
18 this checklist item requirement.

19
20 **Q. ARE THE ANNUAL RECURRING CHARGES THE ONLY RATES AT ISSUE?**

1 A. No. U S WEST also imposes nonrecurring charges to inspect poles and conduits to
2 determine if sufficient space is available for attachment or occupancy. As an initial
3 matter, NEXTLINK questions the need for any such charge. I understand from
4 consultation with a NEXTLINK engineer that U S WEST should maintain records of
5 poles and conduits and the amount of available space in each, and only rarely should be
6 required to undertake a physical inspection to determine whether space is available. I
7 also understand that U S WEST's pole and innerduct inquiry fees (\$114 and \$171 per
8 mile, respectively) and innerduct field verification fees (\$406 per manhole) appear to be
9 excessive, as well as unwarranted, undocumented, and unjustified. NEXTLINK will
10 attempt to have an additional subject matter expert at the workshop to address these
11 issues, but cannot prepare prefiled testimony without the cost and supporting data for
12 these functions and charges.

13
14 The other pricing issue is U S WEST's imposition of a \$200 per pole/innerduct charge for
15 unauthorized attachment/occupancy. When NEXTLINK asked for the cost justification
16 for this charge, U S WEST responded that it is a penalty "designed to encourage CLECs
17 to follow the established procedures for attachment/occupancy on U S WEST facilities,
18 thereby maintaining the safety and integrity of the network for customers." USWC

1 Response to NEXTLINK Request No. 01-010. In light of U S WEST's consistent refusal
2 to agree to pay *any* penalty to CLECs for U S WEST's failure to comply with its
3 contractual obligations, imposition of a penalty for CLEC noncompliance that is 68 times
4 the recurring pole attachment charge is discriminatory, as well as excessive, unjustified,
5 and offensive.

6 **Q. WHAT ARE NEXTLINK'S CONCERNS WITH THE APPLICATION PROCESS?**

7
8 A. NEXTLINK's primary concern is with the expense involved to determine whether space
9 is available. Based on U S WEST's charges, NEXTLINK could incur thousands of
10 dollars in inspection and verification fees, only to be informed that insufficient space is
11 available to accommodate NEXTLINK's request. Although U S WEST has stated in
12 response to a Bench Request and a NEXTLINK data request that it incurs "similar" costs
13 for its own projects, U S WEST has provided no evidence that any of these costs are
14 included in the rates U S WEST charges to its customers. Without such evidence, U S
15 WEST cannot demonstrate that is it not discriminating against CLECs who request pole
16 attachment or conduit occupancy space.

17
18 A related concern is timing. The application process is unnecessarily delayed if U S
19 WEST takes the time to physically inspect every pole or every conduit at every manhole

1 along the route the CLEC has requested. The CLEC thus faces not only substantial
2 financial liability, but also a significant time delay just to determine whether space exists,
3 without consideration of the additional time and expense required to install facilities if
4 space is available. Under these circumstances, few CLECs will risk requesting space on
5 U S WEST poles or in U S WEST conduit, and access to U S WEST poles, ducts,
6 conduits, and rights-of-way effectively will be meaningless.

7 **Q. DOES NEXTLINK HAVE ANY OTHER CONCERNS ABOUT U S WEST'S**
8 **PROVISIONING OF ACCESS TO POLES, DUCTS, CONDUITS, AND RIGHTS-**
9 **OF-WAY?**

10
11 A. Yes, to the extent that the review process in the workshops includes discussion of the
12 terms and conditions in U S WEST's SGAT and accompanying documents governing
13 access to poles, ducts, conduits, and rights-of-way. Several of these provisions are
14 internally inconsistent or raise other contract or legal issues. For example, Exhibit A,
15 Section 10.8 is inconsistent with Exhibit D, Section 4.2, with respect to U S WEST's
16 ability unilaterally to raise rates. U S WEST has stated in response to a NEXTLINK data
17 request that it will clarify the inconsistency, but NEXTLINK remains concerned that U S
18 WEST seeks to retain authority to raise rates without Commission or party approval.

19
20 My understanding is that in other states, the parties have used workshop time to negotiate

1 language and other changes to SGAT provisions to ensure compliance with legal
2 requirements, as well as clarity and general fairness. If the Commission decides to do so
3 in this proceeding, NEXTLINK will be prepared to address specific contract language
4 concerns at the workshop, rather than attempt to address those issues in prefiled
5 testimony.

6 **Q. DOES THAT CONCLUDE YOUR TESTIMONY?**

7 **A.** Yes, it does.