BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Investigation Into U S WEST Communications Inc's Compliance with Section 271 of the Telecommunications Act of 1996	)))))	Docket No. UT-970300

COMMENTS OF TCG SEATTLE ON COMMISSION'S DRAFT ORDER AND POLICY STATEMENT

INTRODUCTION

Teleport Communications Group, Inc. ("TCG") has carefully reviewed both the draft Order on Investigation and the draft Interim Policy Statement. TCG strongly supports the Commission's views in these two documents and commends the Commission for setting forth a well-defined process for thoroughly and correctly analyzing any filing made by U S WEST under Section 271 of the Act. Given the extremely short period that the Commission and other interested parties will have to comment on the validity of any Section 271 filing by U S WEST, it is essential that the Commission proceed with a careful and swift process.

TCG believes that the draft Order and Policy Statement achieves these objectives. In an effort to more fully address the principle of "equal and nondiscriminatory treatment," however, TCG sets forth below a brief discussion of the concept of performance parity for interconnection, access to unbundled network elements and operational support systems (OSS). TCG recommends, in particular, that the Commission 1) order the measurement and reporting of ILEC activity related to interconnection and the provision of unbundled network elements (UNEs) to show objectively whether interconnection and UNEs are being provided at parity with the way the ILECs treat themselves, their affiliates and other CLCs, and 2) require the ILECs to take actions necessary to provide the nondiscriminatory access to OSS required by both facilities- based CLECs and resellers.

DISCUSSION

A. The Concept of Performance Parity

The single most important principle that assures the national goal of competitive local telecommunications markets is found in Section 251(c)(2) of the Telecommunications Act of 1934 as amended: the principle of performance parity. Section 251(c)(2)(C) imposes upon incumbent local exchange carriers (ILECs):

> "The duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's

network...that is at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection."

The performance parity principle reflects the fact that ILECs have little if any incentive to treat rival interconnecting telecommunications service providers in a fair or nondiscriminatory fashion, but that they must do so if competition is to yield seamless interoperability in a "network of networks." The performance parity principle recognizes that incumbent local exchange carriers, who still serve nearly 100 percent of the consumers in the United States, can degrade the service quality of their new rivals or raise the rivals' cost of interconnection. The performance parity principle recognizes, too, that if the ILECs are allowed to treat interconnecting carriers as second-class citizens, facilities-based competition will be retarded. Since facilities-based competition is the only form of competition that assures consumers a physical alternative to the ILEC, interconnection which satisfies the performance parity principle is the key to real consumer choice.

The Act also invokes the performance parity principle with respect to the unbundled network elements (UNEs) that ILECs must provide to their competitors. Section 251(c)(3) additionally imposes on ILECs:

"The duty to provide, to any requesting telecommunications carrier for the provision of telecommunications service, nondiscriminatory access to network elements on an unbundled basis... ."

Because even facilities-based competitive local exchange carriers (CLECs) need to use some elements of the ILECs' networks in order to provide service ubiquitously, the performance parity principle applies also to ILECs' provision of unbundled network elements. The Federal Communications Commission's rules establish that "nondiscriminatory" access with respect to unbundled network elements means access that is, in fact, "at least equal". Again, the Act and the rule recognize the plain fact that the ILEC can materially affect the service quality experienced by the CLEC's customers, if the rival needs any ILEC facilities to provide service.[1] If the ILEC fails to promptly provision an unbundled loop, for example, it is the CLEC's reputation, not the ILEC's reputation, that will be harmed. The performance parity principle in

effect establishes a statutory requirement for performance benchmarks that "operationalize" the concept of performance parity. The Act created a remarkably efficient regulatory tool in this regard, for the requirement is clear, the determination of whether or not it has been met is "binary", and enforcement of the requirement will preclude exhausting and drawn out complaint procedures.

For a Bell operating company (BOC), failure to provide performance parity must result in denial of authority to enter the interLATA market. Specifically, in connection with the evaluation of a BOC's application to enter the long distance business, both the regulatory agency in the relevant state and the FCC must find that the BOC has provided interconnection and unbundled elements in accordance with Section 251(c)(2) and (c)(3). The performance parity principle applies to every item in the 14-point "competitive checklist" the BOCs must satisfy before they can enter the long distance market. But all ILECs, not just BOCs, always will be accountable for performance parity under Section 251 of the Act. Thus all ILECs must be in a position to show that they have provided service or functionalities to CLECs on par with the equivalent service or functionalities that they provide to themselves, their affiliates and other interconnecting carriers.

The ILEC's showing must result in a "yes" or "no" answer. The ILEC has either met its statutory obligations or it has not. The Act does not allow for "almost" met or "conditionally" met. To get the right answer, CLECs and regulators must be able to see quantitative data, or performance measures.[2] A comparison of data sets, one reflecting the ILEC's performance for itself, and others reflecting the ILEC's performance for each other entity with which it interconnects, will quickly reveal whether the performance parity principle has been satisfied. A simple bar graph will often suffice. Regulators can scan the results and literally "check off" the conclusion: "yes" the ILEC has provided "at least equal" service to the CLEC, or "no", it has not.

The proper reporting requirements and penalties will make regulatory oversight simple and allow "swift justice" if the ILEC has failed to meet the requirement.

B. The FCC's Analysis of Performance Parity

In its decision denying the application of Ameritech Michigan authority to provider interLATA service under Section 271 of the Act, the FCC addressed the performance parity issues with respect to interconnection, OSS and E911. (In the Matter of Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services In Michigan, CC Docket 97-137, Memorandum Opinion and Order, released August 19, 1997, ¶¶ 128-221.) In that Order, it set forth numerous examples of Ameritech's failure to provide these checklist items in a manner that met the performance parity requirements of the Act, and thus found it unnecessary to adopt any findings with regard to additional checklist items. (Memorandum Opinion and Order, ¶ 106.)

As can be seen by a careful review of the FCC's Order in the Ameritech proceeding, the concept of performance parity is critical to a Section 271 analysis. The provision of interconnection and OSS has also become highly contentious, in part because the ILEC's, including U S WEST, have not yet shown a willingness to meet their parity obligations under the Act. TCG therefore recommends that the Commission require US WEST (and GTE) to measure and report their performance in connection with their provision of interconnection and unbundled elements, including OSS. Our proposed, preliminary list of performance measures is attached as Attachment A.[3]

The information gathered will be necessary to evaluate U S WEST's Section 271 filing. By moving quickly to gather this information, the Commission will take a valuable and essential step toward fulfilling its role in the Section 271 evaluation process.

CONCLUSION

TCG supports the Draft Order and Interim Policy Statement, with the following concrete recommendations in order to define the "actual and complete information about USWC's provisioning [access and interconnection] to itself, to affiliates, and to interconnecting companies." (Draft Order, p. 5) TCG recommends that the Commission 1) order the measurement and reporting of ILEC activity related to interconnection and the provision of unbundled network elements (UNEs) to show objectively whether interconnection and UNEs are being provided at parity with the way the ILECs treat themselves, their affiliates and other CLCs, and 2) require the ILECs to take actions necessary to provide the nondiscriminatory access to OSS required by both facilities-based CLECs and resellers.

DATED this 19th day of September, 1997.

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ATTACHMENT A

[1] In the same way the passage of the Act has redefined the telecommunications market, it has also redefined the understanding of the concept of "nondiscrimination." Under the Act, nondiscriminatory provision of interconnection and UNEs must not only be equal as to US WEST's customers, but as to the service it provides to itself and its affiliates.

[2] For example, in arbitration before the Colorado Public Utilities Commission, US WEST was ordered to provide a number of CLECs with specific information regarding the service quality and measurement data it regularly maintains. (TCG_US WEST Arbitration, Docket No. 96A-329T, Decision No. 96-1186.) Since that order was issued in November 1996, the Colorado Commission has rejected US WEST's filings and found that US WEST in failing to provide the required information has failed to "negotiate in good faith" as required by Section 251(c)(1). (Decision No. 97-428 and Decision No. C97-582 at p. 2.)

[3]This information would be useful in conjunction with further Commission dockets which should address appropriate remedies for failure to comply with parity obligations, in addition to its 271 evaluation role.