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April 9, 1999

Carole J. Washburn, Secretary
Washington Utilities and
Transportation Commission
P.O. Box 47250
Olympia, WA 98504-7250

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99 APR -9 PM 4:45
OFFICE OF THE ATTORNEY GENERAL
UTILITY DIVISION

Re: US West Petition for Competitive Classification
Docket No. UT-990022

Dear Ms. Washburn:

Enclosed for filing are the original and 10 copies of the Comments of Washington Utilities and Transportation Staff and Certificate of Service.

Very truly yours,

SHANNON E. SMITH
Assistant Attorney General
(360) 664-1192

SES:pah
Enclosure
cc: All parties



BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

US WEST'S PETITION FOR COMPETITIVE CLASSIFICATION OF
HIGH CAPACITY CIRCUITS
PROVISIONED AT CAPACITIES OF DS-1 AND ABOVE
WITHIN THE GREATER SEATTLE, GREATER VANCOUVER,
AND GREATER SPOKANE AREAS

DOCKET NO. UT-990022

COMMENTS OF COMMISSION STAFF

APRIL 9, 1999

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STATE OF WASH.
UTIL. AND TRANSP.
COMMISSION

The Washington Utilities and Transportation Commission Staff (Staff) submits the following comments in opposition to US West Communications Inc.'s (US West) petition for competitive classification of its high capacity circuits within the Greater Seattle, Greater Vancouver, and Greater Spokane areas.

A. STATUTORY REQUIREMENTS

US West's petition is governed by RCW 80.36.330. In deciding whether to grant US West's petition, the Commission must consider the following factors:

- (1) The number and size of alternative providers of services;
- (2) The extent to which services are available from alternative providers in the relevant market;
- (c) The ability of alternative providers to make functionally equivalent or substitute services readily available at competitive rates, terms, and conditions; and
- (d) Other indicators of market power, which may include market share, growth in market share, ease of entry, and the affiliation of providers of services.

B. NUMBER AND SIZE OF ALTERNATIVE PROVIDERS

The Staff recognizes that several resellers and facilities-based providers exist in the areas where US West requests competitive classification. Although several of the facilities-based providers competing with US West are large entities, the services examined in this proceeding are only a small portion of their business. Most of these competitors are primarily interexchange carriers. There is not sufficient evidence demonstrating that these companies have the capability

to supply services in sufficient quantity to provide customers with an alternative to US West's high capacity service.

C. THE EXTENT TO WHICH SERVICES ARE AVAILABLE FROM ALTERNATIVE PROVIDERS IN THE RELEVANT MARKET

Facilities-based providers, at this point, are only offering high capacity services in limited corridors where they have placed their fiber backbone facilities. By identifying groups of high-volume customers in close proximity, competitors can keep their investments low, while maximizing revenue. These corridors are designed to provide maximum return on investment for the facility-based competitor.

D. THE ABILITY OF ALTERNATIVE PROVIDERS TO MAKE FUNCTIONALLY EQUIVALENT OR SUBSTITUTE SERVICES READILY AVAILABLE AT COMPETITIVE RATES, TERMS, AND CONDITIONS

At this time, customers in the majority of the areas in question do not have a choice of providers. If the facility-based providers extend their facilities, or equivalent services become available through other technologies, then the areas in question may be considered competitive.

While resellers of US West's service can provide alternative services within the entire areas in question, they depend on US West's facilities. This type of competition does not constrain US West's market power. If the resellers replace their dependence on leased facilities, employ their own facilities, and serve a significant portion of the areas in question, then a judgement of effective competition could be made.

E. OTHER INDICATORS OF MARKET POWER

At this point, US West has a majority of the market in all these service areas (See Confidential Attachment A). In its petition, US West states that alternate providers account for

“nearly 80% of the end-user relationships.” US West’s Pet. at 7 (quoting Attachment 2 of Petition at 11). In other words, US West asks the Commission to consider only its retail service as a measure of its market share. However, Staff believes that the Commission should consider both US West’s retail services and its wholesale services as the measure of its market share because US West’s competitors are largely dependent on US West’s facilities in order to compete with US West for these services.

Because US West’s competitors do not have ready access to historical data, Staff has not been able to compute US West’s loss of market share. In its documentation supporting its petition, US West claims that its market share is decreasing. US West’s Petition for Competitive Classification, Attachment 2. Staff does not doubt that possibility, but notes that US West’s absolute circuit counts are increasing. See Confidential Attachment A. If US West can demonstrate that it has lost significantly more market share in the future, a re-examination of its competitive status may be appropriate.

F. RECOMMENDATION

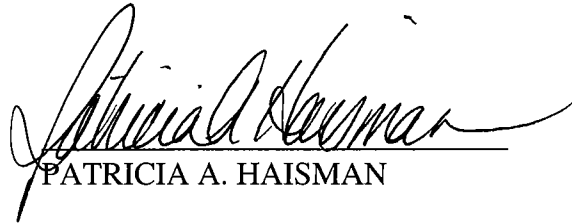
Staff recommends that US West’s petition for competitive classification be denied at this time. Staff will continue to monitor the competitive status of the markets in question.

CERTIFICATE OF SERVICE

UT-990022

I hereby certify that I have this day served copies of the foregoing Comments of Washington Utilities and Transportation Staff upon each known party of record in this proceeding by mailing a copy thereof properly addressed to each such party by facsimile and first class mail, postage prepaid.

DATED this 9th day of April, 1999.



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