



Christine O. Gregoire

ATTORNEY GENERAL OF WASHINGTON

900 Fourth Avenue #2000 • Seattle WA 98164-1012

April 9, 1999

Carole J. Washburn, Secretary
Washington Utilities and
Transportation Commission
1300 S. Evergreen Pk. Dr. S.W.
PO Box 47250
Olympia, WA 98504-7250

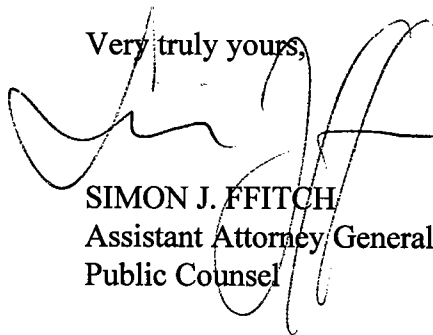
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STATE OF WASHINGTON
UTILITY AND TRANSPORTATION
COMMISSION

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

Dear Ms. Washburn:

Enclosed please find an original and ten copies of the Initial Comments of Public Counsel for filing in the above matter.

Very truly yours,



SIMON J. FFITCH
Assistant Attorney General
Public Counsel

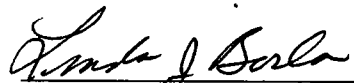
SJF/ljb
cc: Parties



CERTIFICATE OF SERVICE

I hereby certify that I have this day served one copy of the Initial Comments of Public Counsel upon all parties of record in this proceeding, as shown on the attached service list by electronic mail and by U.S. mail properly addressed and prepaid.

Dated this 9th day of April, 1999.



Linda J. Befla
Legal Secretary
Public Counsel Section

SERVICE LIST
US West Petition for Competitive Classification
Docket No. UT-990022

NEXTLINK

Mr. Gregory J. Kopta
Davis Wright Tremaine
1501 Fourth Avenue
2600 Century Square
Seattle, WA 98101-1688

AT&T

Mary B. Tribby
AT&T Law Department
1875 Lawrence Street, Suite 1575
Denver, CO 80202

MetroNet Services Corp.

MCImetro Access

Mr. Brooks Harlow
Clyde MacIver
Miller, Nash, Wiener, Hager & Carlsen
4400 two Union Square
601 Union Street
Seattle, WA 98101-2352

**Washington Association of Internet
Service Providers**

Richard J. Busch
Foster Pepper & Shefelman
777 - 108th Avenue NE, Suite 1500
Bellevue, WA 98004-5118

US West

Lisa Anderl
US West Communications
PO Box 21225
1600 7th Ave., Room 3206
Seattle, WA 98191

Commission Staff

Shannon Smith
Office of the Attonrey General
1400 S. Evergreen Park Drive SW
P.O. Box 40128
Olympia, WA 98504-0128

GST Telecom

Barry Pineles
4001 Main Street
Vancouver, WA 98662

TRACER

Art Butler
Ater Wynne Hewitt Dodson & Skerrit
Two Union Square
601 Union Square, Suite 5450
Seattle, WA 98101-2327

DIS

Chip Holcomb
State of Washington, DIS
1125 Washington St.
P.O. Box 40100
Olympia, WA 98504-0100

MCIMETRO

Rogelio E. Pena
707 - 17th Street, Suite 3600
Denver, CO 80202

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BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition of
U S WEST COMMUNICATIONS, INC.
for Competitive Classification of Its High
Capacity Circuits in Selected Geographical
Locations

DOCKET NO. UT 990022
INITIAL COMMENTS OF PUBLIC
COUNSEL

I. INTRODUCTION

The Public Counsel Section of the Washington Attorney General submits these comments pursuant to the Fifth Supplemental Order in this docket. The Fifth Supplemental Order extended the comment deadline in order to allow for receipt, analysis, and distribution by the Commission Staff of CLEC data. Public Counsel has requested the aggregated data from Staff but it is our understanding that it is not yet available. As a result, these comments will be abbreviated. Public Counsel reserves its right to address all issues further in the responsive round due April 23.

II. COMMENTS

Public Counsel believes that U S West Communications, Inc. (U S West) has not made an adequate showing that it meets the requirements for competitive classification under RCW 80.36.330. The company's initial filing, as the Commission noted in its February 3 Order Setting the Petition for Hearing, was "woefully inadequate on the most significant issues the Commission is required by law to address." Order, p. 3. The company's Additional Comments, filed February 25, attempt to remedy the problem, but still fall short.

The fundamental problem with the U S West request is its failure to establish the existence of effective competition for the services which are the subject of the petition. There is

insufficient evidence in the record to support a conclusion that U S West faces any constraints on its pricing of the subject services. Under these circumstances, customers are exposed to significant risk that prices for “high-capacity circuits” will rise if the petition is granted.

The company’s filings do not sufficiently address the question of market power. U S West maintains significant market share in both the retail and wholesale markets. In its Additional Comments, U S West seeks to minimize the importance of market share information by reference to the difficulty of developing such information and by arguing that market share can be a misleading indicator. Additional Comments, p. 3. U S West’s efforts to show by means of the QS Market Study that it does not have market power are not persuasive. The study subdivides the market in a questionable manner. In addition, the study put undue emphasis on the resale and retail side of the market. The resale of U S West’s services is not a good indicator of the existence of competition, since the company retains the ability to control price unilaterally. The practical reality which the QS study does not address is that the vast majority of high-capacity customer locations are served by U S West, not by competitors. These customers do not have “reasonably available alternatives” merely because competitors might hypothetically be able to serve them, as U S West argues. The fact is that the services which are at issue continue to be provided to a “significant captive customer base.” Effective competition under RCW 80.36.330 (1) is not present.

U S West takes the position that “the most critical component of this petition is its demonstration that the providers in these markets have no barriers.” U S West asserts that “alternative providers are free to obtain as much market share as they desire.” Id.. Such assertions ignore the tremendous advantages of incumbency and historical monopoly that U S West possesses. Even if, in theory, alternative providers are “free” to enter the market, this fact does not establish the existence of effective competition. By analogy, this would be like saying that a well-trained and fit Olympic-calibre 10k runner, already halfway around the course, faces effective competition from new competitors (including some rookies) who are still at the starting

line, merely because there are no "barriers" that prevent the new competitors from beginning the race and trying to catch the leader.

It is far from clear, however, that entry to the "high-capacity circuit" market is as barrier-free as U S West asserts in its petition. Presumably, the competitors participating in the case are in the best position to address this issue. It is certainly the case, however, that competitors need more than the presence of fiber in the vicinity of potential customers. Obtaining access to customer premises and to intervening rights of way are significant issues for competitors, for example. Even if "free" entry is deemed to be a proxy for effective competition, a proposition which Public Counsel questions, the Commission should scrutinize the record closely to determine if entry is as easy as U S West claims.

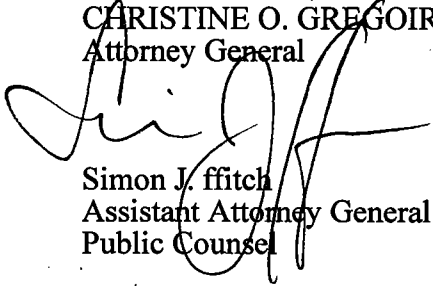
In summary, U S West's Petition and Additional Comments do not establish that the company no longer has a significant captive customer base or that there are reasonably available alternatives to the company's service, as required by statute.

III. CONCLUSION

For the foregoing reasons, Public Counsel recommends that the Commission reject the U S West petition for competitive classification as failing to satisfy the requirements of RCW 80.36.330. Public Counsel intends to provide further comments in the responsive round.

DATED this 9th day of April, 1999.

CHRISTINE O. GREGOIRE
Attorney General



Simon J. Ffitch
Assistant Attorney General
Public Counsel