BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Investigation Into	)	
	)	DOCKET NO. UT-970300
U S WEST COMMUNICATIONS INC.'S	)	
	)	
Compliance with Section 271 of the	)	ORDER ON INVESTIGATION
Telecommunications Act of 1996.	)	
. . . . .	)	

Nature of this Proceeding

This matter involves actions under the Federal Telecommunications Act of 1996.[1] The Commission instituted this investigation on January 27, 1997. Its purpose is to interpret the requirements of federal law and rule and, with the assistance of public participation, to formulate a policy for Commission action under Section 271 of the Act. Under that statute, an existing regional Bell Operating Company ("RBOC"), may file an application with the Federal Communications Commission ("FCC"), to provide interLATA message toll service in competition with the carriers now providing that service. U S WEST Communications, Inc. ("USWC") is the only qualifying RBOC in Washington State. The FCC is directed to consult with this Commission upon the filing of USWC's application for Washington State service, and has determined that it will do so by receiving a written consultation from the state within 20 days after the date on which the RBOC files its application.

The matters for consultation are specified in the statute and are set out in this Order. Because the issues are both serious and complex, and because the 20 days afforded for consultation after filing is such a short time for dealing with such a complex matter, the Commission instituted this investigation to assist the Commission in formulating its policies on how to provide the "consultation" to the FCC in a rational and knowledgeable manner.

Procedural History

The Commission held a workshop at Commission offices in Olympia on December 5, 1996, to begin a review of the state role and process for implementing Section 271 for USWC. Notice of the workshop was provided to all persons on the service list in Docket No. UT-960269, the Commission's workshop docket for implementation of the 1996 Act, as well as the telecommunications industry and counsel lists maintained by the Commission. Participants

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[1]The Telecommunications Act of 1996, Public Law No. 104-104, 101 Stat. 56, *codified at* 47 U.S.C. § 151 *et seq.* (1996) (the "Telecom Act", "1996 Act", or "the Act"). Sections 251 and 252 provide the conditions for new entrants to compete with incumbent local exchange carriers ("LECs"), including Regional Bell Operating Companies ("RBOCs") such as U S WEST Communications, Inc. ("USWC"), in the local service market. Section 271 of the Act is designed to increase competition in the long-distance (toll) market by allowing RBOCs to enter the market for interLATA toll in their regions once certain competitive conditions exist in their local markets.

at the workshop included representatives of Sprint, NEXTLINK, GTE, AT&T, TCG, MFS Communications, Telephone Ratepayers Association for Cost-based and Equitable Rates ("TRACER"), Telecommunications Resellers Association ("TRA"), MCI Communications, U S WEST Communications, Inc., U S WEST Long Distance, Office of Public Counsel, and Commission Staff. Written materials from the National Association of Regulatory Utility Commissioners ("NARUC"), AT&T and the United States Department of Justice ("DOJ") were made available to the parties. The Commission provided additional written material to the attendees. An initial comment date of January 8, 1997, was subsequently extended to January 24, 1997. Parties also submitted responding comments and supplementary comments relating to consultation with the United States Department of Justice.

Commission Staff prepared a draft order and policy statement and proposed its interim adoption while receiving further comment. Upon representation from USWC that it would provide the Commission at least 120 days' advance of any Section 271 filing, Commission Staff withdrew its proposal for interim effect, held an additional workshop, and received additional comment. It asked that comment be directed both to terms of the draft order and policy statement and to possible specific indicators of service quality that could be used in determining objectively whether interconnection agreements are "fully implemented" and whether service is being provided to competing local exchange carriers in an equal and nondiscriminatory manner.

The parties' positions have been skillfully presented and thoroughly explored.

Summary of this Decision

After reviewing the written and oral comments presented to date, the Commission is able to answer the questions posed in its order instituting investigation. It determines a process for reviewing USWC's application for authority to provide regional interLATA toll and for consulting with the Federal Communications Commission about the review and the application. It expresses its determinations in a policy statement, which it is adopting by means of this Order.

Discussion of Matters Identified for Comment in the Order of Investigation

The investigations leading to this Policy Statement have allowed the Commission to resolve the issues identified in the Order of Investigation. We will set out the questions in the order of investigation in italic type, discuss the parties' comments, and state our conclusion on each of the matters raised.

At the outset, the Commission finds that the purpose of Section 271 is to condition RBOC entry into interLATA regional toll markets upon a clear demonstration that the

RBOC is complying[2] with requirements that it open its local service to competition. The Act does not require that the RBOC demonstrate the existence of a competitive market. Neither does the Act permit entry upon a demonstration that agreements exist, on paper, that might be implemented.

The Act does, in every state in which interconnection has been requested under Section 252, require a demonstration of implementation of one or more agreements, consistently with all of the requirements of the Act. This includes the requirement that the agreement in fact be implemented and that service to the competitive LEC be without discrimination and of the same quality as service that the RBOC provides to itself, to its own affiliates, and to other CLECs.

This is the only interpretation of the Section 271 requirements that makes sense to us. Congress allowed reference to "paper" availability only when no request for interconnection had been made. Congress also could have, but did not, demand effective competition as a condition for entry.

The majority of the commenters are correct, however, in stating that conditioning the entry into interLATA toll is perhaps the most powerful available incentive for RBOCs to implement effective and nondiscriminatory interconnection processes. A Section 271 application therefore must be reviewed thoroughly and carefully and, because it is a matter of considerable import to all involved and to the public, with scrupulous fairness.

A. General

1. Presence of a facilities-based provider. Section 271(c)(1)(A)

(a) The Commission asked whether the term "binding agreement" has special significance (e.g., What is the effect of pending legal challenges?)?

USWC commented that each of its Agreements with interconnecting carriers is binding and has the force of law if not stayed by the Commission or court. Other commenters disagreed, noting that agreements subject to USWC's challenge have a substantial degree of uncertainty about them and will not permit substantial investment and the commencement of operations until the agreements are final and no judicial challenges are pending. AT&T noted that USWC's agreements with Electric Lightwave, Inc. and NEXTLINK do not satisfy the requirement of Section 271 because those agreements are not "approved under Section 252".

The Commission finds that the "binding agreement" referenced in the Act is an agreement that is final, i.e., that is signed by the parties and intended to be their final expression

[2]The statute requires that the compliance be "full" -- i.e., with all requirements, willing, and in good faith.

of agreement. The FCC has determined that arbitrated interconnection agreements that are undergoing judicial review do qualify as binding agreements for purposes of the Act.

(b) The Commission asked how the phrase "is providing access and interconnection" should be interpreted (e.g., What level of actual operations is required, if any?).

USWC contends that there is no requirement for actual purchase or sale of access and interconnection to satisfy this requirement. It urges that the requirement is satisfied if the BOC *offers* service per agreements or tariffs. It urges that the problem in looking to actual use is that it would empower the competitor to decide the issue. USWC argues that Congress rejected a "metrics" test.

TRA contends that "providing" means making interconnection and access available on demand, reliably and in required quantities. TCG argues that "providing" means evidence of an unconditional willingness to make interconnection and access in sufficient quality and quantity and in the places needed by CLECs. TCG argues that USWC's reservations about providing sufficient facilities unless it receives its desired price, as opposed to the authorized price, means that facilities will be subject to a unilateral RBOC decision that it is not getting high enough rates. TCG argues that permanent rates are needed before this element of Section 271 requirements can be met. TCG points to the statute requiring that the agreement be fully implemented. It argues that implementation includes equal and nondiscriminatory treatment, and states that USWC refuses to disclose to TCG the information TCG needs to determine whether service to it meets those tests. AT&T argues that USWC's past and present behavior in resisting legal requirements proves that a review of experience under agreements is needed.

The Commission finds that "providing access and interconnection" requires actual delivery of service in quantities and at locations as reasonably requested under a binding agreement that meets all requirements for such service, including its provision equally and in a nondiscriminatory manner, and that sufficient service has been and is being provided under the agreement to determine whether pertinent standards are being met. It should be clear as well that operating support systems that are used in ordering, provisioning, maintaining and billing unbundled network elements, resale, etc., are a service element to be considered. The Commission further finds that its decision on this element will require actual and complete information about USWC's provisioning such service to itself, to affiliates, and to interconnecting companies.

(c) The Commission asked how it should determine whether service is being provided "exclusively" or "predominantly" over a competitor's "own" facilities (e.g., is predominance established by use of more than 50% of competitor-owned facilities, and does provision of service using unbundled network elements of the incumbent qualify as use of the

competitor's own facilities?)?

USWC contends that this element is satisfied, because several new entrants are offering service now in Washington. It states that predominant means over 50%. It further argues that reselling under long term leases should qualify as use of the carrier's own facilities because the leasing carrier has responsibility for the facilities.

TRA argues that leased facilities cannot qualify as the competing carrier's own facilities. It also argues that "predominantly" should mean 70% or higher. MCI contends that reselling won't qualify, and cites authority for its view.

The Commission finds that the term "predominantly" means more than 50%. We find no support for the suggestion that some kind of supermajority is a required minimum. We find that leased unbundled facilities will qualify under this requirement. This interpretation is consistent with other FCC decisions and with the purpose of the Act to nurture real competition. Service provided with unbundled facilities leased from the RBOC sufficiently resembles "owned" facilities in terms of CLEC responsibilities to constitute the CLEC's "own" facilities.

(d) The Commission asked whether use of the phrase "competing provider" in the statute requires that it make a separate determination of the actual existence or level of competition between the interconnecting company and USWC, and if so, how the Commission should make that determination and whether a subsidiary or affiliate of USWC could constitute a competing facilities based provider.

USWC argues that no level of competition is required -- otherwise, USWC would be barred from competing for toll until it had lost a significant share of its local market. USWC contends that Congress rejected such a test. USWC also argues that a subsidiary or affiliate can be a competitor.

TRA urges that the Commission quantify a percentage of Washington customers who have access to alternatives -- a "bright line" test -- to determine whether the "competing provider" is a competitor. It also urges that one location isn't enough to qualify as a competing provider, but to qualify for consideration under Section 271, the competitor must offer true or effective competition to USWC for a substantial part of its business.

The Commission rejects the contention that no level of competition is required. That interpretation would in effect amend the statute. The competing provider must offer more than an insignificant level of competition, or the purposes of Section 271 to assure that the basic requirements for competition are in place and working cannot be met. At present, this is a judgment call that can be made only on examination of a specific situation. Public Counsel suggests that we adopt a heightened standard for competition. We considered doing so, but believe that the FCC has clearly defined the standard it believes appropriate and that it is consistent with the provisions of the Act, whether or not we believe that different standard to be better. We reject the suggestion.

A subsidiary or affiliate of USWC cannot qualify as a competing provider because there is no competition at the level of ownership and because the purpose of the provision and the Act appears to be to nurture nonaffiliated competition.

(e) The Commission asked what criteria should be used to determine whether service is being provided to both residential and business subscribers and to what extent must service be provided to each class of customer?

USWC urges that residential competition not be required, arguing that USWC's residential rates are nearly the lowest in the country and will not draw competition. USWC urges that the criterion should be whether the competing provider offers services to both business and residential customers -- so that residential users may subscribe to the offered business service, for example, if they choose.

TRA argues that the true test should be whether a market is meaningfully competitive under an evaluative approach. AT&T contends that rates can't be an excuse for failure to demonstrate real competition for residential customers, and that the Commission must look to whether residential customers have a real choice.

The Commission finds that the statute's expectation is that real competition must exist in both residential and business service. The Commission cannot accept USWC's premise that USWC's assertedly low rates will constitute a barrier to entry. The rates were set based on evidence of costs, including USWC's evidence of costs. USWC's argument is no substitute for objective evidence that the level of rates is an effective barrier to competition. The Commission does not preclude USWC from making such a demonstration, based on credible and objective evidence, in its presentation to the Commission. The mere contention, however, is not persuasive.

Similarly, it may be that, at the time of USWC's presentation, it can demonstrate that a lack of competition reflects a national market phenomenon under which competitors choose not to enter competition for residential service, instead choosing to enter competition for more lucrative business service markets. USWC should be able to make that presentation and, if necessary to avoid an unjust denial of its application, to demonstrate the availability of residential access if competition is insufficient to use its existence to meet the standards of the Act.

We stress that this is an opportunity and not a grant of authority, and that if such an application is filed, other participants will be entitled to offer comments and counter evidence upon USWC's proposal and its basis.

Public Counsel suggests that the Commission decline to offer USWC the opportunity to demonstrate that the level of its rates affects the extent and nature of competition among CLECs for residential customers. Public Counsel contends that this is a waiver of requirements of the federal act and that it is a collateral attack on the rates established in the

previous rate case.

We find neither of these arguments persuasive. We see the option not as a waiver but as a means to establish that the Company is complying with the requirements of the Act and doing its part to open the market to competition, and as a means to measure whether avenues to competition are open as the Act requires. Neither is it a collateral attack on the prior rate case -- it has no effect on the rates established and is totally independent from the question of whether rates are appropriately set under pertinent standards.

At this point, USWC has made a mere allegation regarding rate level, and it has expressed concerns about the possibility that residential competition may not exist anywhere. We believe that fairness and pragmatism both require us to view the nature and extent of competition in the context of real circumstance. Offering the opportunity to present objective, factual evidence does not imply in any way that the Commission has decided the ultimate issue or that it will do so inappropriately. If the Commission finds that such little competition exists in residential service that it should not rely on competitive evidence, it may look to generally available terms.

2. Statement of generally available terms. The Commission asked whether the "statement of generally available terms" option that is set out in Section 271(c)(1)(B) is available to USWC in Washington, and if so, whether there are particular definitional, legal, or policy issues to address.

USWC contends that this avenue may be used whether or not it has entered interconnection agreements with competing carriers, and that there are no mutually exclusive "tracks." It urges that no CLEC has committed to an implementation schedule and that therefore part B may be needed. It points to Congress' "Joint Explanatory Statement" and the legislative history to support its view that lack of actual competition under an agreement will not bar an RBOC from interLATA competition. It cites other reasons: Economic: USWC contends that improperly high wholesale discount levels will reduce incentives to provide owned facilities and will thus retard their development. Joint marketing: USWC urges that joint intra/interLATA marketing gives an advantage to what it calls "sham unbundlers," or purchasers of unbundled service who merely recombine them to offer a competitive service. Advantage in delaying InterLATA competition: USWC urges that those CLECs that are Interexchange carriers ("IXCs") will gain advantage by delaying RBOC entry into interLATA toll, and that they will design their entry strategy to maximize that delay.

Other commenters generally argue that the "statement" avenue is not available to USWC in Washington. MFS, for example, points out that under the terms of the Act, Track B is not available if a competing provider has requested access. Section 271(c)(1)(B). MCI offers a particularly cogent analysis to this effect.

The Commission believes that the law is very clear on this point, and that the "Track B" or statement option is not available to USWC under specific terms of the Telecom Act because another carrier has requested interconnection in Washington State. This agrees with the

conclusion of the FCC on the subject. Our sole reservation is as to residential service only, and that is subject to US WEST's demonstration as set out above.

B. Competitive Checklist" (14 points)

While the statute itself provides an "issues list," the Commission asked that a number of related questions also be addressed:

1. Are Commission determinations on issues in arbitrated or negotiated agreements sufficient to determine checklist compliance? Is the Commission required or permitted to do a separate review, beyond that leading to the approval of interconnection agreements?

USWC argues that the 14 enumerated requirements are merely a restatement of the interconnection-related requirements in Section 251, and that approval of an agreement satisfies the requirements. It urges that information from the arbitrations will be sufficient to resolve the questions.

Other commenters disagree. MFS argues that interim agreements and prices are not sufficient for review because only on learning "permanent" cost levels can potential competitors evaluate whether to enter the market. It contended that prices must be based on forward-looking costs. TRACER argues that USWC cannot make a prima facie showing as to the criteria until the final terms are established -- including prices -- in final and implemented agreements. TRA urges that the competitive checklist must be fully implemented and meaningful local competition in existence to meet the criteria. MFS contends that the threshold question should be whether there is effective competition in the local market because, it contends, USWC has the ability to control the speed with which other carriers enter the market and expand. MFS urges that the statute contemplates that consumers have a real choice of carriers. MFS points out that the statute, Section 271(d)(3)(a), requires the BOC to demonstrate that the checklist is "fully implemented." MFS states that the competitor must have been active in the market long enough to show that orders are being processed, services provisioned, and all checklist items provided.[3] TCG argues that the Commission must review actual performance of obligations under the checklist, and that neither interconnection in accordance with agreements nor non-discriminatory access can be established without factual and verifiable evidence of performance. Finally, AT&T states that this review, under Section 271, is a different review from that of Section 252 -- it requires an examination of actual operations under approved agreements. It contends that by definition the Section 252 record is insufficient to satisfy the Section 271 requirements.

The Commission finds that the review required under Section 271 is not satisfied by the mere demonstration that the Commission considered those items in approving an interconnection agreement. We agree with the commenters who note that this review requires an examination of the implementation of agreements, rather than the mere existence of agreements,

[3]MFS' contention that USWC cannot comply unless MFS' favored "pick and choose" approach to contract terms is applied has been repudiated by the Eighth Circuit in Iowa Utilities Board v. Federal Communications Commission, et al., ___ F.3d ___ (July 18, 1997).

and that full implementation must be shown, including a showing of nondiscriminatory treatment.

2. Are there any special definitional, legal, or policy issues related to items on the checklist which the Commission should address and resolve in advance of a 271 filing?

USWC responds that there are no such issues. No parties offer specific suggestions, and the Commission identifies none at this time. TRA suggests that any such issues will be dealt with in the course of Commission investigation. The Commission agrees.

3. What evidence should USWC provide to establish compliance with the competitive checklist?

USWC responds that binding agreements are prima facie proof of compliance. It acknowledges that others may challenge compliance, but urges that any specific challenges be met by a response from USWC.

TRA contends that the burden is on USWC to show that the checklist is fully implemented and functional and that the market is meaningfully competitive. AT&T argues that USWC has the burden of proving compliance, and notes that USWC has control over virtually all of the evidence. AT&T contends that to date, USWC has refused to supply information of the sort that is needed to show that USWC is in compliance.

The Commission notes that USWC bears the burden of providing sufficient information to permit a decision. To do this, it must present information beyond the text of existing interconnection agreements. The process USWC suggests would be slower, and less likely to provide information needed to make a knowledgeable determination, than the process suggested by others. Consequently, we determine that USWC must provide, no later than the time it files with the Commission the notice of its intention to file with the FCC, information regarding its compliance, of a nature and in a form that enables the Commission to determine whether USWC is in compliance.

The Commission suggested that it might be fruitful to identify with more specificity the indicators of compliance. It invited written comments and a further workshop session to discuss and focus on measures that will show compliance.

TCG suggests detailed evidentiary requirements. We do not believe that the information here is sufficient to establish the TCG suggested requirements as the standard for an application. We do agree with TCG that USWC must provide sufficient underlying information to prove via original data the contentions that it makes in its application. Public Counsel suggests that the Commission hold continuing sessions to establish specific filing requirements, providing a copy of the FCC's "Notice of Revised Procedures for Section 271 Applications" issued September 19, 1997, "as a starting point."

The Commission agrees that pursuing the matter further will be beneficial. It directs Commission Staff to work with USWC, Public Counsel, and other interested entities to develop a recommended content and format and to present it to the Commission no later than 90 days after the date of this Order. In addition to the notice that Public Counsel cites, the FCC's Ameritech order, cited above, will also be useful. The Commission may respond to the proposal by letter from the Secretary.

4. As opposed to reviewing all items simultaneously in one USWC filing, could or should the Commission make determinations regarding checklist items one at a time, or on a subgroup basis?

Nearly all commenters who addressed this question recommended that all matters be addressed in a single process. The Commission agrees.

C. Section 272 - Affiliate Issues.

The Commission asked what evidence USWC must provide to demonstrate compliance with the separate affiliate requirement of Section 272?

USWC stated that the FCC has ongoing proceedings to define elements to consider in examining affiliation issues, and represented that USWC will comply with all requirements. AT&T suggested that USWC provide records of transactions, with costs, and comparative information regarding treatment of affiliates and non-affiliated companies.

The Commission finds that USWC must provide sufficient information to demonstrate that its affiliate or affiliates are satisfactorily segregated from its own operations, and must also demonstrate by specific objective information that it is not showing a preference for the affiliate. The Commission will not today define the measures to be used, but as noted above, will ask the participants to consult with Commission Staff to develop the appropriate indicators. Pending that, we note only that the burden is on USWC to provide needed information.

D. Public Interest Issues.

1. The Commission asked whether it is required or permitted to consult with the FCC regarding whether the requested interLATA authority is consistent with the public interest, convenience and necessity in conjunction with the FCC's determination under Section 271(d)(3)(C).

USWC stated that the FCC's obligation to consult with states is limited to Section 271(c) issues and that the FCC is required to consider public interest in Section 271(d), so there is no requirement to consult with the Commission on this issue. USWC observes that the Commission may comment, along with other interested persons.

TRA states that this is a "consultation" issue and that the FCC will look to the Commission for guidance. AT&T contends that the public interest test is one of the those on which consultation is required. Public Counsel supports the draft order's view that the Commission has an obligation to address public interest questions, and cites the FCC order in the application of Ameritech, cited above .

The Commission finds that the public interest test is within the Commission's obligation to consult.

2. The Commission asked, if the answer to question 1 is yes, whether it should conduct an analysis and/or provide a recommendation to the FCC regarding the existence of a competitive market in Washington, beyond the literal language of Section 271(c), and if so, what criteria or information should be used to make the determination?

USWC states that its entry into interLATA competition will enhance competition, a goal of the Act. It urges that with the satisfaction of the 14-point checklist, USWC no longer effectively has any captive customers in the state of Washington because all customers may be served by a competitive local exchange company.

TRA contends that a review of market competitiveness should be at the center of the Commission's analysis. It urges that USWC's proposal is a simple or theoretical "opportunity" to compete and is not enough to provide real competitive choices. AT&T urges that the Commission's investigation of market competitiveness is essential. AT&T acknowledges that legal barriers to competition have ended, but urges that the Commission does not know what practical barriers exist and cannot find out without an investigation.

The Commission believes that the existence of one or more signed interconnection agreements does not mean, ipso facto, that the market for local exchange service is competitive. Instead, information must be provided about the number of customers, the nature of service, and other elements to enable the Commission to understand whether the market is indeed open and whether one or more competitors are offering more than token competition to USWC. We invite further comments on specific indicators to use and specific information required to make an evaluation.

E. United States Department of Justice Questions.

The United States Department of Justice ("DOJ") has asked states to address certain issues as part of their Section 271 review proceedings. The Commission asked parties to comment on the extent to which the DOJ issues should be included as part of the Commission's

analysis. Subsequently, the DOJ presented additional questions, and parties were afforded further opportunity to address the additional questions.

USWC states that it has already provided the DOJ directly with the information that the DOJ asked for. USWC contends that the DOJ request to States seems neither accurate nor proper. USWC argues that the Commission must limit its consultation with the FCC to Section 271 issues. As to the additional DOJ inquiry, USWC argues that to the extent these inquiries exceed the requirements of the Act, they are improper. USWC observes that the thrust of the additional items involves the carrier's meeting of demand in a nondiscriminatory fashion, and its ability to meet future demand. USWC represents that to the extent that the DOJ asks for basic data, USWC will voluntarily supply it directly to the DOJ. USWC argues that the Commission should merely pass along to USWC for its response any requests for information from DOJ attorneys.

TCG suggests that the DOJ issues should be included in any Commission review of USWC compliance with Section 271. It reiterates its view that the existence of agreements does little to demonstrate the extent of competition. AT&T urges that the Commission's participation and investigation are essential to providing DOJ with the information that it needs, and that the Section 271 consultation is a proper avenue for providing that information.

The Commission agrees with USWC that these matters are not *directly* within the statutory list of elements to be included in a consultation under Section 271. It believes, however, that the statute does not forbid the Commission from offering further information that is relevant to the process, that a statutory party to the process has requested. The Commission therefore rejects USWC's conclusion and determines that USWC will provide information as requested by the Commission to permit a response to DOJ issues.

F. Procedural Issues.

1. Contents and Timing of USWC Petition. The Commission asked the parties to address its proposal to adopt the sort of filing procedure recommended in the NARUC "best practices" letter: The proposal was phrased as follows:

> *"USWC is directed to notify the Commission 90 days in advance of its intention to file a Section 271 application with the FCC to provide in-region interLATA service in Washington. The filing should include the following information:*
>
> *a. Evidence to be relied upon showing that USWC has met either the requirements relating to the presence of a facilities-based carrier, 47 U.S.C. §271(c)(1)(A), or relating to a state of generally available terms, 47 U.S.C. § 271(c)(1)(B).*

b. Evidence to be relied upon showing that each requirement of the "competitive checklist" has been met.

c. Evidence to be relied upon showing the extent to which the service will be provided by a separate affiliate, pursuant to Section 272.

d. Evidence showing that the application is in the public interest, including the extent of competition and any special unforeseen circumstances."

"USWC shall provide a copy of the foregoing notice and materials to the FCC, DOJ, and the service list for this proceeding."

USWC argues that the 90-day proposed filing deadline is an improper attempt to double the statutory time for FCC action. USWC represents that it will willingly provide the Commission with 90 days' notice that USWC will "most likely" file, and a statement of the sorts of support it will likely present. It will not willingly provide other information or other entities with a copy of its draft application.

TRA observes that many issues to be addressed in investigation will be adversarial and contested. It urges that the Commission provide for discovery, prefiling, and other procedures. Sprint contends that the 90 day notice of intent with all supporting material is needed. AT&T states that the 90 day advance is a minimum period for conducting a thorough review.

The Commission agrees with commenters who urge that the 90 day advance filing is the minimum period in which an adequate process can be conducted. The policy statement should specify that the filing with the Commission shall be made no later than 90 days prior to the Company's filing with the FCC.

Public Counsel suggests that we add 30 days to the 90 days that has been proposed. We decline to do so. The 90 day period appears to be a bare minimum, but nonetheless adequate, period. We encourage USWC to file more than 90 days in advance, but do not require it to do so.

As noted at the outset of this discussion, the recent history of proceedings involving USWC and others indicates at a minimum that interested persons will likely disagree about at least some of the evidence that USWC will offer in support of its application. The recent history of proceedings involving USWC and others indicates to us that specific information is required; that it must be provided early; and that at least limited opportunity to ask

questions about it or discover other relevant information must be provided as an incentive for early full disclosure and as a means to satisfy participants that they indeed were provided the information that was required.

The Commission believes that the NARUC proposal is an appropriate way to state the Commission's needs and expectations as to data and process, and that it is in fact the minimum that should be required to enable the Commission to perform its responsibilities under Section 271. The Commission adopts the NARUC proposal as its own.

It is not improper for the Commission to require disclosure of information to persons that may be interested in a proceeding. The Commission has in the past required such disclosure, subject to appropriate confidentiality requirements. That it does so here with reference to the FCC and the DOJ does not violate the statute by doubling the time available to them for review. The decision states the Commission's minimum reasonable notice for the preparation of its own consultation, and it requires disclosure to interested persons. It is not improper. Any issues relating to confidentiality or proprietary information may be addressed if such claims are made.

The Commission understands that minor changes in the proposed filing may be required within the 90 days between filing of the notice with this Commission and the actual filing with the FCC. The review process should contemplate such changes, and authority to make such changes may be asked as soon as the need for change appears. Other participants must be advised as soon as the need for change is known. It should be recognized that major substantive changes -- or even a cumulation of minor changes -- could affect or even render it impossible for the Commission to make a favorable, knowledgeable recommendation in its consultation.

2. The Commission asked to what extent the Commission filing requirements should mirror those of the FCC.

USWC contends that the Commission cannot mirror FCC requirements because the FCC is on a different time line. TRA contends that the Commission's filing requirements should mirror those of the FCC. It suggests that for the Commission to prepare adequately its recommendations, specific evaluative and quantitative criteria should be identified and required. TCG argues that the Commission requirements should include the FCC's. It urges that the Commission develop a list of performance measures that will determine whether Sections 251 and 271 have been met.

The Commission will require that USWC file with its notification to the Commission all of the original information that it will file with the FCC, unless the Secretary of the Commission determines in writing, upon USWC's request and in advance of the filing deadline, that specific information is within the Commission's possession and just as easily available to the Commission Staff and others as it would be if filed with the notification. *In addition,* USWC must file information sufficient to answer questions identified in this Order and

in the Policy Statement. That information is the minimum that will enable the Commission to satisfy its obligations under federal and State law to consult with and comment to the federal agencies making decisions affecting Washington ratepayers. The precise identification of that evidence will be the subject of Staff and participant discussions, but the burden must nonetheless be met in any Section 271 filing.

3. The Commission asked participants to propose a schedule and procedural mechanism for review of the USWC Section 271 filing with the Commission, addressing the need for and timing of discovery, prefiled or written testimony, and hearing and other related formal procedures.

USWC suggested that the matter could be handled adequately on written statements and that no discovery or opportunity for oral comment or examination is needed. As we have noted above, we disagree with this view. Only one commenter, AT&T, filed a suggested schedule. We have reviewed it and believe that it is in general terms appropriate. We have included it in the attached Policy Statement, with the proviso that we retain authority to make such changes in the schedule as may appear to be appropriate.

O R D E R

THE COMMISSION ORDERS That:

1. The attached Interpretive and Policy Statement sets out the Commission's present approach, until modified by the Commission, to the issues surrounding the Commission's response to a U S WEST Communications, Inc. application under Section 271 of the Telecommunications Act of 1996 to provide in-region interLATA message toll service.

2. Further clarification is appropriate of the evidentiary requirements for an application for entry by U S WEST Communications, Inc., into the in-region interLATA telecommunications market and to further define information requirements. Commission Staff will prepare a proposal through discussions with USWC and other participants, and present the proposal to the Commission within 90 days after the date of this Order. The Commission may accept the proposal by letter of the Secretary, or take such other action under this Docket as it deems appropriate.

3. U S WEST Communications, Inc. is directed to file an updated status report regarding its compliance with the statutory requirements for entry into the in-region interLATA long-distance market, on or before December 5, 1997.

DATED at Olympia, Washington, and effective this day of October 1997.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

ANNE LEVINSON, Chair

RICHARD HEMSTAD, Commissioner

WILLIAM R. GILLIS, Commissioner