BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In re Application of	
U S WEST, INC. and QWEST COMMUNICATIONS INTERNATIONAL INC.	Docket No. UT-991358
For an Order Disclaiming Jurisdiction or, in the Alternative, Approving the U S WEST, INC. - QWEST COMMUNICATIONS INTERNATIONAL INC. Merger	JOINT APPLICANTS' OBJECTIONS TO, OR PETITION FOR RECONSIDERATION OF, THIRD SUPPLEMENTAL ORDER OUTLINING SCOPE OF REVIEW

Pursuant to WAC 480-09-460(2) or, in the alternative, WAC 480-09-810, Qwest Communications Corporation ("Qwest") and U S WEST Communications, Inc. ("U S WEST") file the following objections to the Third Supplemental Order Outlining Scope of Review dated October 11, 1999 ("Third Supplemental Order").[1]

[1]The Joint Applicants file these objections on behalf of their respective parent companies, Qwest Communications International Inc. ("Qwest Inc.") and U S WEST, Inc., and those parents' subsidiaries that are regulated by the Commission. The Joint Application relates to Qwest Inc.'s and U S WEST, Inc.'s subsidiaries regulated by the Commission in Washington. For Qwest Inc. these subsidiaries are: Qwest Communications Corporation, LCI International Telecom Corp., USLD Communications, Inc., and Phoenix Network, Inc. For U S WEST, Inc. that subsidiary is U S WEST Communications, Inc.

These Objections To Third Supplemental Order Outlining Scope of Review do not repeat the Joint Applicants' position on jurisdiction, and instead assume the Commission has jurisdiction. The Joint Applicants do not thereby intend to waive their arguments regarding jusridiction.

The Third Supplemental Order generally approved the intervenors' and parties' proposed scope of inquiry, with little limitation. See id. at 4-5. Qwest and U S WEST object to the scope of proceedings outlined in the Third Supplemental Order. The Commission should not permit the intervenors to turn this proceeding into an expansive fishing expedition into the Joint Applicants' businesses and operations, or into a forum for airing each and every grievance that any party may have or may someday fear they will have against U S WEST or Qwest.

A. The Scope of Proceedings Set Forth in the Third Supplemental Order is Overbroad

1. The scope of review has not been tailored to the standard for Commission approval of the merger

In Scottish Power, the Commission articulated the standard for its consideration of mergers where the regulated entities themselves are not merging. That standard, known as the "no harm" standard, was explained as follows:

> The standard in our rule does not require the Applicants to show that customers, or the public generally, will be made better off if the transaction is approved and goes forward. In our view, Applicants' initial burden is satisfied if they at least demonstrate no harm to the public interest.

In Re PacifiCorp and Scottish Power PLC, Docket No. UE-981627, Third Supplemental Order on Prehearing Conference (April 2, 1999), at 2. Appropriately, then, the Commission has adopted the "no harm" standard in this proceeding. Third Supp. Order at 3.

However, the scope of proceedings outlined in the Third Supplemental Order bears no relationship to the no harm standard. While U S WEST and Qwest believe that the merger of their parent corporations will lead to substantial benefits for customers in Washington and will be procompetitive, approval of the application does not depend on requiring the Joint Applicants to

demonstrate such benefits. The relevant question, in the end, is not whether the merger will provide significant additional benefit to customers, over and above the current status quo, but rather whether the merger will harm them.

The Commission should not permit this proceeding to become a venting session for disgruntled customers or competitors. As a regulated entity, U S WEST must comply with state and federal law, Commission regulations, prior Commission orders and its own tariffs. The Joint Applicants must also perform their obligations under agreements they have entered into with customers and competitors. This proceeding is not the appropriate forum for resolving questions concerning whether the Joint Applicants have met such obligations.

To the degree intervenors, Public Counsel or Staff have questions or concerns about such issues, they should be addressed in separate proceedings focused on the precise question at issue. Then, the relevant statutory standard or contractual provisions would control the scope of proceedings and guide the Commission's inquiry and ruling. Raising such concerns in the context of this generic merger application will require the Commission to conduct multiple mini-proceedings within the larger proceeding. The result will be unnecessary, costly and burdensome discovery and hearings and the application of a vague "public interest" standard to the Joint Applicants' actions.

The Commissioners should also not permit this proceeding to become an open door through which competitors of the Joint Applicants' parent corporations are able to gather industrial intelligence for use in their own merger and acquisition strategic planning or for other business purposes.

Finally, the Commission should not permit this proceeding to become a feeding trough in

which intervenors, Public Counsel or Staff line up to see what concessions they can demand from the Joint Applicants as the price for lowering their opposition to what should be straightforward and non-controversial approval of the proposed merger.

2. Numerous matters set forth in the Third Supplemental Order are outside the proper scope of this proceeding

These proceedings should not include inquiry into matters related to the Telecommunications Act of 1996, including potential impacts on "charges under U S WEST's tariffs and contracts, including interconnection agreements," or impacts related to long-distance or OSS. See Third Supp. Order at 3, 4. Nor should they serve as a procedure for general inquiry into the status of competition in Washington. Id. at 4. U S WEST and Qwest have obligations under federal and state law and existing agreements with regard to these matters. Concerns about such matters have been, are being, and likely will be addressed in the future through appropriate separate proceedings.[1]

In the Scottish Power case, the Commission appropriately excluded such topics from the proceedings. The Commission ruled that it would have ample opportunity in the future, particularly through future rate cases, to examine affiliated interest transactions. Scottish Power, Third Supp. Order at 4. The Commission also ruled that "the appropriate time to review any proposed divestiture of particular assets is when there is actually a proposal before the Commission," id. at 4, and that "[t]his is not the time nor the appropriate forum for discussion of" industry restructuring and open access issues. Id. at 5.

The Commission should follow its own precedent and exclude issues regarding affiliated interests, divestiture and competition from these proceedings. The merger application proceedings,

which concern the merger of two parent corporations not subject to the Commission's jurisdiction, are an inappropriate forum to conduct discovery or hearings on such issues.

3. Data requests promulgated in this case to date demonstrate that the Commission should explicitly limit the scope of review and hold the parties within those bounds in conducting discovery

The Joint Applicants' objections to the overbreadth of the scope of proceedings, as set forth in the Third Supplemental Order, are further supported by the course these proceedings have taken over the last two weeks.

The Commission stated in its Third Supplemental Order:

> We emphasize... that *this is not a general rate case*. Our concern in this proceeding is whether *the transaction itself* has any implications for rates, terms, and conditions of service.

Third Supp. Order at 5 (emphasis added).

Despite this warning, the Commission's Third Supplemental Order let loose a frenzy of activity by the intervenors that threatens to turn these proceedings into a free-for-all. Since October 8, 1999, the Joint Applicants have been barraged with data requests from the numerous intervenors in this matter. Public Counsel issued 82 data requests in four sets between October 8 and 13, 1999. AT&T Communications of the Pacific Northwest, Inc. ("AT&T"), NEXTLINK Washington, Inc. ("NEXTLINK") and Advanced TelCom Group ("ATG") issued 103 data requests on October 14, 1999. The Northwest Payphone Association issued 16 data requests on October 14, 1999.

While some of the data requests served on the Joint Applicants are not objectionable, particularly those issued by Staff and Public Counsel that are focused on ascertaining the impact of the merger on customers in the state,[2] many others go far beyond questions necessary to obtain

information calculated to lead to relevant, admissible evidence.

For example, many of the data requests of intervenors AT&T, NEXTLINK and ATG are outside the scope of the present Third Supplemental Order proceedings. Numerous data requests are not limited to the impact of the proposed merger on the State of Washington, but rather extend globally to U S WEST's and Qwest's operations in other states. The data requests also ask for volumes of information about current or historical activities or services, rather than about the impact of the merger on the current status quo.

In addition, the AT&T, NEXTLINK and ATG data requests call for information regarding topics that should not be addressed in this proceeding, including access charges, interconnection, unbundled network elements, Section 271 of the Telecommunications Act of 1996, location routing numbers (LRN) procedures, and rural exchanges.

Most significantly, however, these competitors of Qwest and U S WEST have requested information from the two companies that not only is outside the scope of this proceeding, but is highly competitively sensitive. For example, one question asks Qwest and U S WEST to identify all companies in which U S WEST or Qwest have invested, as well as all companies with which U S WEST or Qwest have joint operating, marketing, or other cooperative agreements. First, this question is overbroad. The request regarding Qwest and U S WEST investment apparently would seek each and every investments of Qwest and U S WEST, not just investments where one of the companies may have a controlling interest in another company. Second, the request for a list of companies with which U S WEST or Qwest have business agreements seeks competitively sensitive information that would not shed light upon any of the issues raised in the Commission's Order. The

Commission should not allow the merger proceeding to be used by Qwest and U S WEST's competitors to gather information that solely could be used to advance their business plans.

Similarly, the Northwest Payphone Association's ("NWPA") data requests ask numerous questions about U S WEST's provision of unregulated payphone services that have absolutely nothing to do with the present proceedings, even under the present scope of the Third Supplemental Order.

NWPA has asked several questions about U S WEST's provision of payphone services and whether U S WEST intends to provide such services through a separate subsidiary in the future. However, such services have been deregulated by the Telecommunications Act of 1996 and are not regulated by this Commission. NWPA has also asked for copies of numerous documents concerning provision of and accounting for payphone services that are on file with the FCC or Commission, and are equally available to NWPA.

NWPA's data requests ignore the fact that the Commission recently conducted a complaint proceedings that lasted two years on the issue of payphone services, UT-970658. NWPA chose not to participate in those proceedings, although the complainants in that docket and NWPA are represented by the same counsel. NWPA clearly is seeking to use the present merger proceedings to explore or relitigate those issues in this docket. Moreover, NWPA's inquiry about imposing a condition on the merger related to payphone services demonstrates that it is seeking to set up straw men in opposition to the merger in the hopes that the Joint Applicants will be forced to make concessions on payphone issues that are unrelated to the merger.

The data requests promulgated to date demonstrate that the Commission should actively

prevent intervenors from inappropriately taking advantage of this proceeding to pursue their own, narrow agendas. As a first step, the Commission should revisit the broad scope of review set forth in the Third Supplemental Order, and impose the more restricted scope of review set forth below.

4. This proceeding should be limited to the merger's likely impact on service quality and the economic benefits and synergies that will flow to ratepayers and customers from the merger.

This proceeding should be limited to two issues: (1) whether service quality after the merger, *on a going-forward basis*, is more likely or less likely to improve than if the merger did not occur, see Third Supp. Order at 5, and (2) investigation of the economic synergies and benefits that will flow to ratepayers of U S WEST and Qwest through merger of their parent companies, i.e. whether U S WEST will face a changed cost of capital or other direct financial impact from the merger of its parent with Qwest's parent. Id. The Commission should bar any inquiry beyond that calculated to address this limited scope of review.

DATED: October ___, 1999.

Respectfully submitted,

Qwest Communications Corporation

By _____
Peter A. Rohrbach
Mace J. Rosenstein
Gina Spade
Hogan & Hartson LLP
555 Thirteenth Street NW
Washington, D.C. 20004
Phone: (202) 637-3657
Fax: (202) 637-5910

U S WEST Communications, Inc.

By _____
Lisa A. Anderl
Senior Attorney
U S WEST, Inc.
1600 7th Ave., Room 3206
Seattle, WA 98191
Phone: (206) 345-1574
Fax: (206) 343-4040

Perkins Coie LLP

By _____
James M. Van Nostrand
Kirstin S. Dodge
411 + 108th Ave NE, Suite 1800
Bellevue, WA 98004
Phone: (425-453-7323
Fax: (425) 453-7350

[BA992940044]

[1] For example, the Commission currently has before it a complaint proceeding initiated by AT&T against U S WEST with regard to access services, UT-991292. AT&T should not be permitted to turn the merger proceeding into a parallel adjudication for pursuit of the issues raised in its complaint.

Interconnection matters have been addressed through complaints before the Commission, such as MCI's complaint against U S WEST in UT-971063. These matters are also being addressed through private negotiation, in arbitrations before the Commission and in the federal courts.

[2] U S WEST has objected to Public Counsel's data requests to the degree they go back too far in time or call for information that might be appropriate in a rate case, but that is not narrowly focused on the impact of the merger at issue.