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June 11, 1999

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

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COMMUNICATIONS SECTION

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

Dear Ms. Washburn:

Enclosed for filing are the original and 10 copies of Reply Comments of Commission Staff and Certificate of Service.

Very truly yours,

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

SES:kl  
Enclosure  
cc: All parties



BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

US WEST'S PETITION FOR COMPETITIVE CLASSIFICATION OF  
HIGH CAPACITY CIRCUITS

DOCKET NO. UT-990022

REPLY COMMENTS OF COMMISSION STAFF

JUNE 11, 1999

COMMUNICATIONS SECTION  
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COMMUNICATIONS SECTION

A. Summary of Comments

In the time since the initial comments were filed, Commission Staff has worked closely with US West and the other parties to develop additional information on the extent of competition in geographic areas that are the subject of this petition. The key conclusion we have drawn from this analysis is that the “relevant market” must be defined more narrowly than originally proposed by US West. US West has agreed to this approach and is amending its petition to include only five wire centers in the Seattle/Bellevue area and the core downtown area of Spokane and to exclude Vancouver entirely.

Staff believes that, within the redefined relevant market area, the statutory requirements for competitive classification of DS-1, DS-3, and SONET services are satisfied. While there undoubtedly will be some customers within those areas who have no alternative to service from US West, they do not constitute a “significant captive customer base” that would preclude competitive classification.

Staff recommends that the Commission grant US West’s amended petition for competitive classification.

B. Evidence of Competitive Alternatives

The evidence supporting competitive classification consists primarily of (1) market share information as to the number of DS-1 and DS-3 circuits being provided by US West and the intervenors and (2) various maps showing the location of fiber optic routes within the three cities. The value of the market share information is limited by the fact that not all providers are

intervenors in this case and therefore have not provided data, by an absence of location-specific information on circuits, and by inconsistencies in how various types of circuits were reported. The map information provides a good general sense of where facilities-based competitors can offer service, but it does not completely answer some questions about how far off the fiber rings a competitor may offer service and whether there are any barriers such as building access.

C. The Market Share Data in Appendix A Are Not Sufficient Evidence

The market share data demonstrate that competition exists, but it is not specific to the relevant geographic markets. Because the data are not location-specific, they say nothing about whether the incumbent has a significant captive customer base. A given market share might consist of customers who exercised their choice of a particular provider, or it could as easily consist of a residual customer base that has no competitive alternative.

Because market share is an imperfect indicator of market power, Staff has consistently advocated in other proceedings that the Commission look beyond market share numbers to the structure of the market itself and whether competitors are actually offering service in the relevant market. Information such as the maps showing competitors' fiber routes is generally a better indicator of effective competition.

However, the market share data do address a concern raised by various parties about the barriers to entry by competitors. There is a concern that competitors would be unable to gain access to public rights of way, building entrances, or interconnection facilities and would therefore be unable to compete even if they installed facilities. The fact that a substantial number

of circuits are being provided on competitors' networks demonstrates that barriers, while they undoubtedly remain, are not so high as to forestall entry entirely.

D. US West's Amended Petition Better Defines the Relevant Market

US West's amended petition defines the relevant market more narrowly so as to exclude areas where effective competition does not exist. Staff believes that, for the type of services considered in this case, the relevant geographic area should contain fiber routes or other facilities of multiple competitors and, equally important, it should not include significant areas where US West is the only provider of the services in question. Staff believes this approach is consistent with TRACER's recommendation that

[T]he relevant geographic market should be defined as comprising those areas in which the conditions of competition are homogenous and which can be distinguished from neighboring areas where the conditions of competition are significantly different.

Comments of TRACER, at 3.

It is apparent that the most competitive environment exists where several competitors have facilities in place. These competitive areas usually comprise geographic locations where high-volume users are clustered. These are usually "downtown" locations or industrial areas. The key conclusion to reach from the evidence presented in this case is that these areas fall far short of including an entire exchange or, in many instances, of even including an entire wire center. Information provided by US West shows high circuit density in these limited competitive areas, with much lower density in residential areas, that may have only a few high-speed circuits by small and medium-sized businesses.

Moreover, it is important to recognize that for the services at issue here the presence of a single alternative provider is unlikely to provide price-constraining competition. Because every network will fail on occasion, diversified service has great value. US West provides diversified routes at great expense. The opportunity to obtain service from another competitor has this same value, so prices would not be forced down. Two providers could still exercise market power.

E. The Absence of Significant Captive Customer Base Exists in the Revised Market Area

As discussed above, the limiting factor in defining the relevant market for competition is the absence of areas where the incumbent has a significant captive customer base. This is particularly important because competitive classification includes exemption from the undue preference and unreasonable discrimination statutes (RCW 80.36.170 and 80.36.180) for individual customer contracts. While it might be impractical to vary prices among customers in a mass market service such as long distance calls, it would be relatively easy to do so for these services, which are typically designed and provisioned on a customer-by-customer basis anyway.

Staff has examined the areas proposed in US West's original petition for competitive classification and believes that, while US West continues to have a significant captive customer base in most areas, it does not have such a base in the areas contained in its amended petition. In the Seattle/Bellevue area, the competitive area can be defined to consist of five wire centers: Seattle Main, Seattle Elliott, Seattle Campus, Seattle Duwamish, and Bellevue Glencourt. In Spokane, no wire center is entirely competitive, but Staff believes that the portion of the Spokane Riverside wire center is quite competitive and does not contain a significant captive customer

base. Staff understands that US West is filing maps and, for Spokane, a list of street boundaries defining the competitive market area.

F. The Commission Should Not Cap Prices or Tie Competitive and Non-Competitive Prices

Some of the comments filed in this proceeding have suggested that the Commission should grant US West's original petition subject to conditions. See Comments of TRACER, at 2. Such conditions would address the problem that, while competition exists in the urban areas, it does not yet reach all areas of the exchanges proposed for competitive classification. In essence, the conditions would attempt to leverage the competition in core areas to restrain prices in the non-competitive areas. For example, the competitive classification might require that US West cap its charges under the price list at the level charged for the same service in "non-competitive" areas where the tariff applies.

In light of US West's amended petition, Staff believes that such conditions are neither necessary nor consistent with the competitive classification statutes. Competitive classification represents a significant step away from the close supervision of rates and practices of monopoly companies, and that step should not be taken unless customers actually have alternative providers. Capping prices may be a necessary stopgap in some circumstances, but it clearly is not the process envisioned under the state's Regulatory Flexibility Act. State law provides that, within the relevant market where effective competition exists, a company is to have pricing freedom, including the freedom to use customer-specific contracts that are not subject to the discrimination and preference statutes. Instead, transactions within those markets are to be

governed by the general consumer protection laws of the state.

In addition, US West's amended petition for competitive classification does not conflict with the federal requirement that rates be "reasonably comparable" in urban and rural areas. 47 U.S.C. § 254(b). The federal requirement exists regardless of whether a service is offered under tariff or price list. While it is still unclear what "reasonably comparable" means, that standard will still apply where the same service is both competitive and non-competitive in different markets. One factor that may tend to preserve this comparability is that, even with competitive classification, US West will still be required to offer transport and termination to competitors at prices that comply with the Federal Communications Commission's interconnection pricing rules. These rules do not differentiate between competitive and non-competitive areas.

G. Implementation of a Price List for the Relevant Competitive Market is Practical

Based on discussions with US West, Staff believes the company can administer a price list that applies only to a specific geographic area smaller than an exchange. In concept, it is not different from the base rate area designation in many exchange maps that sets out a central portion of an exchange in which different prices or line extension policies apply. US West's price list would include a map or other legal description of the areas to which the price list applies. It would be unfortunate if US West's operating systems did not enable it to respond to competition in this way and, in effect, required that it treat competitive and non-competitive areas alike. If it were the case that US West could not implement competitive classification on a less than exchange area basis, it could simply charge the same prices in the competitive and non-



competitive areas.

H. The Public Will Benefit from Appropriate Regulatory Treatment, Including Competitive Classification

Consumers benefit from competition. While competitive classification does not create competition, it helps ensure fair competition and appropriate regulation. Consumers will benefit if all providers of the competitive service, including US West, play by the same rules.

Competitive classification of competitive services also helps protect the remaining captive customers of the incumbent. Greater pricing flexibility reduces the likelihood that competition-related losses would ever be borne by captive customers.

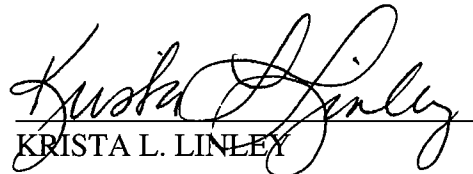
I. Commission Staff's Recommendation

The Commission Staff recommends that the Commission grant US West's amended petition for competitive classification. Staff believes that the amended petition complies with the legal requirements for competitive classification and is otherwise in the public interest. In the future, the Commission may wish to consider broadening the areas designated by the amended petition as subject to effective competition as the level of competition changes. Staff notes that in all three cities originally proposed for competitive classification, there are alternative providers who are attempting to expand the geographic footprint of their networks. If their present growth continues, the captive customer base of US West will shrink, and it may be appropriate to designate additional areas as subject to effective competition.

CERTIFICATE OF SERVICE  
UT-990022

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

DATED this 11th day of June, 1999.

  
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