

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION  
COMMISSION

In the Matter of : )  
Carrier-to-Carrier Service Quality Rulemaking )  
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)  
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DOCKET NO. UT-990261

**SUPPLEMENTAL COMMENTS OF U S WEST**

**Introduction**

U S WEST favors addressing the subject of carrier-to-carrier service quality through the use of a SGAT. U S WEST believes that this approach is superior to detailed rulemakings and tariff requirements. While U S WEST favors this approach compared to others, U S WEST strongly believes that any carrier-to-carrier services quality rules should be time limited and subject to subsequent review or expiration.

On February 15, 2000, the Washington Utilities and Transportation Commission (Commission) issued its *Notice of Opportunity to File Supplemental Comments* in this proceeding. The Commission asked parties to address four issues. U S WEST addresses each of these issues in its comments which follow.

**B. Commission Issues:**

**First Issue: Whether the Commission should address carrier-to-carrier service quality through tariffs or a Statement of Generally Accepted Terms (SGAT), rather than by rules:**

The Commission stated in its notice that, “the Commission would adopt a rule requiring that local exchange companies include performance measures and remedies in a local interconnection tariff or SGAT. Because of the significance of such an underlying rule, U S WEST believes that the proposed rule should be constructed with several factors taken into consideration:

The rule should be applicable to all telecommunications providers, not just Incumbent Local Exchange Carriers (ILECs). The relationships between telecommunications providers is not limited to that of ILECs interconnecting networks, reselling finished services, or leasing facilities to Competitive Local Exchange Carriers (CLECs). Instead, CLECs are interconnecting with ILECs and also interconnecting with other CLECs. CLECs are reselling finished services to other CLECs and leasing or subleasing facilities to other CLECs. In the future, it is also likely that CLECs will resell their finished services and lease or sublease facilities to ILECs, as well. Given these many types of business relationships, any Commission rules relating to service performance measurements should be

applicable to all providers, ILECs and CLECs alike.

The proposed rule should be flexible enough to allow providers to fulfill the intent of the rule in a manner that reflects each provider's unique processes and systems for gathering and reporting performance measurement data. For example, a rule might require a provider to report on the average time to install a service. Some telecommunications providers will group their services differently than others. Some providers may install, and subsequently report their averages based upon the volume of services ordered. Other providers may choose to report an overall average for the service regardless of whether the provider's offered installation intervals vary by ordering volumes. A proposed rule should accommodate these types of differences.

A proposed rule should not preempt parties from undertaking arms-length negotiations. If a rule is too specific or overly directive, the parties may not have the incentive, or flexibility, to negotiate contractual terms concerning carrier-to-carrier service quality. A proposed rule should expressly allow the parties to a contract to replace, or even disregard a subject contained in a rule, if it is in the parties' best interest.

With respect to service performance related remedies, a proposed rule should allow the parties to negotiate (or in the case of an SGAT, offer) remedies. Such remedies should be allowed to vary, including allowing parties no remedy other than to prove damages as otherwise would be done for a proven substantial breach of contract. Additionally, the rules should not establish a regime of strict liability, nor should rules preclude a provider from defending its results, or offsetting or negating liability for "force majeure" occurrences, and acts of others outside of the control of the

telecommunications provider, including performance deficiencies caused in part or entirely, by the telecommunications carrier seeking a remedy.

**Second Issue: The possibility of a rulemaking that results in tariffs incorporating the specific elements of carrier-to-carrier service quality.**

It is U S WEST's position that this alternative is less flexible than allowing parties to address service performance through an SGAT and other contracts. As local exchange competition increases, telecommunication providers will require increasing flexibility to remain competitive. The process for tariff review and approval, however, is relatively cumbersome compared to the relative ease of amending a contract offer, or the SGAT. As long as the SGAT terms are in conformance with the Commission's rules, a telecommunications provider should be allowed the flexibility that contract and contract offer amendments allow.

**Third Issue: Whether certain performance requirements now used for retail services could be used to measure carrier-to-carrier service quality.**

Without addressing any particular rules of the Commission which exist today, U S WEST's position is that retail service quality rules should only be used selectively in measuring carrier-to-carrier service performance.

Under the current requirements for the provisions of carrier-to-carrier services, U S WEST is required to resell its finished services, lease network elements and interconnect its network with the CLECs. Under no circumstances should U S WEST be required to provide wholesale services to the CLECs which are superior to the retail service levels that U S WEST is required to provide to its retail customers. This is especially true with regard to the resale of finished services. It would be operationally difficult, as well as unlawful, for U S WEST to resell finished services to the CLECs which are superior to the levels of service that U S WEST provides to its end-user customers.

The Commission should also forgo requiring results for the installation or repair of unbundled network elements that are superior, if even arguably comparable to a finished service. That does not mean that U S WEST, or for that matter, the CLECs, might not make comparisons between certain aspects of the provisioning or repair of unbundled network elements. However, while voluntary comparisons are permissible, U S WEST should not be required to make the results for unbundled network elements equal or better than any requirements for a finished service.

The Commission should be especially wary of creating a rule that mandates that U S WEST become a construction company for the CLECs. While U S WEST is required to unbundle its network, this Commission should not require and measure U S WEST on the construction of unbundled network elements.

If the Commission wishes to maintain standards for trunk blockage, the standards applicable to retail customer-related trunk blockage should be the same for wholesale customer-related trunk blockage. Trunk blockage is measuring an integrated network, not two separate networks. Therefore standards for the level of trunk blockages should be the same. Additionally, because the subject reflects interconnection of two separate networks, joint network planning should be required and a telecommunications provider should be held harmless for trunk blockage which results from one telecommunications carrier failing to accurately forecast and/or timely respond to the other telecommunications carriers request for interconnection trunks to be built or forecasted.

**Fourth Issue: Whether there are alternatives to rulemaking, tariffs, or SGAT that would take into account ease of use, administrative efficiency, and industry flexibility.”**

While U S WEST lauds the objectives sought in this particular inquiry, U S WEST believes that the underlying assumption ought not to include a continued need for governmental regulation. Instead, this Commission should not apply wholesale service

quality rules where it is determined that competition exists. Governmental regulation is a substitute for the “regulation” caused by competition. When competition exists, there should no longer be a need for significant ongoing governmental regulation. Competition will require all telecommunications providers to be price-sensitive and continuously improve their service quality. Therefore, U S WEST recommends that any proposed carrier-to-carrier service quality rule should not be applied where competition is determined to exist.

U S WEST also recommends that any carrier-to-carrier service quality rule should have a sunset clause or be subject to periodic review in order to determine the continued efficiency of the rule. Over time, the need and scope of any rule might change. However, while a telecommunications carrier might be able to change its SGAT, it would not be able to if an outdated rule continues to require that applicable outdated provisions be contained in the SGAT.

### **C. Conclusion**

U S WEST continues to believe that a carrier-to-carrier service quality rulemaking is not necessary. However, if the Commission chooses to continue, U S WEST strongly favors the flexibility of implementation allowed through an SGAT, rather than the rigid and expensive process of a rulemaking.