

TC00-011

0861-0862
Cont 1-0862

In the Matter of _____

IN THE MATTER OF THE FILING BY U
S WEST COMMUNICATIONS, INC. OF A
NOTICE OF INTENT TO FILE A 271
APPLICATION

Public Utilities Commission of the State of South Dakota

DATE	MEMORANDA
2/8 00	Received;
2/9 00	Rechecked;
2/10 00	Weekly Filings;
2/28 00	Response of the Hon. Resolvers Assign to U.S. West's Motion for Alternative Procedure to Manage the Section 271 Process;
3/7 00	Order Setting Intervention Deadline and Procedural Schedule;
3/10 00	Petition for Leave to Intervene of the Telecommunications Services Assn.
3/16 00	McLeod's Petition to Intervene as a Party;
3/17 00	AT&T's Petition for Leave to Intervene;
3/17 00	Midcontinent's Petition to Intervene;
3/17 00	US West's Response to the Commission's Request for Additional Information Concerning Alternative Procedure to Manage the Section 271 Process;
3/31 00	Petition for Leave to Intervene by Black Hills TeleCom, L.P.C.,
3/27 00	Sprint's Application for Intervention;
3/31 00	Comments of AT&T;
3/31 00	Order Granting Intervention;
4/10 00	Midcontinent's Motion to Late File Intervention Comments;
4/10 00	Midcontinent's Reply to US West's Statement of Additional Information;
4/10 00	US West's Reply to AT&T's Comments, ^{to manage the Section 271 Process} Concerning Alternative Procedure and Motion to Permit Filing of Reply Comments;
4/14 00	US West's Response to Midcontinent's Motion to Permit Late Filed Comments;
4/17 00	New Edge Networks' Petition for Later Intervention;
5/4 00	Order Granting Motions; Order Granting Intervention;
6/6 00	Order Closing Docket;
6/6 00	Docket Closed

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February 8, 2000

VIA FACSIMILE - 605-773-3809

William Bullard, Executive Director
SD Public Utilities Commission
500 E. Capitol
Pierre, SD 57501

FAX RECEIVED FEB 09 2000

RECEIVED

FEB 09 2000

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

Re: In Re: Application for interLATA Relief of U S WEST Communications, Inc. Pursuant to
Section 271 of the Telecommunications Act of 1996
Our File No. 2104.006

Dear Mr. Bullard:

Enclosed for filing please find U S WEST Communications, Inc.'s Notice of Intent to File Section
271 Application and Motion for Alternative Procedure to Manage the Section 271 Process. The
original and 10 copies are being mailed to you today.

Sincerely yours,

BOYCE, MURPHY, McDOWELL &
GREENFIELD, L.L.P.



Thomas J. Welk

TJW/vjj

Enclosure

cc: Alex Duarte
Colleen Sevoid
Cindy Pierson

P/LX Received FEB 11 2000

1000-01
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**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA**

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

IN RE: APPLICATION FOR interLATA)
RELIEF OF U S WEST COMMUNICATIONS,)
INC. PURSUANT TO SECTION 271 OF THE)
TELECOMMUNICATIONS ACT OF 1996)

Docket No. TC00-___

**U S WEST COMMUNICATIONS, INC.'S NOTICE OF INTENT TO FILE SECTION 271
APPLICATION AND MOTION FOR ALTERNATIVE PROCEDURE TO MANAGE
THE SECTION 271 PROCESS**

INTRODUCTION

The Public Utilities Commission of the State of South Dakota ("the Commission") is currently involved in assessing U S WEST Communications, Inc.'s ("U S WEST") operational support systems ("OSS") through a third-party test managed by the USWEST Regional Oversight Committee ("ROC") for purposes of determining U S WEST's compliance with section 271 of the Telecommunications Act of 1996 ("the Telecommunications Act" or "the Act"). The ROC released a draft of its Master Test Plan and is scheduled to finalize the test plan in April 2000. The OSS test is scheduled to begin early second quarter 2000 and to complete early fourth quarter 2000. U S WEST respectfully requests that the Commission initiate a docket to (1) allow U S WEST to submit the ROC Master Test Plan to the Commission for consideration in early second quarter 2000, and (2) allow parties to participate in proceedings to consider each aspect of Section 271, including each item on the 14-point checklist in Section 271, beginning fourth quarter 2000. U S WEST makes this request now so the Commission has ample time to consider how to best proceed with consideration of Section 271 in South Dakota.

DISCUSSION

I. SECTION 271 PROMISES U S WEST THAT IT WILL BE REWARDED WITH THE OPPORTUNITY TO PROVIDE INTERLATA SERVICES ONCE ITS LOCAL MARKETS ARE OPENED TO COMPETITION

The Telecommunications Act is intended to bring competition to both the local and long distance telecommunications markets throughout the country. In exchange for a Bell Operating Company ("BOC") opening its local exchange markets to competition, Section 271 dictates that the BOC will be rewarded by being permitted entry into that state's interLATA long distance market. There are four principal components to Section 271. First, U S WEST must satisfy "Track A," which requires, among other things, that a competitive local exchange carrier ("CLEC") is serving both residential and business customers principally over its own facilities. Second, U S WEST must offer evidence that it satisfies the 14-point competitive checklist. Third, U S WEST's entry into the interLATA market must be in the public interest. Fourth, U S WEST must show it is prepared to offer interLATA services through a separate subsidiary pursuant to Section 272 of the Act.

The Act anticipates that if the local telephone market is open to competition, CLECs will enter or at least be able to enter via (1) resale, (2) unbundled network elements (UNEs), and (3) facilities-based bypass. There is substantial evidence that U S WEST's efforts to open South Dakota's local telephone market are working. The following data shows that competitors are availing themselves of all of the Act's modes of entry into the local telephone market:

1. For example, with respect to resale, as of December 31, 1999, U S WEST had provisioned more than 431, 000 resold lines in its region, including 25,000 resold lines in South Dakota.
2. With respect to UNEs, as of December 31, 1999, U S WEST had provisioned more than 44,000 loops to CLECs throughout its region.

3. In addition, with respect to interconnection, U S WEST has provisioned more than 1800 interconnection trunks in South Dakota to permit interconnection with CLECs and other carriers.
4. Further, as of December 31, 1999, U S WEST had ported almost 660,000 numbers throughout its region and had more than 1,160,000 CLEC 211 listings.
5. Finally, as of December 31, 1999, U S WEST has provisioned collocations from which CLECs have access to almost 40% of U S WEST's access lines in South Dakota; thus, CLECs are positioned well to compete as they choose.

This is just some of the evidence which shows that U S WEST's market opening efforts are working. Thus, U S WEST believes it is an appropriate time for the Commission to consider initiating a Section 271 docket.

II U S WEST ASKS THE COMMISSION TO ASSESS U S WEST'S SATISFACTION OF SECTION 271 IN A TIMELY MANNER

Section 271 cases are not traditional proceedings that lead to a final Commission decision. Unlike traditional adjudicatory proceedings, the Commission does not make the ultimate determination on whether U S WEST satisfies Section 271. The express language of Section 271(d) vests the FCC with exclusive jurisdiction to determine whether U S WEST satisfies Section 271. The Commission does, however, have an important role in the 271 process. Section 271(d)(2)(b) states that the FCC "shall consult with State commission" before issuing its ultimate decision.

To date, the FCC has issued six Section 271 decisions, and in virtually every instance the FCC stressed the importance of the state commission to the 271 process. The FCC has defined the state commission's primary goal as development of "a comprehensive factual record concerning BOC compliance with the requirements of section 271 and the status of local

competition”¹ The FCC promises to “consider carefully state determinations of fact that are supported by a detailed and extensive record.”²

In the case of Bell Atlantic’s Section 271 Application in New York, the FCC gave the New York Commission’s recommendation “substantial weight” because of the “rigorous collaborative process” it had utilized. As part of this rigorous process, the FCC cited the New York Commission’s collaborative sessions and technical workshops in which all involved parties participated to clarify or resolve issues.³ Although utilizing workshops is one way the Commission could proceed, at this juncture U S WEST simply requests that the Commission process the docket in a timely manner beginning fourth quarter 2000. Prompt consideration should benefit all involved. Both competitors and U S WEST will benefit from a prompt resolution of issues affecting the local telephone market. Consumers will also benefit from enhanced competition in both the local and interLATA markets.

III. THE FCC HAS CREATED A LEGAL FRAMEWORK FOR ANALYZING SATISFACTION OF SECTION 271

The Commission should recognize and utilize the FCC’s framework for assessing Section 271 issues. First, the FCC created a two-prong test that U S WEST must satisfy with respect to each of the 14 items on the Section 271 checklist. To determine whether U S WEST is “providing” each checklist item, it must:

. . . demonstrate [1] that it has a concrete and specific legal obligation to furnish the item upon request pursuant to a state-approved interconnection

¹ See, e.g., *Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934 as amended, To Provide In-Region, InterLATA Services In Michigan*, Memorandum Opinion and Order, CC Docket No. 97-137, Memorandum Opinion and Order, ¶ 30 (rel. Aug 19, 1997) (“*Ameritech Michigan Order*”).

² *Application of BellSouth Corporation Pursuant to Section 271 of the Communications Act of 1934 as amended to Provide In-Region InterLATA services in Louisiana*, CC Docket No. 98-121, Memorandum Opinion and Order, FCC 98-271, ¶ 9 (rel. Oct. 13, 1998) (“*BellSouth Louisiana II*”).

³ *BellAtlantic New York Order* at ¶¶ 6-13 and 20.

agreement or agreements that set forth prices and other terms and conditions for each checklist item, and [2] that it is currently furnishing, or is ready to furnish, the checklist item in the quantities that competitors may reasonably demand and at an acceptable level of quality.⁴

To meet the first aspect of the test, that U S WEST has a "concrete legal obligation" to provide a checklist item, U S WEST can either cite to language in any existing interconnection agreements or file a "Statement of Generally Available Terms" (SGAT) pursuant to Section 252(f) of the Act. U S WEST plans to rely on an SGAT as its primary means to meet this piece of the FCC's test. The SGAT will spell out in detail how U S WEST will offer each item on the competitive checklist to CLECs. The SGAT will provide a common document to frame discussions about U S WEST's legal obligations. Once in effect, the SGAT will also provide another alternative that CLECs can opt into or select from pursuant to Section 252(i). To U S WEST's knowledge, other state commissions throughout the country have used SGATs as the basis for confirming that their respective ILECs have a concrete and specific legal obligation to furnish each checklist item.

The second piece of the FCC's test is to establish that U S WEST can provide each checklist item at an "acceptable level of quality." U S WEST has developed a series of performance measures to track its performance. These measures continue to be refined in ROC workshops. The performance data generated will be analyzed to assess whether U S WEST is offering the checklist item to CLECs on a nondiscriminatory basis. To establish "nondiscriminatory" treatment, the FCC has again provided guidance. When U S WEST performs the same function for itself or its retail customers (i.e., a retail analogue exists), it must offer the item at parity, meaning in "substantially the same time and manner" as it provides the

⁴ *BellSouth Louisiana II* at ¶ 54.

item to itself.⁵ When no retail analogue exists, however, U S WEST must provide the checklist item such that an "efficient competitor has a meaningful opportunity to compete."⁶ In the latter circumstance, a performance "benchmark" will be set in the ROC process to define U S WEST's expected performance.

U S WEST has the burden to establish by a preponderance of the evidence that it meets both prongs of this test as to each checklist item.⁷ However, "[o]nce the BOC has made such a showing, opponents must produce evidence and arguments to show that the application does not satisfy the requirements [of that portion] of section 271, or risk a ruling in the BOC's favor."⁸ To meet their burden, CLECs must present substantial evidence that U S WEST does not meet the checklist item. "Mere unsupported evidence in opposition will not suffice." Similarly, "anecdotal evidence" or "isolated incidents may not be sufficient . . . to overcome the BOC's *prima facie* case."⁹ U S WEST recommends that the Commission utilize these same standards throughout this proceeding.

IV. U S WEST'S PROPOSED PROCEDURE

U S WEST understands that Section 271 subsumes numerous issues and, therefore, may require substantial effort. As a result, U S WEST is open to discussing any of the many different alternatives available to the Commission for processing this docket. For example, the Commission could collaborate with another state or several states, as has the ROC, to help alleviate the workload. The Commission could take administrative notice of the substantial

⁵ *Bell Atlantic New York Order* at ¶ 44.

⁶ *Id.*

⁷ *Id.* at ¶ 48.

⁸ *Id.* at ¶ 49.

⁹ *Id.* at ¶ 50.

progress made in ongoing workshops in other states. U S WEST is confident other alternatives exist and is open to discussing virtually any method. U S WEST's intention is simply to provide the Commission with advanced notice so it has time to consider which approach it wants to use for processing this docket.

CONCLUSION

For all of the foregoing reasons, U S WEST respectfully requests that this Commission issue an Order that initiates a docket to:

1. Allow U S WEST to file the ROC Master Test Plan with the Commission for its consideration and adoption in early second quarter 2000; and
2. Create a procedure that will allow the parties to consider all aspects of Section 271 in a timely manner.

Dated this 8th day of February, 2000.

Respectfully submitted,



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Attorneys for U S WEST Communications, Inc.

South Dakota Public Utilities Commission

WEEKLY FILINGS

For the Period of February 3, 2000 through February 9, 2000

If you need a complete copy of a filing faxed, overnight expressed, or mailed to you, please contact
Delaine Kolbo within five business days of this filing.

Phone: 605-773-3705 Fax: 605-773-3809

CONSUMER COMPLAINTS

CT00-032 In the Matter of the Complaint filed by Margie Gertsen, Watertown, South Dakota, against OLS, Inc. Regarding Switching Telecommunications Services Through Deceptive Tactics.

The Complainant indicates that a telemarketer identified himself as a representative of her long distance company wanting to combine her billing. As a result of that call her service was switched. The Complainant requests that something be done so this does not continue to happen.

Staff Analyst: Leni Healy
Staff Attorney: Karen Cremer
Date Filed: 02/04/00
Intervention Deadline: NA

CT00-033 In the Matter of the Complaint filed by Dale Hilgemann, Aberdeen, South Dakota, against OLS, Inc. Regarding Switching Telecommunications Services Through Deceptive Practices.

The Complainant indicates that his long distance service was switched without authorization. The Complainant requests that all charges be removed, and there be an imposition of fines and penalties.

Staff Analyst: Leni Healy
Staff Attorney: Karen Cremer
Date Filed: 02/04/00
Intervention Deadline: NA

CT00-034 In the Matter of the Complaint filed by Kathleen C. Glynn, Watertown, South Dakota, against OLS, Inc. Regarding Switching Telecommunications Services Through Deceptive Tactics.

The Complainant claims she was contacted by a telemarketer to switch her long distance service. The Complainant indicates that she requested information in writing and did not agree to switch service. For a resolution, the Complainant requests that her account be closed, all charges be removed and there be an imposition of appropriate laws.

Staff Analyst: Leni Healy
Staff Attorney: Karen Cremer
Date Filed: 02/02/00
Intervention Deadline: NA

CT00-035 In the Matter of the Complaint filed by Gordon Wilkerson, Manager, on behalf of Sioux Falls Stockyards Co., Sioux Falls, South Dakota, against FirstTel Business Systems Regarding Billing Dispute.

On February 8, 2000, the Commission received a complaint regarding a billing dispute against FirstTel Business Systems. The Sioux Falls Livestock Market received a letter from FirstTel informing it that, based on a recent audit, it had not been charged a monthly fee for three lines for three lines at the business. FirstTel billed the complainant for the three lines retroactively for the past six months. The complainant alleges it was quoted a price from FirstTel when the business was solicited and it has paid that amount. The complainant is requesting that FirstTel cancel its bill for past services in the amount of \$1,133.76 and to cooperate with U S WEST to have their service transferred back to U S WEST.

Staff Analyst: Michele Farris
Staff Attorney: Camron Hoseck
Date Filed: 02/08/00
Intervention Date: NA

TC00-006 In the Matter of the Application of NewPath Holdings, Inc. for a Certificate of Authority to Provide Telecommunications Services, Including Local Exchange Services, in South Dakota.

NewPath Holdings, Inc. is seeking a Certificate of Authority to provide resale and facilities-based local exchange (subject to rural safeguards) and interexchange telecommunications services in South Dakota. Initially, NewPath intends to provide these services only.

Staff Analyst: Keith Senger
Staff Attorney: Camron Hoseck
Date Filed: 02/03/00
Intervention Date: 02/25/00

TC00-007 In the Matter of Qwest Communications, Inc.

Commission Staff filed a Motion To Assess Fines and Statutory Penalties against Qwest Communications, Inc. The basis for this Motion is the number of complaints which have recently been filed against Qwest Communications, Inc. which are alleged to represent a pattern of inadequate service in South Dakota, of reckless disregard for South Dakota law and a disregard for the rights of South Dakota consumers. Staff moves the Commission to assess fines and penalties in accordance with SDCL 49-31-93, 49-31-94, impose other remedies and assess costs associated with processing the complaints.

Staff Attorneys: Camron Hoseck and Karen Cremer
Date Filed: 02/04/00
Intervention Deadline: NA

TC00-008 In the Matter of the Application of United Communications HUB, Inc. for a Certificate of Authority to Provide Telecommunications Services in South Dakota.

United Communications HUB, Inc. (United) seeks a Certificate of Authority to provide resold intrastate interexchange telecommunications services. United intends to offer 1+, 800, travel card, and dedicated interexchange services throughout South Dakota.

Staff Analyst: Heather Forney
Staff Attorney: Camron Hoseck
Date Filed: 02/08/00
Intervention Date: 02/25/2000

TC00-009 In the Matter of the Application of Adelphia Business Solutions Operations, Inc. for a Certificate of Authority to Provide Telecommunications Services in South Dakota.

Adelphia Business Solutions Operations, Inc. seeks a Certificate of Authority to provide resold and facilities based interexchange telecommunications services in South Dakota. Adelphia intends to offer 1+ direct dial, toll free, travel card and prepaid calling card services.

Staff Analyst: Keith Senger
Staff Attorney: Camron Hoseck
Date Filed: 02/09/00
Intervention Date: 02/25/00

TC00-010 In the Matter of the Application of UKI Communications, Inc. for a Certificate of Authority to Provide Telecommunications Services in South Dakota.

UKI Communications, Inc. (UKI) seeks a Certificate of Authority to provide resold long distance telecommunications services. UKI intends to offer 1+ and Travel Card services throughout South Dakota.

Staff Analyst: Heather Forney
Staff Attorney: Karen Cremer
Date Filed: 02/09/00
Intervention Date: 02/25/00

TC00-011 In the Matter of the Filing by U S WEST Communications, Inc. of a Notice of Intent to file a 271 Application

On February 8, 2000, U S WEST Communications, Inc. filed with the Commission its Intent to File Section 271 Application and Motion for Alternative Procedure to Manage the Section 271 Process. U S WEST is asking the Commission to (1) allow it to file the Master Test Plan with the Commission for its consideration and adoption in early summer quarter 2000; and (2) to create a procedure that will allow the parties to conduct all aspects of Section 271 in a timely manner.

All Staff

Date Filed: 02/08/00

Intervention: NA

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Andrew Isar, Director - State Affairs

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Via Overnight Delivery

25 February 2000

Mr. William Bullard, Jr.
Executive Secretary
Public Utilities Commission of South Dakota
500 East Capitol Street
Pierre, South Dakota 5701-5070

RECEIVED

FEB 28 2000

**SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION**

RE: Application for InterLATA Relief of US West Communications, Inc. Pursuant to
Section 271 of the Telecommunications Act of 1996, Docket No. TC-00-011

Dear Mr. Bullard:

Enclosed are an original and ten (10) copies of the Telecommunications Resellers Associations' ("TRA") *Response to US West Communications' Motion for Alternative Procedures to Manage the 271 Process* in the above-captioned proceeding.

Questions may be directed to the undersigned.

Sincerely,

Telecommunications Resellers Association


Andrew O. Isar

Enclosures

BEFORE THE
PUBLIC UTILITIES COMMISSION OF THE STATE OF SOUTH DAKOTA

RECEIVED

In Re: Application for InterLATA Relief of)
US West Communications, Inc. Pursuant to Section)
271 of the Telecommunications Act of 1996)

Docket No. TC-00-011

FEB 28 2001

SOUTH DAKOTA P
UTILITIES COMMISS

**RESPONSE OF THE TELECOMMUNICATIONS RESELLERS ASSOCIATION TO US WEST
COMMUNICATIONS' MOTION FOR ALTERNATIVE PROCEDURE TO MANAGE THE §271 PROCESS**

The Telecommunications Resellers Association ("TRA"), on behalf of its members, responds to US West Communications, Inc.'s February 8, 2000 (US West") Motion to Modify Procedures ("Motion") in the above-captioned proceeding. TRA agrees that a collaborative process, if properly formulated, can be an effective tool in evaluating US West's compliance with the "competitive checklist" for in-region, interLATA market entry under Section 271 of the Telecommunications Act of 1996. A collaborative process, such as is proposed by US West, cannot, however, ever serve as a substitute for US West's submission of *evidence* that it meets the competitive check list.

On its face, US West's proposal would effectively disregard the framework established by the Commission in its December 16, 1996 *Order Requiring Filing*,¹ which requires US West to file its Section 271 application with the South Dakota Public Utilities Commission together with "all supporting documentation."² US West in a seeming revelation, has reconsidered its position and now unilaterally concludes that the collaborative process, by itself, is the most effective course for evaluating its compliance with Section 271.

US West's Motion is void of any substantive proposal for conducting its suggested collaborative process. US West merely proclaims that a single Section 271 filing is

¹ In the Matter of Section 271 of the Telecommunications Act of 1996 Regarding US West Communications, Inc.'s Provisioning of In-Region interLATA Services, Docket No. TC-96-165, *Order Requiring Filing*, Issued December 16, 1996. TRA acknowledges that US West has filed its Motion under a new docket number. However, TRA submits that the procedural order in the initial investigation Case No. TC-96-165 is as applicable to the instant proceeding as it was to the Commission's initial Section 271 investigation.

² *Id.* at 1.

not the "optimum" method of addressing questions raised by a Section 271 application. Instead, US West proposes two alternatives to a traditional §271 process. Under its first proposal, US West would have the Commission conduct a series of workshops to address each checklist item, either under a state-specific process or via a multi-state collaborative process. Under the second proposal put forth by US West, the company claims the Commission could "take administrative notice of the substantial progress made in ongoing workshops in other states." Either proposal is made seemingly in *lieu* of the formal 271 filing and evidentiary hearings before the Commission contemplated in its December, 1996 Order. If this is indeed what US West is suggesting, US West's proposal effectively bypasses the evidentiary standard contemplated by the Telecommunications Act of 1996, and could ultimately dismantle the integrity of the 271 evaluation process altogether, and undermine the credibility of any Commission recommendation to the FCC.

TRA certainly supports the concept of a collaborative process, including issue-specific workshops that involve the Commission, U S West, and the competitive industry as participants. TRA's experience with such collaborative 271 processes in New York and Texas have been quite favorable. In those states, industry collaborative workshops have resulted in a more thorough, substantive, and conclusive record of Bell Atlantic-New York's and Southwestern Bell Telephone's respective compliance with Section 271 and ultimately, in favorable state endorsements. Nevertheless, in both New York and Texas, as well as others states such as California, and more recently Massachusetts, a collaborative process has been initiated only *after* the regional Bell operating company has submitted an application with the state commission containing evidence of its compliance.³ Further, in any state in which a collaborative

³ In Washington, US West has taken exception to recommendations that it be required to file a complete 271 application with the Commission prior to the commencement of any workshops to ensure a full evidentiary record. The company assured the Commission it intended to provide

process has been undertaken, that process has remained state-specific. Although some commonality exists in U S West's operations support systems (OSS) throughout its operating territory, there are deviations between states given differing procedures, staffs, and capabilities. It would be a dangerous presumption for this or any other commission to believe that a regional view alone is sufficient to determine U S West's actual compliance *in each state*. The Act intended that each state would conduct its own section 271 evaluation. Certainly regional OSS testing, such as will be conducted under the auspices of the U S West regional oversight committee, offers certain efficiencies. Yet there can be no substitute for state-specific testing and evaluation. Wholesale acceptance of a regional evaluation is insufficient for this commission to make an informed and accurate assessment of U S West's actual compliance.

TRA is aware of no state which has engaged in a collaborative process, much less initiated a 271 proceeding, without the filing of a complete 271 application by the RBOC which clearly sets forth RBOC *evidence* that it has complied with the competitive checklist for interLATA market entry. Nor is TRA aware any state or group of states in which a multi-state collaborative process has been undertaken, in which it is contemplated that state commissions will take administrative notice of checklist compliance in other states, rather than requiring a *state-specific evidentiary showing* by the RBOC proving compliance with *all* of the Act's requirements for in-region interLATA entry. Any proposed process reviewing US West's §271 compliance must remain state-specific, and must not commence until after US West has filed a formal §271 application with the Commission.

testimony as part of its filing, but appeared to confuse the need for evidence with its planned testimony, stating, "US West understands that it bears the initial burden of proof and therefore *must provide the Commission with detailed evidence*. US West only asserts that the testimony *should be filed in stages*, not all at the beginning of the process." Such submission of testimony is not, in and of itself, dispositive of US West's compliance. (*In the Matter of the Investigation Into US West Communications Inc.'s Compliance with Section 271 of the Telecommunications Act of 1996*, Docket No. UT-970300, *US West Reply to Response of Intervenor*, at page 3 (emphasis supplied)).

The burden of demonstrating compliance with the competitive checklist rests squarely on U S West and is not subject to negotiation, as US West itself has acknowledged.⁴ It is with this recognition in mind that the Commission issued its December, 1996 Order. This Order, issued over three years ago, suggests the Commission contemplated a formal Section 271 investigation, complete with an evidentiary hearing.⁵ No appeals or exceptions were taken to the order by US West. For U S West to now request that it should not be required to submit a 271 filing subject to the sound evaluation procedures set forth by the Commission in its Order is nothing short of disingenuous.

U S West must play its hand first. It must demonstrate how it now complies with the competitive checklist *before* any collaborative sessions are initiated. U S West cannot achieve compliance by trial and error, *i.e.* by modifying its "compliance" based on the outcome of issue-specific collaborative workshops. The Federal Communications Commission has been clear on this point.

Section 271 places on the applicant the burden of proving that all of the requirements for authorization to provide in-region, interLATA services are satisfied. In the *Ameritech Michigan Order*,⁶ the Commission determined that the ultimate burden of proof with respect to factual issues remains at all times with the BOC, even if no party opposes the BOC's application. In the first instance, a BOC must present a *prima facie* case in its application that all of the requirements of section 271 have been satisfied. Once the applicant has made such a showing, opponents of the BOC's entry must, as a practical matter, produce evidence and arguments necessary to show that the application does not satisfy the requirements of section 271, or risk a ruling in the BOC's favor. Nevertheless, the BOC applicant retains at all times the ultimate burden of proof that its application is sufficient [footnote references to *Ameritech Michigan Order* paragraphs 43 and 44 in original omitted, footnote to *Ameritech Michigan Order* supplied].⁷

⁴ *In Re: Application for interLATA Relief of US West Communications, Inc. Pursuant to Section 271 of the Telecommunications Act of 1996*, Docket No. TC-00-011, *US West Communications Inc.'s Notice of Intent to File Section 271 Application and Motion for Alternative Procedure to Manage the Section 271 Process*, Page 6.

⁵ *In the Matter of Section 271 of the Telecommunications Act of 1996 Regarding US West Communications, Inc.'s Provisioning of In-Region interLATA Services*, Docket No. TC-96-165, *Order Requiring Filing*, Issued December 16, 1996.

⁶ *Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in Michigan*, CC Docket No. 97-137, Memorandum Opinion and Order, FCC 97-137 (rel. Aug. 19, 1997) [*"Ameritech Michigan Order"*].

⁷ *Application of BellSouth Corporation, et al. Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in South Carolina*, CC Docket No. 97-208, Memorandum Opinion and Order (rel. December 24, 1997) [*"South Carolina MOO"*] at 37.

and

In the *Ameritech Michigan Order*, the Commission also required that an application be complete when filed. The Commission concluded that, when a BOC presents factual evidence and arguments in support of its application for in-region, interLATA entry, such evidence must be clearly described and arguments must be clearly stated in its legal brief with appropriate references to supporting affidavits. The Commission stressed that an applicant may not, at any time during the pendency of its application, supplement its application by submitting new factual evidence that is not directly responsive to arguments raised by parties commenting on its application. This prohibition applies to the submission, on reply, of factual evidence gathered after the initial filing that is not responsive to the oppositions filed. Moreover, under no circumstance is a BOC permitted to counter any arguments made in the comments with new factual evidence *post-dating* the filing of those comments [footnote references to *Ameritech Michigan Order* paragraphs 50, 51, 55, and 60 in original omitted, emphasis in original].⁸

RBOC compliance with the Act was not intended to be an iterative process. U S West should be ready to demonstrate that it is ready to satisfy the high bar established by the FCC in its recent approval of Bell Atlantic – New York's 271 application at the time it seeks 271 endorsement from this Commission.⁹ The December, 1996 Order appropriately establishes the basis under which U S West's application should be filed in South Dakota. If U S West does not believe that the merits of its application will withstand Commission scrutiny, absent a collaborative process, perhaps U S West should delay its application until a later date.

While collaborative sessions certainly enhance the state 271 compliance evaluation process, they do not replace, nor are they intended to replace, hard RBOC evidence that its operations are in compliance with the competitive checklist. An RBOC's application serves as the foundation for any 271 evaluation. There are no substitutes. TRA urges the Commission to reject U S West's request accordingly. Alternatively, U S West should be required to provide greater specificity in its proposed approach rather than baiting the

⁸South Carolina MOO at 39.

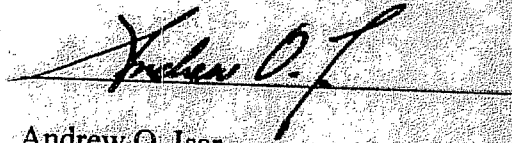
⁹Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act To Provide In-Region, InterLATA Service in the State of New York, CC Docket No. 99-295, Memorandum Opinion and Order, FCC 99-404 (rel. December 22, 1999).

Commission and industry to test reaction. The Commission should act on an evaluation of U S West's compliance with the competitive checklist *only* when U S West conclusively demonstrates that it has met its obligations under section 271 with hard evidence presented in the form of a formal application, consistent with the guidelines set forth by the Commission.

Respectfully submitted,

Telecommunications Resellers Association

BY:



Andrew O. Isar
Director - State Affairs
3220 Uddenberg Lane, Suite 4
Gig Harbor, WA 98335
Telephone: 253.851.6700
aisar@harbor-group.com

February 25, 2000

BEFORE THE
PUBLIC UTILITIES COMMISSION OF THE STATE OF SOUTH DAKOTA


In Re: Application for InterLATA Relief of)
US West Communications, Inc. Pursuant to Section)
271 of the Telecommunications Act of 1996)

Docket No. TC-00-011

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the Telecommunications Resellers Associations' ("TRA") *Response to US West Communications' Motion for Alternative Procedures to Manage the 271 Process* on all parties of record in the above-captioned proceeding, as listed in the following service list, via United States Mail, postage prepaid.

Dated this 25th Day of February, 2000 at Gig Harbor, Washington


Dena Alo-Colbeck

Andrew D. Crain, Esq.
Charles W. Steese, Esq.
Alex Duarte, Esq.
US West Law Department
1801 California Street, Suite 5100
Denver, CO 80202

Thomas J. Welk
Boyce Murphy, McDowell & Greenfield, LLP
101 North Phillips Avenue, Suite 600
Sioux Falls, SD 57117-5015

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA**

IN THE MATTER OF THE FILING BY U S WEST)
COMMUNICATIONS, INC. OF A NOTICE OF)
INTENT TO FILE A 271 APPLICATION)

ORDER SETTING
INTERVENTION DEADLINE
AND PROCEDURAL
SCHEDULE
TC00-011

On February 8, 2000, the Public Utilities Commission (Commission) received a Notice of Intent to File Section 271 Application and Motion for Alternative Procedure to Manage the Section 271 Process from U S WEST Communications, Inc. (U S WEST). In its notice, U S WEST requested "that the Commission initiate a docket to (1) allow U S WEST to submit the ROC Master Test Plan to the Commission for consideration in early second quarter 2000, and (2) allow parties to participate in proceedings to consider each aspect of Section 271, including each item on the 14-point checklist in Section 271, beginning fourth quarter 2000."

At its February 29, 2000, meeting, the Commission considered how to proceed with this matter. After listening to comments from U S WEST and other interested entities, the Commission unanimously voted as follows: (1) set an intervention deadline; (2) require U S WEST to explain its request for an alternative procedure to manage a Section 271 application in more detail; (3) allow parties to comment on U S WEST's alternative procedure; and (4) allow U S WEST to respond to those comments.

The Commission sets an intervention deadline of March 17, 2000. The Commission sets the following procedural schedule:

U S WEST's detailed proposal due	March 17, 2000
Intervenors' comments due	March 31, 2000
U S WEST's reply comments due	April 10, 2000

It is therefore

ORDERED, that the deadline for intervention is March 17, 2000; and it is

FURTHER ORDERED, that all parties shall follow the procedural schedule as set forth above.

Dated at Pierre, South Dakota, this 7th day of March, 2000.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.

By: Melanie Kaelo

Date: 3/7/00

(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION

James A. Burg
JAMES A. BURG, Chairman

Pam Nelson
PAM NELSON, Commissioner



Andrew Isar, Director - State Affairs

Telecommunications
Resellers
Association

Suite 4
3220 Uddenberg Lane NW
Gig Harbor, WA 98335

Tel: 253-851-6700
Fax: 253-851-6474
E-mail: aisar@harbo

RECEIVED

MAR 10 2000

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

Via Overnight Delivery

9 March 2000

Mr. William Bullard, Jr.
Executive Secretary
Public Utilities Commission of South Dakota
500 East Capitol Street
Pierre, South Dakota 5701-5070

RE: Application for InterLATA Relief of US West Communications, Inc. Pursuant to
Section 271 of the Telecommunications Act of 1996, Docket No. TC-00-011

Dear Mr. Bullard:

Enclosed are an original and ten (10) copies of the *Petition to Intervene of the Telecommunications Resellers Association* in the above-referenced proceeding. TRA filed its *Response to US West's Motion for Alternative Procedure to Manage the §271 Process* in this docket on February 25, 2000. TRA contemporaneously respectfully requests the Commission consider TRA's comments pursuant to the Commission's March 7, 2000 *Order Setting Intervention Deadline And Procedural Schedule*.

Questions may be directed to the undersigned.

Sincerely,

Telecommunications Resellers Association

Andrew O. Isar

Enclosures

BEFORE THE
PUBLIC UTILITIES COMMISSION OF THE STATE OF SOUTH DAKOTA

In Re: Application for InterLATA Relief of)
US West Communications, Inc. Pursuant to Section)
271 of the Telecommunications Act of 1996)

Docket No. TC-00-011

PETITION FOR LEAVE TO INTERVENE
OF THE TELECOMMUNICATIONS RESELLERS ASSOCIATION

The Telecommunications Resellers Association ("TRA"), on behalf of its members and pursuant to Section 20:10:01:15.06 of the Administrative Rules of South Dakota, hereby respectfully moves the South Dakota Public Utilities Commission for leave to intervene in the above-captioned proceeding. In support of its application, TRA submits the following:

1. TRA is a national trade organization representing over 800 telecommunications service providers and suppliers throughout the United States including one South Dakota-based member. TRA's members are generally small to medium-sized telecommunications service providers. TRA members offer a variety of value-added competitive interexchange, local, wireless, Internet, and enhanced services to the public. Several TRA members are authorized by the Commission to provide competitive local and interexchange services in the state of South Dakota.

2. As service providers who compete and will compete with US WEST Communications, Inc ("US WEST"), TRA members have a direct and substantial interest in the matters raised by US WEST's compliance with the Telecommunications Act of 1996 ("the Act")¹. The conditions under which US West enters the interLATA market will have a profound impact on members' ability to compete in South Dakota, particularly of US West's entry into the

¹ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996), codified at 47 U.S.C. §151 et seq.

interLATA market is premature. TRA believes that it is critical that US West fully and completely demonstrate its compliance with Section 271 of the Telecommunications Act of 1996. US West's *Motion For Alternative Procedure to Manage the Section 271 Process* raises serious concerns over the standard which US West will be asked to meet in its application of in-region interLATA entry in South Dakota. There are no other parties to this proceeding who can address adequately the concerns of TRA or provide its member's perspective.

3. TRA wishes to intervene for the specific purpose of monitoring this proceeding and submitting comments and a brief concerning US WEST's petition for in-region interLATA market entry pursuant to Section 271 of the Act. TRA does not intend to sponsor witnesses nor engage in cross-examination of witnesses. The proposed intervention by TRA will not unduly broaden the issues involved in this proceeding or prejudice other parties.

4. TRA filed its *Response to US West's Motion for Alternative Procedure to Manage the §271 Process* in the above-captioned docket on February 25, 2000. TRA respectfully requests the Commission consider TRA's comments pursuant to the Commission's March 7, 2000 *Order Setting Intervention Deadline And Procedural Schedule* in this matter.

5. The name and address of the individual to receive documents and communications regarding this proceeding is:

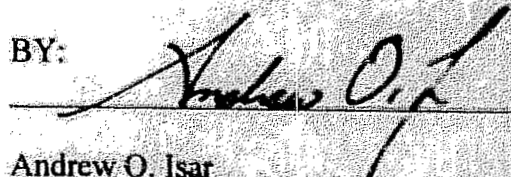
Andrew O. Isar
Director - State Affairs
Telecommunications Resellers Association
3220 Uddenberg Lane, Suite 4
Gig Harbor, WA 98335
Telephone: (253) 851.6700
Facsimile: (253) 851.6474

WHEREFORE, the Telecommunications Resellers Association respectfully requests that the Commission grant its Petition for Leave to Intervene in this proceeding.

Respectfully submitted,

Telecommunications Resellers Association

BY:


Andrew O. Isar
Director - State Affairs
Telecommunications Resellers Association
3220 Uddenberg Lane, Suite 4
Gig Harbor, WA 98335
Telephone: (253) 851.6700
Facsimile: (253) 851.6474

9 March 2000

BEFORE THE
PUBLIC UTILITIES COMMISSION OF THE STATE OF SOUTH DAKOTA

In Re: Application for InterLATA Relief of)
US West Communications, Inc. Pursuant to Section)
271 of the Telecommunications Act of 1996)
_____)

Docket No. TC-00-011

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the *Petition to Intervene of the Telecommunications Resellers Association* on all parties of record in the above-captioned proceeding, as listed in the following service list, via United States Mail, postage prepaid.

Dated this 9th Day of March, 2000 at Gig Harbor, Washington



Dena Alo-Colbeck

Andrew D. Crain, Esq.
Charles W. Steese, Esq.
Alex Duarte, Esq.
US West Law Department
1801 California Street, Suite 5100
Denver, CO 80202

Thomas J. Welk
Boyce Murphy, McDowell & Greenfield, LLP
101 North Phillips Avenue, Suite 600
Sioux Falls, SD 57117-5015

March 15, 2000

RECEIVED

MAR 15 2000

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

Mr. William J. Bullard, Executive Director
South Dakota Public Utilities Commission
State Capitol
500 East Capitol
Pierre, South Dakota 57501

Tradition

Technology

Talent

Teamwork

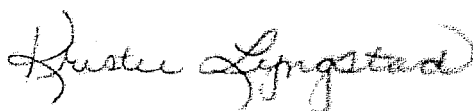
RE: TC00-011 PETITION TO INTERVENE

Dear Mr. Bullard:

9705 453rd Ave
Box 66
Sioux Falls, SD 57037-0066
Phone: 605-263-7214
Fax: 605-263-3844

On behalf of McLeodUSA Incorporated, ("McLeod"), I have enclosed one original and ten copies of the PETITION TO INTERVENE in the above referenced docket. This PETITION has been served on all parties of this docket by mail this same date.

Sincerely,



Kristie Lyngstad
Administrative Manager

Enclosures

CC: Service List

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA**

IN THE MATTER OF THE FILING BY U S WEST)
COMMUNICATIONS, INC. OF A NOTICE OF)
INTENT TO FILE A 271 APPLICATION)

DOCKET TC00-060
UTILIT

RECEIVED

PTC

PUBLIC
COMMISSION

**MCLEODUSA TELECOMMUNICATIONS SERVICES INCORPORATED'S
PETITION TO INTERVENE AS A PARTY**

McLeodUSA Telecommunications Services Incorporated ("McLeodUSA")
petitions to intervene as a party in the above-captioned docket and therefore states:

McLeodUSA is a certificated competitive local exchange carrier in South
Dakota.

McLeodUSA has a vital interest in assuring that before U S WEST be allowed
into the competitive advantage of having long distance service in South Dakota, U S
WEST must have met its obligations under the Section 271 process.

McLeodUSA Telecommunications Services Incorporated as a reseller in
South Dakota is dependent on U S WEST for facilities. U S WEST cannot be
allowed to have the freedoms it seeks until it opens up its networks in compliance
with Section 271.

McLeodUSA as a competitive provider can provide information to the
Commission on the question of U S WEST's compliance with Section 271.

As a competitive provider of local and long distance service in South Dakota,
McLeodUSA has a financial interest in the outcome of this issue. It is directly and
substantially affected by the outcome of this docket.

WHEREFORE, McLeodUSA requests that the Public Service Commission
grant McLeodUSA's petition to intervene as a party in the foregoing docket.

DATED this 14th day of March, 2000.

McLeodUSA Telecommunications Services Incorporated

BY:

A handwritten signature in dark ink, appearing to read "Barbara E. Berkenpas", is written over a horizontal line.

Barbara E. Berkenpas

William P. Heaston

Richard S. Lipman

David R. Conn

David A. Gerdes

Its attorneys

PO Box 66

Irene, SD 57037-0066

605-263-7213

CERTIFICATE OF SERVICE

I, Kristie Lyngstad, do hereby certify that on the 15th of March, 2000, a true and correct copy of the foregoing Petition to Intervene, Docket TC00-011, of McLeodUSA Incorporated, was served by first class United States mail, upon the following:

Alex Duarte
U S WEST Communications, Inc.
1801 California Street, Suite 5100
Denver, CO 80202

Thomas J. Welk, Attorney
P.O. Box 5015
Sioux Falls, SD 57117-5015


Kristie Lyngstad



Michel Singer Nelson
Senior Attorney

Room 1504
1975 Lawrence Street
Denver CO 80202-1601
303 298-2527

RECEIVED

MAR 17 2000

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

March 16, 2000

Via Overnight Delivery

Mr. Bill Bullard
Executive Director
SD Public Service Commission
500 East Capital Avenue
Pierre, SD 57501

Re: In The Matter Of the Filing by U S West Communications, Inc. of a Notice of
Intent to File a 271 Application Docket No. TC00-011

Dear Mr. Bullard:

Enclosed are an original and ten copies of AT&T Communications of the
Midwest Inc.'s Petition to Intervene in the above-referenced docket.

Please call me if there are any questions.

Sincerely,

Michel Singer Nelson
7sh

Michel Singer Nelson

Enclosures

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA**

**IN THE MATTER OF THE FILING BY U S WEST
COMMUNICATIONS, INC. OF A NOTICE OF
INTENT TO FILE A 271 APPLICATION**

)
)
)

Docket No. TC00-011

**AT&T COMMUNICATIONS OF THE MIDWEST, INC.'S
PETITION FOR LEAVE TO INTERVENE**

AT&T Communications of the Midwest, Inc. ("AT&T"), by and through its attorneys, requests, pursuant to ARSD 20:10:01:15.02, that it be permitted to intervene and be granted status as a party in the above matter. In support of its petition to intervene, AT&T states as follows:


1. On February 8, 2000, U S WEST Communications, Inc. ("US WEST") filed its Notice of Intent to File Section 271 Application and Motion for Alternative Procedure to Manage the Section 271 Process with the South Dakota Public Utilities Commission ("Commission").
2. AT&T is a telecommunications company certified by this Commission to provide local exchange and interexchange telecommunications services in South Dakota. AT&T currently provides both local and interexchange services in South Dakota.
3. As a provider and purchaser of telecommunications services in South Dakota, AT&T will be directly and substantially affected by the Commission's decisions in this matter.
4. AT&T seeks to protect its interests in providing telecommunications services in South Dakota and the interests of its customers.

5. The evidence to be presented by AT&T will be of material value to the Commission in its determination of the issues involved in this proceeding, including the public interest. Moreover, no other party can adequately address AT&T's concerns.

WHEREFORE, AT&T respectfully requests permission to intervene as a party to this proceeding and to participate to the full extent permitted under the Commission's rules and South Dakota law.

RESPECTFULLY SUBMITTED this 16th day of March 2000.

AT&T COMMUNICATIONS
OF THE MIDWEST, INC.


Michel Singer Nelson
1875 Lawrence Street, Suite 1575
Denver, CO 80202
(303) 298-6527
(303) 298-6301 (Facsimile)

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of March 2000, the original and 10 copies of AT&T Communications of the Midwest Inc.'s Petition for Leave to Intervene in Docket No. TC00-011, were delivered via overnight delivery to:

William Bullard, Jr
Executive Director
South Dakota Public Utilities Commission
500 East Capitol Avenue
Pierre, SD 57501
Fax #: 605-773-3809

and a true and correct copy was delivered via overnight delivery to:

Karen Cremer
South Dakota Public Utilities Commission
500 East Capitol
Pierre, SD 57501
Fax #: 605-773-3809

and a true and correct copy was delivered by U S Mail delivery to:

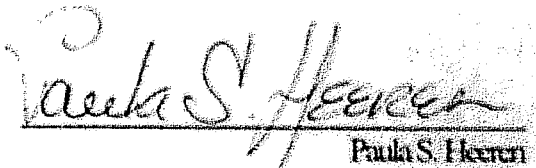
Alex Duarte
U S WEST Communications, Inc.
1801 California Street, Suite 5100
Denver, CO 80202

Richard Coit
SDITC
P.O. Box 57
Pierre, SD 57501-0057

Barbara E. Berkenpas
McLeod Telecommunications
P.O. Box 66
Irene, SD 57037-0066

Thomas H. Harmon
Tieszen Law Office
306 E. Capitol, Suite 300
P.O. Box 550
Pierre SD 57501-0550

Thomas J. Welk
Boyce, Murphy, McDowell
& Greenfield, L.L.P.
1001 North Phillips Ave., Ste. 600
Sioux Falls SD 57117-5015


Paula S. Heeren

LAW OFFICES
MAY, ADAM, GERDES & THOMPSON LLP
503 SOUTH PIERRE STREET
P. O. BOX 160
PIERRE, SOUTH DAKOTA 57501-0160

GLENN W. MARTENS 1881-1963
KARL GOLDSMITH 1885-1966
THOMAS C. ADAM
DAVID A. GERDES
CHARLES M. THOMPSON
ROBERT B. ANDERSON
BRENT A. WILBUR
TIMOTHY M. ENGEL
MICHAEL F. SHAW
NEIL FULTON

March 17, 2000

RECEIVED

MAR 17 2000

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

OF COUNSEL
WARREN W. MAY

TELEPHONE
605 224-8801
TELECOPIER
605 224-6289

E-MAIL
dag@magt.com

HAND DELIVERED

Bill Bullard
Executive Secretary
Public Utilities Commission
500 East Capitol Avenue
Pierre, South Dakota 57501

RE: IN THE MATTER OF THE FILING BY US WEST COMMUNICATIONS,
INC., OF A NOTICE OF INTENT TO FILE A 271 APPLICATION
Docket: TC00-011
Our file: 0053

Dear Bill:

Enclosed are original and ten copies of a Petition to Intervene,
which please file.

With a copy of this letter to the service list I am transmitting
a copy of the petition to intervene.

Yours truly,

MAY, ADAM, GERDES & THOMPSON LLP

BY: 

DAG:mw

Enclosures

cc/enc: Tom Simmons
Mark Niblick
Alex Duarte
Colleen Sevold
Thomas J. Welk
Andrew O. Isar
William P. Heaston/Barbara E. Berkenpas
Michel Singer Nelson

MAR 17 2000

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA**

IN THE MATTER OF THE FILING BY US WEST) TC00-011
COMMUNICATIONS, INC., OF A NOTICE OF)
INTENT TO FILE A 271 APPLICATION)

MIDCONTINENT'S PETITION TO INTERVENE

Midco Communications, Inc., doing business as Midcontinent Communications ("Midcontinent") through its undersigned counsel petitions to intervene in the captioned proceeding, as follows:

1. Midcontinent is a telecommunications company doing business in the state of South Dakota, authorized to do business both as a local exchange carrier and as an interexchange carrier.
2. Because US WEST has not yet provided a detailed explanation of its request for an alternative procedure to manage a Section 271 application, it is difficult for petitioner to state its precise interest in this proceeding. However, the provisions of Section 271 of the Telecommunications Act of 1996 govern not only the proper transition of US WEST into interLATA interexchange service, but also deal with service quality issues which are of concern to petitioner. Thus petitioner's interest in this proceeding relates both to US WEST's potential request to become an interexchange carrier under the provisions of Section 271 and service quality issues which may arise in the proceeding.

WHEREFORE Midcontinent prays that it be permitted to intervene in this proceeding and participate as a party in the proceeding.

Dated this 17th day of March, 2000.

MAY, ADAM, GERDES & THOMPSON LLP

BY: 

DAVID A. GERDES

Attorneys for Midco Communications, Inc.
d/b/a Midcontinent Communications

503 South Pierre Street

P.O. Box 160

Pierre, South Dakota 57501-0160

Telephone: (605)224-8803

Telefax: (605)224-6289

CERTIFICATE OF SERVICE

David A. Gerdes, of May, Adam, Gerdes & Thompson LLP hereby certifies that on the 17th day of March, 2000, he mailed by United States mail, first class postage thereon prepaid, a true and correct copy of the foregoing in the above-captioned action to the following at their last known addresses, to-wit:

Mr. Alex Duarte
Senior Attorney
US WEST Communications, Inc.
1801 California Street, Suite 5100
Denver, Colorado 80202

Ms. Colleen Sevoid
US WEST Communications, Inc.
125 South Dakota Avenue, 8th Floor
Sioux Falls, South Dakota 57194

Mr. Thomas J. Welk
Boyce, Murphy, McDowell & Greenfield
P.O. Box 5015
Sioux Falls, South Dakota 57117-5015

Mr. Andrew O. Isar
Director, State Affairs
Telecommunications Resellers Association
3220 Uddenberg Lane NW, Suite 4
Gig Harbor, Washington 98335

Mr. William P. Heaston
Ms. Barbara E. Berkenpas
McLeodUSA
P.O. Box 66
Irene, South Dakota 57037-0066

Ms. Michel Singer Nelson
AT&T
1875 Lawrence Street, Room 15-04
Denver, Colorado 80202-1847


David A. Gerdes

U S WEST, Inc.
1801 California Street, Suite 5100
Denver, Colorado 80202
Telephone 303 672-5871
Facsimile 303 295-7069
aduarte@uswest.com

Alex M. Duarte
Senior Attorney



VIA FACSIMILE & FEDERAL EXPRESS

RECEIVED

March 17, 2000

MAR 20 2000

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

William Bullard, Jr., Executive Director
South Dakota Public Utilities Commission
500 E. Capitol Avenue
Pierre, South Dakota 57501-5070

FAX Received MAR 17 2000

RE: Docket No. CT00-011

In Re: Application for interLATA Relief of U S WEST Communications Pursuant
to Section 271 of the Telecommunications Act of 1996

Dear Mr. Bullard:

Enclosed are an original and ten copies of U S WEST Communications, Inc.'s Response
to the Commission's Request for Additional Information Concerning Alternative Procedure to
Manage the Section 271 Process.

The documents will also be forwarded electronically.

Please stamp and return the enclosed extra copy of this letter in the enclosed addressed,
postage paid envelope.

Sincerely,

Marjorie Herlth
Secretary to Alex Duarte

Enclosures
/moh



Proud Sponsor
38 USC 380

RECEIVED

MAR 20 2000

STATE OF SOUTH DAKOTA
PUBLIC UTILITIES COMMISSION

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

IN RE: APPLICATION FOR interLATA)
RELIEF OF U S WEST COMMUNICATIONS)
PURSUANT TO SECTION 271 OF THE)
TELECOMMUNICATIONS ACT OF 1996)

Docket No. TC00-011

FAX Received MAR 17 2000

U S WEST COMMUNICATIONS' RESPONSE TO THE COMMISSION'S REQUEST
FOR ADDITIONAL INFORMATION CONCERNING ALTERNATIVE PROCEDURE
TO MANAGE THE SECTION 271 PROCESS

INTRODUCTION

On February 8, 2000, U S WEST Communications, Inc. ("U S WEST") asked the South Dakota Public Utilities Commission ("Commission") to initiate a docket to (1) request an alternative procedure for consideration of its compliance under Section 271 of the Telecommunications Act of 1996, (2) allow U S WEST to submit the U S WEST Regional Oversight Committee ("ROC") Operational Support Systems ("OSS") Master Test Plan to the Commission for consideration in early second quarter 2000, and (3) allow parties to participate in proceedings to consider each aspect of Section 271, including each item on the 14-point checklist in Section 271, beginning fourth quarter 2000. U S WEST's application and motion for an alternative procedure specifically identified two potential options for processing this docket: (1) collaboration with another state or states, and (2) taking administrative notice of the progress made in 271 workshops in other states. Thereafter, on March 7, 2000, the Commission ordered U S WEST to explain in more detail its request for an alternate procedure for consideration of its Section 271 compliance. U S WEST is pleased to provide more detail on the process it envisions for processing this docket, which it sets forth below.

DISCUSSION

I. THE COMMISSION SHOULD ADOPT A SCHEDULE AND PROCESS THAT FACILITATES EFFICIENT CONSIDERATION OF U S WEST'S SECTION 271 SATISFACTION

A. Procedural Schedule

As explained during the February 29, 2000 Commission meeting, U S WEST respectfully requests that the Commission formally adopt the ROC OSS Master Test Plan shortly after its completion, which is anticipated in the next few weeks. The issue the Commission must decide is how to process the remainder of this docket. U S WEST encourages the Commission to join the workshop process with another state or states in which U S WEST has already requested that formal workshops begin. This process would help all parties involved – U S WEST, intervenors and the Commission and Staff alike – with any potential resource issues. If the Commission elects to collaborate with another state, it should be mindful of the current workshop schedules. At this time, U S WEST has asked all of the following state commissions to organize workshops:

State	Workshops Scheduled Start
Colorado	Procedural Conference - 3/15/00
Iowa	TBD
Washington	6/21/00
Minnesota	TBD
Utah	TBD
Oregon	TBD

If the Commission is not prepared to join one of the above state processes, U S WEST requests that the Commission defer a decision concerning the type of procedure it will adopt until the fourth quarter of 2000. U S WEST expects to make a great deal of progress toward achieving Section 271 compliance by October 2000. This progress will, in part, result from the execution of the ROC OSS Master Test Plan, and will, in part, result from progress that occurs in workshops being held throughout U S WEST's region. U S WEST has already made substantial progress on several checklist items in Arizona, obtaining consensus with intervenors on six of

the seven checklist items presented to date. U S WEST is incorporating the changes that it has agreed into its standard business practices and contracts. Thus, these issues should be resolved throughout the region. It is entirely possible, therefore, that most of the issues that can be resolved through workshops will be resolved by the fourth quarter of 2000. If that is the case, additional workshops would not prove beneficial. Since the exact type and amount of progress to be made during the second and third quarters of 2000 remain to be determined, it would be speculative for U S WEST to recommend a specific approach for the fourth quarter at this time.

Again, irrespective of how the Commission elects to process the remainder of this docket, U S WEST renews its request that the Commission promptly confirm the adequacy of the ROC's OSS Test Plan. Such confirmation is necessary to ensure that the OSS test addresses the factors and contains the scenarios the Commission determines are necessary, as well as to ensure that performance indicators exist to measure the operations and functions the Commission determines are necessary.

B. Process

If the Commission desires to consider U S WEST's Section 271 compliance by collaborating with one or more state commissions through a series of formal workshops,

U S WEST proposes the following process.

- | |
|--|
| <ul style="list-style-type: none">• U S WEST files sworn testimony on the 271 issues scheduled for the workshop. |
| <ul style="list-style-type: none">• 20 days thereafter, interested parties can submit sworn testimony on the 271 issues scheduled for the workshop; |
| <ul style="list-style-type: none">• 10 days before each workshop, each party can submit written rebuttal comments on the 271 issues scheduled for the workshop; |
| <ul style="list-style-type: none">• 20 days after each workshop, the party overseeing the workshop will submit proposed findings to each participating commission addressing the 271 issues discussed in the workshop; and |
| <ul style="list-style-type: none">• 10 days after submission of the proposed findings, parties can submit written |

For this process to work as it should, the Commission should require parties to submit all known evidence supporting the assertions in their written comments that predate workshops. This process is necessary to provide parties with a full opportunity to investigate issues in advance of the workshop and fully discuss issues at the workshop. This process should ensure that the workshops are as productive as possible. Of course, U S WEST would not object to oral comments, documents, or exhibits not contained in written comments if they are new or they are necessary to address materials in another party's rebuttal comments.

As evidenced by these suggestions, this process is modeled after the process used in New York and Texas, and U S WEST's own experience in Arizona. U S WEST envisions a process in which it submits written testimony and supporting information/documentation establishing that it satisfies a particular checklist item in each participating state; intervenors then submit written testimony and supporting information/documentation identifying their concerns; parties participate in workshops and discuss their concerns; parties resolve as many issues as possible during the workshops; the party running the workshop tracks areas of disagreement, prepares a report following each workshop for each participating Commission, and submits this report for each Commission's consideration; and each Commission then independently decides whether U S WEST has satisfied a particular 271 issue. This process would be repeated until each participating Commission has fully evaluated each aspect of Section 271.

C. Principles

The FCC has also strongly encouraged states to create a process that is open to all parties. Thus, the Commission should consider including the following principles irrespective of the procedural alternative that it selects.

PURPOSE: The workshops should provide a forum for all affected parties to educate the Commission and openly discuss each aspect of Section 271, as well as the affected portions of the SGAT. The parties should be required to raise all known disputed issues at that time.

RECORD: The workshops should be transcribed so a formal record is created.

OPENESS: The workshops should provide a forum for all parties to express their opinions. All parties should have the opportunity to file written comments and present oral comments on each 271 item. No party should be excluded from any discussion or aspect of the docket.

Use of these basic tenets should ensure that the process allows a full airing of the issues; allows full participation in the process by all parties; creates a thorough record for the FCC's consideration; and allows the Commission to resolve this important docket in a timely fashion.

II. THE TELECOMMUNICATIONS RESELLERS ASSOCIATION'S CONCERNS WITH THE PROCESS WHICH U S WEST PROPOSES ARE WITHOUT MERIT

Over the past two and one-half years, the FCC and state commissions throughout the country have all recognized that collaborative workshops, and not adversarial hearings, are the most effective means to process Section 271 proceedings. The Telecommunications Resellers Association ("TRA") does not dispute the benefits of collaborative workshops. Instead, it asserts that: (1) U S WEST should be required to file a "complete application" because workshops will not generate a complete record, and (2) it would be dangerous for the Commission to determine U S WEST's compliance from a regional view alone. TRA's assertions are misplaced.

A. The Proposed Collaborative Workshops Will Generate a Comprehensive Record for this Commission and the FCC to Evaluate

TRA recommends that the Commission require U S WEST to file a "complete application" before workshops commence. TRA rationalizes that this suggested procedure will

ensure that the Commission and the FCC have a complete record to evaluate. TRA mistakenly assumes that U S WEST does not plan to file detailed testimony. As indicated above, however, if the Commission decides to collaborate with one or more state commissions, U S WEST will file detailed testimony well in advance of each workshop on the issues scheduled to be discussed in the workshop.

U S WEST does not propose workshops without testimony. U S WEST understands that it bears the initial burden of proof and therefore must provide the Commission with detailed evidence. U S WEST merely suggests that the best method for satisfying its burden of proof and creating a record containing detailed evidence may depend upon the nature of the procedural alternative selected. Alternatively, if the Commission chooses to wait until the fourth quarter of 2000, taking administrative notice of the workshops in other states where U S WEST has presented detailed testimony, this should substantially narrow the issues the Commission must decide. The Commission would then only have to decide the disputed issues.

If the Commission chooses to participate in a series of collaborative workshops with one or more state commissions, U S WEST proposes to file testimony on a rolling basis. Experience has shown that filing a "complete application" leads to unnecessary work, delay, and inefficiency for all involved. In each of the three states in which U S WEST currently has a 271 application pending, it initiated the process with many thousands of pages of testimony. However, by the time most of the testimony was (or will be) scrutinized, it was so out of date that U S WEST, and consequently the intervenors, had to file supplemental testimony to make the original testimony current. This need for supplemental testimony has occurred in Montana, Nebraska and Arizona.¹

¹ For example, Arizona started its checklist item workshops 10 months after U S WEST had filed its complete application. Consequently, much of the testimony U S WEST filed will have to be updated to account for legal developments and changes in the parties' respective business positions. This scenario not only generates additional work for U S WEST, the intervenors, and Commission staff, but also has had to review and analyze thousands of pages of outdated testimony.

The recent Bell Atlantic decision in New York supports this position as well. Bell Atlantic did not complete its New York filing with the FCC until after the workshop process was complete. Moreover, Bell Atlantic submitted its application to the FCC within weeks of completing the workshops. At that time it filed a comprehensive record containing its testimony, updated to reflect any positions agreed to in the workshops, supporting documentation, and workshop transcripts.

U S WEST's proposal addresses intervenor complaints that U S WEST's application and motion place an undue burden on resources. By sharing the obligations associated with considering U S WEST's Section 271 compliance with one or more other state commissions, U S WEST, intervenors, Commissions and Commission Staff are spared the burden of repeating workshop discussions. Instead, the resources of all parties are freed to focus upon the aspects of U S WEST's Section 271 application that each party considers most compelling. Finally, by handling the production of direct and rebuttal testimony on a rolling basis, U S WEST, intervenors, and Commission Staffs are spared the burden of having to prepare and update large amounts of testimony and supporting documentation addressing U S WEST's satisfaction of various checklist items. Instead, parties can focus upon responding to the checklist item(s) at issue in the scheduled workshop. Not only will this procedure reduce the workload of all involved, but it should also improve the quality of all parties' comments by allowing them to focus upon the checklist items at issue in a particular workshop.

B. U S WEST's proposed process would meet the FCC's expectations

The FCC has consistently encouraged state commissions to develop comprehensive factual records² and has promised to "consider carefully state determinations of fact that are

² See, e.g., *Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services In Michigan*, Memorandum Opinion and Order, ET Docket No. 92-137, Amendment Number and Date: 0/0/1997, Aug 19, 1997 ("Ameritech Michigan Order").

supported by a detailed and extensive record."³ In the case of Bell Atlantic's Section 271 application in New York, the FCC gave the New York Commission's recommendation "substantial weight" because of the "rigorous collaborative process" utilized. As part of this rigorous process, the FCC cited the New York Commission's collaborative sessions and technical workshops in which all parties participated to clarify or resolve issues.⁴ U S WEST encourages the Commission to create exactly the type of "detailed and extensive record" that the FCC desires by collaborating with another state or states in which U S WEST has already requested formal workshops.

CONCLUSION

U S WEST is sensitive to the interests of the Commission, Commission Staff, CLECs, and South Dakota consumers in finally realizing the full promise of the Telecommunications Act of 1996. Section 271 approval will increase competition in both the local market and interLATA markets. It is true that Section 271 applications involve significant undertakings for the Commission, U S WEST, and intervenors alike. The return on these undertakings for all concerned parties and for South Dakota consumers by using the procedures that U S WEST outlines here clearly outweighs any potential strain on resources.

The Commission asked U S WEST to provide additional detail concerning the procedure U S WEST proposes the Commission utilize to consider U S WEST's Section 271 application. U S WEST has suggested two possible approaches. If the Commission is prepared to begin Section 271 consideration immediately, then U S WEST suggests that the Commission

³ *Application of BellSouth Corporation Pursuant to Section 271 of the Communications Act of 1934, as amended to Provide In-Region InterLATA services in Louisiana*, CC Docket No. 98-121, Memorandum Opinion and Order, FCC 98-271, ¶¶ 9 (Oct. 13, 1998) ("BellSouth Louisiana Second Order").


⁴ *Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act To Provide In-Region InterLATA Service in the State of New York*, CC Docket No. 99-295, Memorandum Opinion and Order, ¶¶ 6 - 13 and 20 (Oct. 22, 1999) ("Bell Atlantic New York Order").

collaborate with one or more state commissions in conducting workshops consistent to the process and principles described above. Otherwise, U S WEST suggests that the Commission postpone any decision until the fourth quarter of 2000, at which time all parties should be better positioned to select the procedural mechanism (taking administrative notice of the workshops and records developed in other states, conducting a limited number of workshops, or conducting an evidentiary proceeding) that provides for the creation of a comprehensive record in the most effective, efficient, and economical manner.

Dated this 17th day of March, 2000.

Respectfully submitted,

By:


Andrew D. Cram
Charles W. Steese
Alex M. Duarte
U S West Law Department
1801 California Street, Suite 5100
Denver, CO 80202

Thomas J. Welk
Boyer, Murphy, McDowell & Greenfield
101 North Phillips Avenue, Suite 600
Sioux Falls, SD 57117-5015

Attorneys for U S WEST Communications,
Inc.

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of March, 2000, an original and ten (10) copies of **U S WEST COMMUNICATIONS, INC.'S RESPONSE TO THE COMMISSION'S REQUEST FOR ADDITIONAL INFORMATION CONCERNING ALTERNATIVE PROCEDURE TO MANAGE THE SECTION 271 PROCESS** was fax filed and forwarded via Federal Express, to the following:

William Bullard, Jr., Executive Director
South Dakota Public Utilities Commission
500 East Capitol
Pierre, South Dakota 57501
(Facsimile: 605-773-3809)

In addition, a true and correct copy was placed in the United States mail, postage prepaid, addressed as follows:

Karen Cremer
South Dakota Public Utilities Commission
500 East Capitol
Pierre, SD 57501

Andrew M. Jones, Esq.
Counsel for Sprint
8140 Ward Parkway, SE
Kansas City, MO 64114

Michel Singer
AT&T Communications
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Andrew O. Isar
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U S WEST Communications, Inc.

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RECEIVED

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

OF COUNSEL
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TIMOTHY L. THOMAS*
JOHN K. NOONEY*
LONNIE R. BRAUN
PENNY TIBKE PLATNICK*
GREGORY J. BERNARD
RYAN J. TAYLOR*

March 21, 2000

[e-mail: gjbernard@mtmlaw.com]

*ALSO LICENSED IN WYOMING
*ALSO LICENSED IN MINNESOTA
*ALSO CERTIFIED PUBLIC ACCOUNTANT

FAX Received MAR 21 2000

VIA FACSIMILE (605-773-3809) AND U.S. MAIL

William Bullard, Jr.
Executive Director
Public Utilities Commission
500 E. Capital
Pierre, SD 57501

Re: Application for interLATA Relief of U.S. West Communications, Inc. pursuant
to Section 271 of the Telecommunications Act of 1996
Docket No. TC00-011
Our File No. BH-1231

Dear Mr. Bullard:

Please find enclosed Black Hills FiberCom, L.L.C.'s Petition for Leave to Intervene in PUC Docket No. TC00-011, *In Re: Application for interLATA Relief of U.S. West Communications, Inc. Pursuant to Section 271 of the Telecommunications Act of 1996*. This Petition is being filed by facsimile and the original and ten copies of the same will follow via U.S. Mail. If you have any questions, please don't hesitate to call me or John Nooney.

Sincerely,



Gregory J. Bernard

GJB:jmh
Enclosures

cc: Dan Landguth
Ev Hoyt
Kyle White

BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF SOUTH DAKOTA

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

IN RE: APPLICATION FOR interLATA)
RELIEF OF U S WEST)
COMMUNICATIONS, INC. PURSUANT)
TO SECTION 271 OF THE)
TELECOMMUNICATIONS ACT)
OF 1996)

Docket No. TC00-011

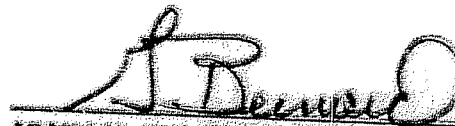
**PETITION FOR LEAVE
TO INTERVENE**

Pursuant to ARSD 20:10:01:15.02, Black Hills FiberCom, L.L.C. ("FiberCom") hereby petitions the Commission for leave to intervene in PUC Docket No. TC00-011 *in the Matter of the Filing by U S West Communications, Inc. of Notice of Intent to File a 271 Application.*

FiberCom's interest in the preceding is supported by the following facts:

1. FiberCom is a facilities-based competitive local exchange carrier providing telecommunications service, including interstate long distance service, in South Dakota.
2. The Commission's role in advising the Federal Communications Commission about the state of local exchange competition and U S West's conformance to Section 271's fourteen point competitive checklist is crucial to the FCC's determination whether U S West will be granted permission to enter South Dakota's interLATA long distance market.
3. If and when U S West is granted permission to enter into the state's interLATA long distance market, FiberCom and U S West will be direct competitors in the markets they serve concurrently.

Dated this 11th day of March, 2000.



JOHN K. NOONEY

GREGORY J. BERNARD

Attorneys for Black Hills FiberCom, L.L.C.

MORRILL THOMAS NOONEY & BRAUN, LLP

625 Ninth Street, 8th Floor

P. O. Box 8108

Rapid City, SD 57709-8108

(605) 348-7516

CERTIFICATE OF SERVICE

I, Gregory J. Bernard, attorney for Black Hills FiberCom in the above-entitled matter, do hereby certify that a true and correct copy of the within and foregoing Petition for Leave to Intervene was mailed by first-class mail, postage prepaid thereon, to the following:

Thomas J. Welk

Attorney for U S West Communications, Inc.

Boyce, Murphy, McDowell & Greenfield, L.L.P.

101 North Phillips Avenue, Suite 600

Sioux Falls, SD 57117-5015

by depositing the same in the United States Mail at Rapid City, South Dakota, this 11th day of March, 2000.



Gregory J. Bernard



Andrew M. Jones
Attorney
State Regulatory Affairs Central Region

8160 Ward Parkway
Kansas City, MO 64114
Mailstop: MDCMCD0801
Voice: 913 624-4285
Fax: 913 624-4681
andrew.jones@mid.sprint.com

March 27, 2000

William Bullard, Executive Director
South Dakota Public Utilities Commission
500 East Capitol Street
Pierre, SD 57501-5070

via facsimile and U. S. Mail

RECEIVED

MAR 28 2000

Re: TC00-011; U S WEST's Section 271 Application

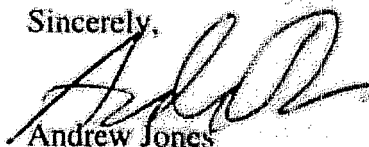
SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

Dear Mr. Bullard:

FAX Received MAR 27 2000

Please find enclosed Sprint's Application to intervene in the above matter. Thank you for your consideration, and please call with any questions.

Sincerely,



Andrew Jones

Enclosure

RECEIVED

MAR 7 2000

BEFORE THE PUBLIC UTILITIES COMMISSION
OF SOUTH DAKOTA

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

IN THE MATTER OF THE FILING BY
U S WEST COMMUNICATIONS, INC.
OF A NOTICE OF INTENT TO FILE
A 271 APPLICATION.

TC00-011

FAX Received MAR 11 2000

SPRINT'S APPLICATION FOR
INTERVENTION

APPLICATION OF SPRINT FOR INTERVENTION

Applicant Sprint Communications Company L. P. (Sprint) hereby requests intervenor status in the above docket. Sprint has substantial interests in the above proceeding, which interests cannot be fully protected without Sprint's participation herein. Sprint participated telephonically in the Commission's recent hearing in this matter. No party would be prejudiced by Sprint's entry.

For the above reasons, Sprint respectfully requests that the Commission grant Sprint party status as an intervenor in this matter.

Respectfully submitted this 27 day of March, 2000.

SPRINT COMMUNICATIONS COMPANY L. P.

By: 

Andrew M. Jones, Esq.
8140 Ward Parkway, SE
Kansas City, MO 64114
(913) 624-4285
(913) 624-5681 (fax)



Michel Singer Nelson
Senior Attorney

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1875 Lawrence Street
Denver, CO 80202-1847
(303) 298-6527

March 31, 2000

RECEIVED

APR 03 2000

**SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION**

Via Facsimile and Overnight Delivery

Mr. Bill Bullard
Executive Director
SD Public Service Commission
500 East Capital Avenue
Pierre, SD 57501

FAX Received MAR 31 2000

Re: In The Matter Of the Filing by U S West Communications, Inc. of a Notice of
Intent to File a 271 Application Docket No. TC00-011

Dear Mr. Bullard:

Enclosed are an original and ten copies of the Comments of AT&T
Communications of the Midwest Inc. in the above-referenced docket.

Please call me if there are any questions.

Sincerely,

Michel Singer Nelson
7sh

Michel Singer Nelson

Enclosures

RECEIVED

APR 03 2000

**STATE OF SOUTH DAKOTA
PUBLIC UTILITIES COMMISSION**

**SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION**

FAX Received MAR 31 2000

IN RE: APPLICATION FOR interLATA RELIEF)
OF U S WEST COMMUNICATIONS)
PURSUANT TO SECTION 271 OF THE)
TELECOMMUNICATIONS ACT OF 1996)

Docket No. TC00-011

COMMENTS OF AT&T COMMUNICATIONS OF THE MIDWEST, INC.

AT&T Communications of the Midwest, Inc. ("AT&T") hereby responds to U S WEST Communications Inc.'s ("U S WEST") Notice of Intent to File Section 271 Application and Motion for Alternative Procedure to Manage the Section 271 Process ("Notice") and U S WEST's Response to the Commission's Request for Additional Information Concerning Alternative Procedure to Manage the Section 271 Process ("Response"). U S WEST, in its Notice, asks the South Dakota Public Utilities Commission ("Commission") to (1) allow U S WEST to submit the Regional Oversight Committee ("ROC") Master Test Plan for consideration in early second quarter 2000, and (2) allow parties to participate in proceedings to consider each aspect of Section 271, including each item on the 14 point checklist, beginning fourth quarter 2000, or, as requested in the Response, (3) defer determining which procedure should be followed to consider Section 271 issues.

In its Response, U S WEST further encourages the Commission to adopt the ROC OSS Master Test Plan shortly after its anticipated completion within the next few weeks and

to join the workshop process with another state or states in which U S WEST has requested that formal workshops begin.

I. INTRODUCTION

U S WEST's Application should be complete upon filing in order to provide a basis for proceeding, via workshops or otherwise. U S WEST has not filed an application, any supporting testimony, affidavits or documentation that demonstrates that U S WEST is in compliance with Section 271 of the federal Telecommunications Act of 1996¹ (the "Act"), Section 272 of the Act, or that a 271 application would be in the public interest. Nor has U S WEST filed the Statement of Generally Available Terms and Conditions ("SGAT") that it purportedly intends to rely on to demonstrate compliance with Section 271 of the Act. Therefore, regardless of the procedure adopted, any meaningful discussions regarding U S WEST's compliance with Section 271 are precluded.

Furthermore, U S WEST, Inc. is in the process of merging with Qwest. In response to data requests seeking information regarding U S WEST's post-merger policies on numerous Section 271-related issues, U S WEST and Qwest have consistently maintained that the surviving corporation has not established *any* policies on issues related to Section 271. It is particularly premature to expend resources collaborating if, ultimately, Qwest changes U S WEST's policies and the SGAT. Thus, unless U S WEST can provide assurances that the positions it advances will be binding on the merged utility, there is no reason to move forward at this time.

Even if the Commission were to require U S WEST to file its application, supporting testimony and its SGAT and subsequently elected to proceed with workshops, it makes no

¹ Pub. L. No. 104-104, 110 Stat. 56 (1996), 47 U.S.C. §151 et. seq.

sense to hold workshops on Operations Support System ("OSS")-related issues prior to the satisfactory completion of OSS testing. Completion of OSS testing is necessary from both a practical and resource perspective. The OSS issues are integral to the OSS-related checklist items, and nothing is gained reviewing OSS-related checklist items before testing is satisfactorily completed.

The Federal Communications Commission ("FCC") is relying on the states to compile and provide the FCC with a complete record on all Section 271 issues. That goal can only be achieved by requiring U S WEST to file its testimony and SGAT prior to the commencement of any discussions of workshops or procedures. By requiring U S WEST to file a complete application, intervenors would have an opportunity to conduct discovery prior to workshops and hearings. It is the general rule that the party filing an application file its case prior to establishing a procedural order and schedule, and that parties have an opportunity to conduct discovery. There is no reason to deviate from the general rule.

II. DISCUSSION

A. U S WEST SHOULD BE REQUIRED TO FILE ITS DIRECT CASE PRIOR TO THE CREATION OF A PROCEDURAL SCHEDULE.

U S WEST does not provide an application, any testimony or affidavits or supporting documentation. It is impossible to evaluate whether U S WEST meets the requirements of Section 271, complies with Section 272 of the Act, or whether an application is in the public interest. Nor has U S WEST filed the SGAT, which it purportedly intends to rely on to demonstrate it meets the requirements of Section 271 of the Act. See Notice at 5.

The FCC has commented on the need for a regional Bell Operating Company's ("RBOC") application to be complete when filed. "[W]e expect that a section 271

application, *as originally filed*, will include *all the factual evidence* on which the applicant would have the Commission rely in making its findings thereon.”² The FCC reaffirmed this requirement in the *Ameritech Michigan Order*.³ The “application must be complete on the day it is filed.”⁴

There are very sound reasons for requiring the application to be complete on the day it is filed: 1) the parties have the opportunity to see the evidence U S WEST is relying on to demonstrate compliance with Section 271 of the Act; 2) U S WEST has, and at all time retains, “the ultimate burden of proof that its application satisfies section 271;”⁵ 3) “[p]aper promises do not, and cannot, satisfy a BOC’s burden of proof;”⁶ 4) the FCC has imposed new obligations on U S WEST that are not contained in any of its existing interconnection agreements; and 5) waiting to see U S WEST’s evidence in a piecemeal fashion will prolong, not shorten the process.

1. U S WEST Should be Required to Clearly Identify and Describe the Evidence upon which it Relies to Meet the Requirements of Section 271.

The FCC commented on the need for the RBOC to clearly describe the evidence upon which it relies. “When a BOC presents factual evidence and arguments in support of its application for in-region, interLATA entry, we expect that such evidence will be clearly described and arguments will clearly be stated in its legal brief with appropriate references to supporting affidavits.”⁷ The FCC stated that the applicant, and the commenting parties, have

² *Procedures for Bell Operating Company Applications Under the New Section 271 of the Communications Act*, Public Notice, 11 FCC Rcd 19708, 19709-10 (1996) (emphasis added).

³ *Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended To Provide In-Region, InterLATA Services in Michigan*, CC Docket 97-137, Memorandum Opinion and Order, FCC 97-298 (rel. Aug. 19, 1997), ¶ 49. (“*Ameritech Michigan Order*”)

⁴ *Id.*, ¶ 50.

⁵ *Id.*, ¶ 44.

⁶ *Id.*, ¶ 55.

⁷ *Id.*, ¶ 60.

"an obligation to present evidence and arguments in a clear and concise manner."⁸

Requiring the RBOC to present factual evidence in a clear and concise manner allows the parties and the agency to determine what evidence the RBOC is relying on to meet a specific obligation of Section 271, without having to sift through all the evidence to determine which evidence the RBOC is submitting to support its claim,⁹ and allows the parties at the state level to conduct discovery of the evidence submitted.

Furthermore, an interested party should not be required to intervene and monitor the evidence U S WEST submits at its choosing and based on its self-imposed schedule. A party should not be required to endure the entire Section 271 process to determine what, if any, issues it may have with U S WEST's application or supporting evidence.

2. U S WEST Has and at All Times Retains, the Ultimate Burden of Proof.

The FCC has stated that the RBOC at all times retains the ultimate burden of proof.¹⁰ Because the burden of proof is on U S WEST, it should be required to file its complete case, including its SGAT, at the initiation of the proceeding.

AT&T is concerned that U S WEST is attempting to shift the burden of proof to the intervenors. Allowing U S WEST to open a docket before filing an application, and then allowing U S WEST to file its application piecemeal, places the burden on the intervenors to point out the deficiencies of U S WEST's Application and evidence in support of its Application. It also places the burden on the CLECs to verify that the SGAT provides CLECs with the rights they are entitled to under the Act and the FCC's regulations implementing the Act. The FCC has stated that the RBOC retains the burden of proof, even

⁸ *Id.*

⁹ The FCC also stated that, "when a BOC submits factual evidence in support of its application, it bears the burden of ensuring that the significance of the evidence is readily apparent." *Id.* ¶ 61.

¹⁰ *Ameritech Michigan Order*, ¶ 44.

if no party opposes the RBOC application.¹¹ It is not the duty of CLECs to demonstrate non-compliance with Section 271; it is the duty of U S WEST to demonstrate compliance.

3. Paper Promises Do Not, and Cannot, Satisfy an RBOC's Burden of Proof.

The FCC has stated that paper promises do not, and cannot, satisfy an RBOC's burden of proof. An RBOC must demonstrate that it has a "concrete and legal obligation" to furnish a checklist item.¹² Compliance cannot be "contingent on future behavior."¹³ Furthermore, "[i]f after the date of filing, the BOC concludes that additional information is necessary, or additional actions must be taken, in order to demonstrate compliance with the requirements of section 271, then the BOC's application is premature and should be withdrawn."¹⁴ The FCC's holdings are equally applicable here. U S WEST should file a complete case that demonstrates that it complies with Section 271 of the Act.

4. The FCC has Imposed Additional Obligations on U S WEST That Are Not Reflected in the Interconnection Agreements.

Since U S WEST's last Section 271 filing in Arizona, the FCC has issued a number of orders that impose additional obligations on U S WEST. Most, if not all, of these new obligations are not contained in existing interconnection agreements. Many are not contained in U S WEST's most recent SGATs filed in other states.

ILECs are required to deaverage unbundled network elements by May 1, 2000.¹⁵

ILECs are required to provide unbundled access to a new network element, the high

¹¹ *Ameritech Michigan Order*, ¶ 43.

¹² *Id.*, ¶ 110.

¹³ *Id.*, ¶ 55.

¹⁴ *Id.*

¹⁵ *Deaveraged Rate Zones for Unbundled Network Elements*, CC Docket Nos. 96-45 and 96-98, Public Notice DA 99-2554 (rel. Nov. 17, 1999).

frequency portion of the local loop, also known as line sharing.¹⁶ The FCC also recently held that the ILEC must resell business and residential DSL services at a wholesale discount.¹⁷

On November 5, 1999, the Commission issued its *Third Report and Order* on remand from the United States Supreme Court's decision in *AT&T v. Iowa Utils. Bd.*, 119 S.Ct. 721 (1999).¹⁸ The FCC added new requirements for unbundling. ILECs are now required, among other things, to provide the unbundled network elements in existing combinations including the UNE Platform ("UNE-P"), as well as unbundled subloops and dark fiber as network elements.¹⁹

As stated earlier, U S WEST has the burden of proof, paper promises are not sufficient and U S WEST must demonstrate it has concrete legal obligations to provide the items required by Section 271 and the Act. Therefore, U S WEST must demonstrate that it complies with the Act, these orders, as well as all other FCC orders, prior to the Commission and the parties expending considerable time and resources on evaluating U S WEST's compliance with Section 271. As the FCC has stated, an RBOC must demonstrate that it meets *all* the obligations of Section 271 to obtain a favorable decision.²⁰ Accordingly, unless U S WEST amends the existing interconnection agreements or provides a fully-compliant SGAT and permits competitive local exchange carriers to pick specific, selected provisions and incorporate those provisions in their interconnection agreements, it makes no sense to proceed with any review of U S WEST's compliance with Section 271 of the Act.

¹⁶ *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, and *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order in CC Docket No. 98-147, Fourth Report and Order in CC Docket No. 96-98, FCC 99-353 (rel. Dec. 9, 1999), ¶ 4.

¹⁷ *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, Second Report and Order, FCC 99-330 (rel. Nov. 9, 1999), ¶ 19.

¹⁸ *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket 96-98, Third Report and Order, FCC 99-238 (rel. Nov. 5, 1999).

¹⁹ *Id.*, ¶¶ 196-199, 205-207.

²⁰ *Ameritech Michigan Order*, ¶¶ 105-106; 47 U.S.C. § 271(d)(3)(A)(i).

5. Piecemeal Filings by U S WEST will Prolong, not Shorten, the Process.

As stated in U S WEST's Reply, U S WEST suggests that it file its case or evidence on each checklist item prior to the workshops on that particular checklist item. This would be disadvantageous to both the Commission and intervenors for a number of reasons: first, it limits the amount of time that the Commission and intervenors have to review U S WEST's filing on each checklist item; second, discovery, which has not been addressed in either the Notice or the Response, would have to be conducted piecemeal; and third, CLECs interested in only certain checklist items will have to closely monitor the case to ensure they do not miss the opportunity to comment on a particular checklist item.

If U S WEST is permitted to file comments as suggested in its Response, the Commission and intervenors will have limited time to review U S WEST's comments, review the SGAT, and file their comments on U S WEST's compliance with a particular checklist item. CLECs should not be disadvantaged by a process that precludes meaningful review of U S WEST's evidence.

U S WEST does not make any mention of discovery in its Notice or Response. Intervenors should have an opportunity to conduct discovery. Most of the discovery could be conducted after U S WEST files a complete application. However, under U S WEST's approach, apparently, discovery would have to be conducted by the CLECs prior to the CLECs filing comments on each checklist item, twenty (20) days after U S WEST's filing of sworn testimony on a particular issue scheduled for a workshop. Based on previous experience with U S WEST, multiple discovery disputes are likely under this scenario, thus prolonging the proceeding. It does not appear remotely practical to set a schedule in advance to deal with checklist items, Section 272 and the public interest under the procedure suggested by U S WEST.

All of the foregoing reasons weigh in favor, and require, U S WEST to file a complete application with all supporting affidavits, testimony and exhibits prior to commencing any review of U S WEST's compliance with Section 271, Section 272 and the public interest. If U S WEST intends to rely on a SGAT to demonstrate compliance, it should be required to file it in advance also and it should specify those checklist items as to which it is relying on the SGAT and those as to which it is relying on interconnection agreements.

The Commission's existing procedures provide that U S WEST shall file a complete Application. In its recent Minnesota filing, even U S WEST proposes to file its SGAT prior to any workshops.²¹ No other state that AT&T is aware of has started workshops or a collaborative process prior to the RBOC filing its complete case. And wisely so, because in the absence of facts upon which to focus the proceeding, workshops will be a waste of time. In Arizona, the only state in the U S WEST region conducting workshops, U S WEST was required to file its complete case prior to any review of U S WEST's Application and the commencement of the collaborative.

The FCC has commented on the role of the states in compiling a complete record and the importance of such a record in aiding the FCC in review of Section 271 applications.²² In the FCC's recent order granting Bell Atlantic Section 271 approval in New York, the FCC gave great weight to the New York Commission's findings based, in large part, on the process the New York Commission used to evaluate Bell Atlantic's Section 271 application.²³ This Commission should not adopt procedures that may preclude full

²¹ Minnesota Application at 17.

²² *Ameritech Michigan Order*, ¶ 30.

²³ *Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region InterLATA Service in the State of New York*, CC Docket No. 99-295, Memorandum Opinion and Order, FCC 99-404 (rel. Dec. 22, 1999), ¶¶ 6-13 & 20.

consideration of U S WEST's Application or result in an incomplete record. On the contrary, the Commission should do all it can to compile an open and complete record.

B. U S WEST'S REQUEST IS PREMATURE UNTIL QWEST AND U S WEST CONFIRM POST-MERGER POLICIES.

U S WEST, Inc. is in the process of merging with Qwest Communications International, Inc. ("Qwest"). AT&T is participating in the merger proceedings in a number of states. AT&T has asked U S WEST and Qwest what the post-merger companies' policies will be on a number of issues directly related to U S WEST's obligations under Section 271 of the Act. U S WEST and Qwest have stated that no policies have been established for the post-merger companies. Also, U S WEST and Qwest have provided no assurance that the existing policies of U S WEST will not change. Therefore, there is no basis to assume that the policies, positions and SGAT that U S WEST has adopted and is presently relying on to demonstrate compliance with Section 271 will not change after the conclusion of the merger.

The merger has been approved in two states -- Colorado and Iowa. In most of the other states where U S WEST and Qwest have filed for approval of the merger, the matter has not gone to hearing. It is uncertain when all final approvals will be obtained from all regulatory jurisdictions reviewing the merger application.²⁴

It is unreasonable to expect the CLECs to participate in workshops in 13 states to discuss U S WEST's Section 271 compliance when U S WEST and Qwest have provided no

²⁴ The Minnesota Public Utilities Commission decided to refer the U S WEST/Qwest merger case to an administrative law judge for a contested case proceeding. The ALJ Report is due June 30, 2000. The Commission will likely need a few weeks to review and analyze the ALJ's recommendation before it can decide whether to approve or reject the merger application.

assurances that the policies and positions adopted by U S WEST with respect to U S WEST's Section 271 obligations will not change after the merger is completed.²⁵

C. U S WEST'S PROPOSAL DENIES CLECS A MEANINGFUL OPPORTUNITY TO PARTICIPATE.

U S WEST has made similar filings in all its states except Arizona. U S WEST asks that the Commissions generally adopt a workshop process to address U S WEST's compliance with the requirements of Section 271 of the Act. It would be impossible for CLECs to participate in workshops in 13 states simultaneously. Most CLECs have only limited resources. Scheduling conflicts between the states also will make it difficult to attend all workshops. Even if the 13-states would agree not to hold multiple workshops on the same day or to collaborate on workshops, CLEC employees could spend almost all of their time in workshops, leaving them little, if any, time to devote their attention to their other responsibilities. If the commissions would expect CLECs to file comments prior to each workshop, CLEC personnel would have to spend some time in their offices drafting and filing comments in multiple jurisdictions, making it extremely difficult to schedule workshops.

If U S WEST does not file a complete application, it is questionable whether a commission could make any legally supportable findings or conclusions of law. Essentially, U S WEST's proposal places undue hardship on the CLECs, and U S WEST does not provide any specific proposals to overcome the practical or legal shortcomings of the process. Therefore, in the absence of proof, it is highly unlikely that workshops would prove beneficial.

²⁵ Workshops also would be unproductive because parties do not even know what U S WEST's present positions and policies are because it has filed no testimony, affidavits or state-specific documentation.

D. IF THE COMMISSION DOES PROCEED WITH WORKSHOPS, THEY SHOULD BE LIMITED TO NON-OSS ISSUES.

If the Commission elects to proceed with workshops to consider U S WEST's compliance with Section 271 of the Act, consideration should be limited to non-OSS checklist items. Non-OSS checklist items are limited to checklist item 3 (poles, conduits, and right-of-way), checklist item 7 (911/E911, directory assistance and operator services), checklist item 8 (white pages listings), checklist item 9 (number administration), checklist item 12 (dialing parity) and checklist item 13 (reciprocal compensation). The remaining checklist items are so intertwined with the OSS testing it makes no sense to proceed with review of these items until OSS testing is satisfactorily completed.

Similarly, it makes no sense to review compliance with Section 272 and the public interest, especially in light of the proposed merger of U S WEST and Qwest. Any consideration of these issues also should be postponed at least until the merger is complete. The preferable approach is for U S WEST to file its entire application after OSS testing is complete so none of the information becomes stale. It also is important to hold evidentiary hearings on *all* issues after OSS testing is complete.

U S WEST fails to point out that even non-OSS items have performance measures issues. For example, white pages listings and number administration have performance measures. The data on these measures will be collected during OSS testing. To address this problem, U S WEST agreed in Arizona to preliminary findings of checklist compliance, subject to the right of parties to raise issues later based on the results of the OSS testing and performance measures results. Therefore, even some of the non-OSS issues have not been totally resolved.

U S WEST has publicly conceded that OSS testing will not be concluded until the end of this year.²⁶ ROC has not released its Requests for Proposals to select the Test Administrator and the Pseudo-CLEC. Test specifications have not been written and will not be written until the Test Administrator is selected. Testing will have to be performed and the results analyzed. Although all parties in Arizona have tried in good faith to keep the OSS testing process moving along without undue delay, there have been expected and unexpected delays that have pushed back the start date for the actual commencement of testing.

The lack of any definite date for the completion of testing not only highlights that it would be premature to address OSS checklist items before testing is complete, it generally highlights the premature nature of U S WEST's requests in general. However, if the Commission wishes to proceed with workshops it should limit workshops to non-OSS checklist items.

E. THERE MUST BE EVIDENTIARY HEARINGS AT THE CONCLUSION OF THE PROCESS.

There must be an opportunity to hold evidentiary hearings at the end of the review of U S WEST's compliance with Section 271, regardless of the process used. Each state must make state-specific findings based on state-specific data. Therefore, even if multi-state workshops are conducted on some issues, this Commission cannot avoid its own independent state-specific evaluation at the end of the process. Ultimately, each state commission must individually determine whether U S WEST complies with Section 271 in its state.

²⁶ Denver Rocky Mountain News, Jerd Smith, February 9, 2000 (<http://www.denver-rmn.com/business/0209usw4.shtml>.)

U S WEST envisions the following process:

1. U S WEST will submit written testimony and supporting information/documentation establishing that it satisfies a particular checklist item in each participating state;
2. intervenors then submit written testimony and supporting information/documentation identifying their concerns;
3. parties participate in workshops and discuss their concerns, resolving as many issues as possible during the workshops;
4. the party running the workshop tracks areas of disagreement, prepares a report following each workshop for each participating Commission, and submits this report for each Commission's consideration;
5. each Commission then independently decides whether U S WEST has satisfied a particular 271 issue.

It is AT&T's position that hearings be held after the OSS testing and the workshops are completed. This will allow for the final debate on remaining contested issues. In addition to disputes over the results of OSS testing, parties can resolve any remaining disputed checklist item issues and review and comment on the results of performance measures data.

The Commission should not presume that the process proposed by U S WEST, based on what little detail U S WEST has provided, would eliminate the need for evidentiary hearings. Because U S WEST has not filed its case-in-chief, issue resolution is less likely and the need for evidentiary hearings more likely. Moreover, because of U S WEST's failure to file an application with testimony and supporting documentation, any attempt to establish a procedural mechanism to review U S WEST's compliance at this time will only lead to repeated adjustments to the schedule to respond to unanticipated events.

Due to the multiple filings of U S WEST, the one thing the intervenors and CLECs need is certainty. This can best be accomplished by requiring U S WEST to file a complete

application before the Commission adopts any procedural schedule to review U S WEST's compliance with Section 271 of the Act. This process should culminate with the Commission holding evidentiary hearings after OSS testing is complete.

III. CONCLUSION

If it is U S WEST's intent to initiate a proceeding to obtain a favorable Commission recommendation to take to the FCC to obtain in-region interLATA authority, then U S WEST should be required to file its application, testimony and documentation it intends to rely on to obtain this Commission's favorable recommendation before the Commission initiates a review of U S WEST's compliance with Section 271 and Section 272, regardless of the method or procedure the Commission adopts.

DATED this 31st day of March 2000.

Respectfully submitted,

By:



Thomas C. Felto
Michel Singer Nelson
1875 Lawrence Street, Suite 1500
Denver, Colorado 80202
Telephone: (303) 298-6527
Facsimile: (303) 298-6301

ATTORNEYS FOR AT&T
COMMUNICATIONS OF THE MIDWEST,
INC.

CERTIFICATE OF SERVICE

I hereby certify that on this 31st day of March 2000, the original and 10 copies of Comments of AT&T Communications of the Midwest Inc. in Docket No. TC00-011, were delivered via overnight delivery and one copy was delivered via facsimile to:

William Bullard, Jr
Executive Director
South Dakota Public Utilities Commission
500 East Capitol Avenue
Pierre, SD 57501
Fax #: 605-773-3809

and a true and correct copy was delivered via facsimile and overnight delivery to:

Karen Cremer
South Dakota Public Utilities Commission
500 East Capitol
Pierre, SD 57501
Fax #: 605-773-3809

and a true and correct copy was delivered by U S Mail delivery to:

Alex Duarte
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Denver, CO 80202

Richard Coit
SD/TC
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Pierre, SD 57501-0057

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David A. Gerdes
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Pierre, SD 57501-0160


Paul S. Herten

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA**

IN THE MATTER OF THE FILING BY U S WEST)	ORDER GRANTING
COMMUNICATIONS, INC. OF A NOTICE OF)	INTERVENTION
INTENT TO FILE A SECTION 271)	
APPLICATION)	TC00-011

On February 8, 2000, U S WEST Communications, Inc. (U S WEST) filed with the Public Utilities Commission (Commission) its Notice of Intent to File a Section 271 Application and Motion for Alternative Procedure to Manage the Section 271 Process

On February 10, 2000, the Commission gave notice of the filing and on March 7, 2000, entered an Order setting an intervention deadline of March 17, 2000, and otherwise setting a procedural schedule

Petitions to intervene were received from the respective parties on the following dates:

Telecommunications Resellers Association	March 10, 2000
McLeodUSA Telecommunications Services Incorporated	March 16, 2000
Midco Communications, Inc.	March 17, 2000
AT&T Communications of the Midwest, Inc.	March 17, 2000

Late filed intervention petitions were received from the respective parties on the following dates:

Black Hills FiberCom, L.L.C.	March 21, 2000
Sprint Communications Company L.P.	March 27, 2000

U S WEST did not object to granting these Petitions to Intervene, including that of Sprint Communications Company L.P. which was not noticed for consideration by the Commission at its March 28, 2000, meeting.

The Commission has jurisdiction in this matter pursuant to SDCL Chapters 1-26 and 49-31, 47 U.S.C. Section 271 and ARSD 20:10.01.15.02 through 20:10.01.15.05, inclusive.

At a regularly scheduled meeting of March 28, 2000, the Commission found that the Petitions to Intervene demonstrated good cause to grant intervention. It is therefore

ORDERED, that the Petitions to Intervene as described above are hereby granted

Dated at Pierre, South Dakota, this 31st day of March, 2000.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.

By: Nellaine Kolbo

Date: 4/3/00

(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION

James A. Burg
JAMES A. BURG, Chairman

Pam Nelson
PAM NELSON, Commissioner

Laska Schoenfelder
LASKA SCHOENFELDER, Commissioner

U S WEST, Inc.
1801 California Street, Suite 5100
Denver, Colorado 80202
Phone 303.672-5871
Facsimile 303.295-7069

Alex M. Duarte
Senior Attorney

U S WEST
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Facsimile 303.295-7069

April 4, 2000

RECEIVED

APR 17 2000

David Gerdes, Esq.
Counsel for Midco Communications
503 S. Pierre St.
P. O. Box 160
Pierre, SD 57501
(facsimile 605-881-6289)

**SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION**

RE: Docket No. CT00-011

In re: Application for intraLATA Relief of U S WEST Communications Pursuant
to Section 271 of the Telecommunications Act of 1996

Dear Mr. Gerdes:

Pursuant to the request of Ms. Karen Cremer, enclosed is a copy of U S WEST's
Response to the Commission's Request for Additional Information Concerning Alternative
Procedure to Manage the Section 271 Process, filed on March 17, 2000.

Your Petition to Intervene filed on behalf of Midcontinent was received by this office on
March 20, 2000. You have been added to our Certificate of Service and will automatically
receive a copy of all future filings.

If you have any questions, please contact Mr. Alex M. Duarte at the number listed above.
Thank you.

Sincerely,

Marjorie Heith
Marjorie Heith
Secretary to Alex M. Duarte

Enclosure

cc: Mary Lohnes (facsimile 603-339-4419)
Karen Cremer (via U S Mail)
William Bullard Jr., (for the PUC file, via U S Mail)

/moh



Proud Sponsor
36 USC 380

U S WEST, Inc.
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Phone 303-672-5871
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Alex M. Duarte
Senior Attorney

April 4, 2000

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APR 07 2000

**SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION**

Gregory J. Bernard, Esq.
John Nooney, Esq.
Counsel for Black Hills FiberCom
625 9th St., 8th Fl.
P. O. Box 8108
Rapid City SD 57709-8108
(facsimile 605-348-5852)

RE: Docket No. CT00-011
In re: Application for intrLATA Relief of U S WEST Communications Pursuant
to Section 271 of the Telecommunications Act of 1996

Dear Messrs. Bernard and Nooney:

Pursuant to the request of Ms. Karen Cremer, enclosed is a copy of U S WEST's
Response to the Commission's Request for Additional Information Concerning Alternative
Procedure to Manage the Section 271 Process, filed on March 17, 2000.

Your Petition to Intervene filed on behalf of Black Hills Fibercom was received by this
office on March 21, 2000. You have been added to our Certificate of Service and will
automatically receive a copy of all future filings.

If you have any questions, please contact Mr. Alex M. Duarte at the number listed above.
Thank you.

Sincerely,

Marjorie Herlith
Secretary to Alex M. Duarte

Enclosure

cc: Karen Cremer (via U S Mail)
William Bullard Jr., (for the PUC file, via U S Mail)

/moh



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MICHAEL F. SHAW
NEIL FULTON

April 10, 2000

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RECEIVED

APR 10 2000

HAND DELIVERED

Bill Bullard
Executive Secretary
Public Utilities Commission
500 East Capitol Avenue
Pierre, South Dakota 57501

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

RE: APPLICATION FOR INTERLATA RELIEF OF US WEST COMMUNICATIONS
PURSUANT TO SECTION 271 OF THE TELECOMMUNICATIONS ACT
OF 1996
Docket: TC00-011
Our file: 0053

Dear Bill:

Enclosed are original and ten copies of a Motion to Permit Late
Filed Comments and Comments of Midcontinent in this docket.
Please file the enclosures.

With a copy of this letter, I am forwarding a copy of the
enclosures to the service list.

Yours truly,

MAY, ADAM, GERDES & THOMPSON LLP

BY: 

DAG:mw

Enclosures

cc/enc: Service List
Tom Simmons
Mary Lohnes

RECEIVED

APR 10 2000

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF SOUTH DAKOTA

IN RE: APPLICATION FOR INTERLATA) Docket: TC00-011
RELIEF OF US WEST COMMUNICATIONS)
PURSUANT TO SECTION 271 OF THE)
TELECOMMUNICATIONS ACT OF 1996)

MIDCONTINENT'S MOTION TO LATE FILE

INTERVENOR COMMENTS

COMES NOW Midco Communications, Inc., doing business as Midcontinent Communications ("Midcontinent"), through its undersigned counsel, and moves the Commission to permit it to file comments subsequent to the March 31, 2000, due date established in the procedural schedule for intervenors' comments in this docket. This motion is based upon the following:

1. On March 7, 2000, the Commission entered its order setting intervention deadline and procedural schedule in this docket. Under the procedural schedule, US WEST's detailed proposal was due March 17, 2000, and the intervention deadline for parties was also established on that date. Midcontinent filed a timely petition for intervention, and served a copy of the petition for intervention upon US WEST.

2. The undersigned counsel for Midcontinent first received US WEST's detailed proposal on April 6, 2000. Attached hereto as a Exhibit A is a copy of US WEST's letter of April 4, 2000, indicating that it received Midcontinent's petition to intervene on March 20, 2000. For some unexplained reason, US WEST did not put the additional information in the mail until April 4, 2000.

3. Midcontinent and counsel require time to confer and prepare comments. Midcontinent's comments accompany this motion.

WHEREFORE Midcontinent prays that it be permitted to file its comments subsequent to the deadline established by the procedural schedule for the reasons stated herein.

Dated this 8th day of April, 2000.

MAY, ADAM, GERDES & THOMPSON LLP

BY: 

DAVID A. GERDES

Attorneys for Midco Communications, Inc.

d/b/a Midcontinent Communications

503 South Pierre Street

P.O. Box 160

Pierre, South Dakota 57501-0160

Telephone: (605) 224-8803

Telefax: (605) 224-6289

CERTIFICATE OF SERVICE

David A. Gerdes, of May, Adam, Gerdes & Thompson LLP hereby certifies that on the 10th day of April, 2000, he mailed by United States mail, first class postage thereon prepaid, a true and correct copy of the foregoing in the above-captioned action to the following at their last known addresses, to-wit:

Alex Duarte
Senior Attorney
US WEST Communications, Inc.
1801 California St, Suite 5100
Denver, CO 80202

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Thomas J. Welk
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Sioux Falls, SD 57117-5015

Karen Cremer
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David A. Gerdes

Alex M. Duarte
Senior Attorney

April 4, 2000

David Gerdes, Esq.
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Pierre, SD 57501
(facsimile 605-881-6289)

RE: Docket No. CT00-011

In re: Application for intraLATA Relief of U S WEST Communications Pursuant
to Section 271 of the Telecommunications Act of 1996

Dear Mr. Gerdes:

Pursuant to the request of Ms. Karen Cremer, enclosed is a copy of U S WEST's
Response to the Commission's Request for Additional Information Concerning Alternative
Procedure to Manage the Section 271 Process, filed on March 17, 2000.

Your Petition to Intervene filed on behalf of Midcontinent was received by this office on
March 20, 2000. You have been added to our Certificate of Service and will automatically
receive a copy of all future filings.

If you have any questions, please contact Mr. Alex M. Duarte at the number listed above.
Thank you.

Sincerely,

Marjorie Herlth
Marjorie Herlth
Secretary to Alex M. Duarte

Enclosure

cc: Mary Lohnes (facsimile 603-339-4419)
Karen Cremer (via U S Mail)
William Bullard Jr., (for the PUC file, via U S Mail)



EXHIBIT A

RECEIVED

APR 10 1998

SOUTH DAKOTA PUBLIC
UTILITY COMMISSION

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA**

IN RE: APPLICATION FOR INTERLATA
RELIEF OF US WEST COMMUNICATIONS
PURSUANT TO SECTION 271 OF THE
TELECOMMUNICATIONS ACT OF 1996

Packet: TC00-911

**MIDCONTINENT'S REPLY TO US WEST'S STATEMENT
OF ADDITIONAL INFORMATION**

Midco Communications, Inc., doing business as Midcontinent Communications ("Midcontinent") provides this reply to the statement of US WEST Communications ("US WEST") providing additional information concerning the alternative procedure it suggests to manage the Section 271 process. Presumably, US WEST intends this procedure to comply with Section 271 of the Telecommunications Act of 1996, as well as related provisions of that Act.

SUMMARY OF COMMENTS

The Telecommunications Act clearly provides that interLATA service originating in any state of a BOC region will not be approved until the competitive checklist and other requirements of Section 271 are met in each state. Further, the inquiry relates to compliance in each state. Thus, the Commission should choose that procedure to determine Section 271 compliance best suited to South Dakota, not the other states of the US WEST region. For the reasons stated herein, Midcontinent believes that a one-time contested case hearing is necessary following completion of the US WEST Regional Oversight Committee ("ROC") Operational Support Systems ("OSS") Master Test Plan.

DISCUSSION

Midcontinent is a customer of US WEST through an interconnection agreement, under which Midcontinent began offering local service in February, 1998. Since January of 1998, Midcontinent has received monthly reports from US WEST detailing statistics concerning US WEST's performance on QoS issues. Midcontinent is a relatively small company, so any compliance failures cause significant problems. There have been many occasions when the performance of US WEST has been 85 percent or below during this period of time, which has caused great problems for Midcontinent, and more importantly, for its customers.

Initially orders to convert an account were accomplished by telecopier. This was fraught with problems, including the fax being lost by US WEST, or submerged in its order typing pool.

Once Midcontinent moved to US WEST's automated system, around April of 1999, the problem of lost faxes disappeared. However, order entry problems persisted. While most orders were timely, they predominantly were not complete. For example, service would be partially initiated, but without custom calling features or with hunt groups in the wrong sequence. On several occasions Midcontinent has had it reported that facilities for lines to a customer's location were present, and then on the deadline facilities were not present. Midcontinent has received a report from at least one customer that a US WEST employee advised the customer that his order would have been installed quicker had it been done directly through US WEST rather than through a reseller, such as Midcontinent.

The point of all this is that US WEST's OSS systems need considerable work at this point.

It is not enough that interconnection and access are available from US WEST in theory. They must be practically available in adequate quantities, and through automated systems that permit efficient ordering, installation and billing. Section 271(c)(2)(B) requires that access and interconnection be "generally offered," and Section 271(d)(3)(A)(i) requires that the checklist be "fully implemented." Unless Midcontinent, or any other competitor, can actually purchase what it needs, the requirement of full implementation has not been met.

Midcontinent agrees that the adequacy of the ROC's OSS test plan is of primary importance. The Commission should not, however, agree to adopt anything until it sees the plan and makes its own decision as to workability. As we all know, South Dakota has unique demographics, not found in many of the other US WEST states. None of the states mentioned in US WEST's filing¹ have demographics close to those found in South Dakota.

The Commission should resist the temptation to permit US WEST to transplant, in a wholesale fashion, mounds of documents from workshops in other states. US WEST should be required to prove Section 271 compliance with Section 271 information specific to South Dakota.

While US WEST is critical of contested case hearings, its perspective comes from more populous and more complex states. This Commission has a track record of cleanly and efficiently conducting contested case proceedings.

¹Colorado, Iowa, Washington, Minnesota, Utah and Oregon.

US WEST complains about having to file a "complete application." US WEST has really not detailed that objection. As it relates to South Dakota, such an application would simply outline US WEST's compliance with the checklist items. There is no need for US WEST to go into issues which are prevalent in other states. It is the status of checklist items in South Dakota that is material, not the status of those items in other states.

Generally speaking, Midcontinent agrees with the position taken by the Telephone Resellers Association. That is, US WEST should be required to emphasize the state view, not the regional view, in presenting its case.

Workshops would be a waste of time in South Dakota. If indeed US WEST has satisfied the checklist items, that would simply be a part of its proof in a contested case hearing. If the Commission believes it is unnecessary to hold a contested case hearing for US WEST Section 271 compliance in this state, a potential alternative would be South Dakota specific workshops. However, it would be a complete waste of time and resources for the Commission or the parties to this proceeding to participate in workshops held in other states.

CONCLUSION

Midcontinent respectfully requests that the Commission defer joining any state or regional workshops. South Dakota's issues are uniquely related to the state. A contested case hearing, or at the very least a South Dakota specific workshop, should be the process followed. These events should occur once the ROC's OSS test plan has been promulgated and found adequate.

Dated this 10th day of April, 2000.

MAY, ADAM, GERDES & THOMPSON LLP

BY: 

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d/b/a Midcontinent Communications

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CERTIFICATE OF SERVICE

David A. Gerdes, of May, Adam, Gerdes & Thompson LLP hereby certifies that on the 10th day of April, 2000, he mailed by United States mail, first class postage thereon prepaid, a true and correct copy of the foregoing in the above-captioned action to the following at their last known addresses, to-wit:

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David A. Gerdes

RE: Docket No. CT00-011

In Re: Application for interLATA Relief of U S WEST Communications Pursuant
to Section 271 of the Telecommunications Act of 1996

Dear Mr. Bullard:

Enclosed are an original and ten copies of U S WEST Communications, Inc.'s Reply to
AT&T's Comments Concerning Alternative Procedure To Manage the Section 271 Process.

The documents will also be forwarded electronically.

Please stamp and return the enclosed extra copy of this letter in the enclosed addressed,
postage paid envelope.

Sincerely,

Marjorie Herlth

Marjorie Herlth
Secretary to Alex Duarte

Enclosures
/moh



THE WEST

FAX Received APR 10 2000

RECEIVED

APR 1 2000

STATE OF SOUTH DAKOTA
PUBLIC UTILITIES COMMISSIONSOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

IN RE: APPLICATION FOR interLATA
RELIEF OF U S WEST COMMUNICATIONS
PURSUANT TO SECTION 271 OF THE
TELECOMMUNICATIONS ACT OF 1996

Docket No. TC00-011

FAX Received APR 10 2000

**U S WEST COMMUNICATIONS' REPLY TO AT&T'S COMMENTS CONCERNING
ALTERNATIVE PROCEDURE TO MANAGE THE SECTION 271 PROCESS**

On February 8, 2000, U S WEST Communications, Inc. ("U S WEST") asked the South Dakota Public Utilities Commission ("Commission") to initiate a docket to (1) request an alternative procedure for consideration of its compliance under Section 271 of the Telecommunications Act of 1996, (2) allow U S WEST to submit the U S WEST Regional Oversight Committee ("ROC") Operational Support Systems ("OSS") Master Test Plan to the Commission for consideration in early second quarter 2000, and (3) allow parties to participate in proceedings to consider each aspect of Section 271, including each item on the 14-point checklist in Section 271, beginning fourth quarter 2000. U S WEST's application and motion for an alternative procedure specifically identified two potential options for processing this docket: (1) collaboration with another state or states, and (2) taking administrative notice of the progress made in 271 workshops in other states.

Thereafter, on March 7, 2000, the Commission ordered U S WEST to explain in more detail its request for an alternate procedure for consideration of its Section 271 compliance. U S WEST did so on March 17, 2000. Thereafter, on March 31, 2000, AT&T was the only intervenor to file comments in response to U S WEST's March 17th filing. This is U S WEST's reply to AT&T's comments.

INTRODUCTION

U S WEST proposes that its Section 271 application be considered in a series of formal collaborative workshops, a procedure different from that followed in a typical, contested case. Use of an alternative procedure is appropriate, however, because this is not a typical case; rather, it is more in the nature of an investigation than a contested case. The Commission will not make the final determination on U S WEST's Section 271 application. It will make a recommendation to the FCC, and the FCC will decide the merits of U S WEST's application. The purpose of this proceeding is to develop a record for the Commission to use when making its recommendation to the FCC and for the FCC to use when making its decision on U S WEST's application.

Other state commissions that have considered Section 271 applications have learned that a formal collaborative workshop format is more appropriate and effective than a contested case proceeding leading to a hearing. A workshop format provides a forum for all parties to negotiate and resolve many, and probably most, of the issues under dispute. The workshop format also provides a forum to fully consider and investigate issues on the record. The parties can narrow and clearly define the remaining issues in dispute, so that they can then be escalated to the Commission for decision.

Although the workshop process is a new and innovative way of handling a case, it is not in any way less rigorous or comprehensive than a contested case procedure. The workshops which U S WEST proposes will include the filing of sworn testimony, a discovery process, examination of witnesses under oath, and an exhaustive exploration of all issues. A complete record will be developed to assist the Commission in making a recommendation to the FCC.

DISCUSSION

I. REQUIRING U S WEST TO FILE ITS "DIRECT CASE" OR A "COMPLETE APPLICATION" BEFORE THE COMMISSION CREATES A PROCEDURAL SCHEDULE WILL LEAD TO UNNECESSARY WORK, DELAYS AND INEFFICIENCIES FOR ALL PARTIES INVOLVED

AT&T recommends that the Commission require U S WEST to file its "direct case" or a "complete application" before workshops commence. AT&T rationalizes that this would ensure the Commission and the FCC will have a complete record to evaluate.

AT&T mistakenly assumes that U S WEST does not plan to file detailed testimony. U S WEST will file detailed testimony well in advance of each workshop on the issues scheduled to be discussed in the workshop. U S WEST understands that it bears the initial burden of proof and therefore must provide the Commission with detailed evidence. U S WEST is not "attempting to shift the burden of proof to the intervenors." To the contrary, U S WEST merely suggests that it file testimony on a rolling basis.

Experience shows that filing a "complete application" leads to unnecessary work, delay, and inefficiency for all parties involved. In each of the three states where U S WEST currently has a 271 application pending, it initiated the process with many thousands of pages of testimony. However, by the time most of the testimony was (or will be) scrutinized, it was so stale that U S WEST, and consequently intervenors, had to file supplemental testimony to bring the original testimony current. This has occurred in Montana, Nebraska and Arizona.

Moreover, the recent Bell Atlantic decision in New York supports this position as well. Bell Atlantic did not complete its New York filing for the FCC until after the workshop process was complete. Moreover, Bell Atlantic submitted its application to the FCC within weeks of completing the workshops. At that time it filed a comprehensive record containing its testimony updated to reflect any positions agreed to in the workshops, supporting documentation, and

workshop transcripts. Thus, there will indeed be a "complete application" by the time the Commission submits its recommendation to the FCC and U S WEST files its 90-day application with the FCC. There is no need, however, to have a "complete application" at this juncture, merely for the Commission to set a procedural schedule. Such a requirement would only delay the process (which is clearly what AT&T desires), and cause extensive updating of material down the road.

AT&T also asserts that workshops alone create the potential for the Commission to make a determination on stale, inaccurate information because the information may have changed since it was presented in the workshop, such as due to new FCC orders imposing additional obligations on U S WEST. However, the FCC has created a legal framework to prevent this very thing from happening. As explained above, U S WEST bears the initial burden of proof as to each aspect of Section 271. Once U S WEST establishes a *prima facie* case, however (whether as to Track A, Section 272, public interest or for any checklist item), the burden shifts to the intervenors to "produce evidence and arguments to show that the application does not satisfy the requirements of section 271 [for the checklist item at issue], or risk a ruling in the BOC's favor."¹ Thus, once the Commission finds that U S WEST satisfies a particular issue, the intervenors have the right to bring forth new evidence to show that U S WEST is no longer in compliance.² Thus, the FCC's legal framework was created to negate this very concern.

Further still, AT&T's arguments that "piecemeal" filings will prolong the process are

¹ See FCC Order on Bell Atlantic's 271 Application for New York, CC Docket No. 98-295, ¶ 40 (released December 22, 1999) ("Bell Atlantic New York Order"); Application of BellSouth Corp., BellSouth Telecomm. Inc. and BellSouth Long Distance, Inc. for Provision of In-Region, Inter-LATA Services in Louisiana, CC Docket No. 98-121, Memorandum Opinion and Order ¶ 52 (rel. Oct. 13, 1998) ("Second BellSouth Louisiana Order").

² Intervenors cannot bring forth just any material, however. The FCC does not require "perfection" from BOCs. "Mere unsupported evidence in opposition will not suffice," and "anecdotal evidence" or "isolated incidents" may not be sufficient . . . to overcome the BOC's *prima facie* case." *Id.* at ¶ 50.

misplaced. For the reasons set forth here, U S WEST's proposal will not prolong the process. First, U S WEST's proposal will provide for more *focused* discovery and review. Further, contrary to AT&T's assertions, U S WEST's proposal will actually help those CLECs that are interested in only certain checklist items. These CLECs need not participate in, and devote resources on, those checklist items in which they have no interest. Thus, "monitoring" the case to "ensure they not miss the opportunity to comment on a particular checklist item" is far preferable, and easier and less time-consuming, than being required to be involved throughout a lengthy process for all checklist items and other 271 issues.

Finally, AT&T's arguments about discovery disputes prolonging the process have no merit. If there are legitimate discovery disputes, the process would be delayed no matter which approach the Commission adopts. However, since U S WEST's proposal calls for *focused* discovery, the parties can obtain quicker resolution of such discovery disputes than the process AT&T seems to propose.

II. THERE IS NO REQUIREMENT THAT THE COMMISSION HOLD AN EVIDENTIARY HEARING

As shown above, AT&T demonstrates a complete misunderstanding of U S WEST's proposal when it suggests that a workshop process will result in an incomplete record. Based upon this misconception, AT&T then compounds its misunderstanding by suggesting that U S WEST's application should be submitted to an evidentiary hearing.

AT&T's misunderstanding may be somewhat understandable, especially since this case is fundamentally different from other cases that have been before the Commission. Unlike other cases, the Commission is not the final decision-maker. Rather, the role of the Commission is to develop a record and to make a recommendation to the FCC. Along with its 271 application to the FCC, U S WEST will submit the record from the South Dakota proceedings. U S WEST will

also submit a brief and affidavits addressing 271 issues. The intervenors will then submit briefs and affidavits, and this Commission will submit a recommendation. Based upon all of the evidence submitted, the FCC will decide whether U S WEST is entitled to interLATA relief.

U S WEST's proposal involves the development of a complete record, including the filing of sworn testimony and examination of witnesses under oath. The workshop process should provide for U S WEST's submission of written testimony and supporting information or other documentation establishing that U S WEST satisfies a particular checklist item; the intervenors' submission of written testimony and supporting information documentation identifying their concerns; and the various parties' participation in workshops where all parties will be questioned under oath regarding their submissions. The party running the workshop will then track areas of agreement and disagreement, prepare a report following each workshop, and submit the report to the Commission for its consideration. Based upon the report and the record developed during the workshop, the Commission can decide whether U S WEST has satisfied a particular 271 issue.

Over the past two and one-half years, the FCC and state commissions throughout the country have all recognized that collaborative workshops, and not adversarial hearings, are the most effective means by which to process Section 271 proceedings. Many state commissions, including those in New York, Texas, California, Georgia, Florida and Arizona, have used, or are using, workshops to develop comprehensive factual records. U S WEST is now involved in similar processes in Arizona, Washington and Colorado.

³ AT&T's allegation that U S WEST's proposal places the burden on the intervenors to point out any deficiencies in U S WEST's application and its evidence is a non sequiter. Regardless of the procedure the Commission adopts, the intervenors will still have the burden to point out any legitimate deficiencies they believe exist in U S WEST's application.

The FCC has indicated that it considers a workshop process to be an adequate procedure for Section 271 cases. In its decision on Bell Atlantic's Section 271 application in New York, the FCC gave the New York Commission's recommendation "substantial weight" because of the "rigorous collaborative process" it used. See *Bell Atlantic New York Order*, ¶ 20.

Experience in other states has demonstrated that workshops replace the need for evidentiary hearings. For example, the New York Commission set up a procedure to consider Bell Atlantic's 271 application and SGAT involving what it termed "technical conferences." In its order setting up the technical conference procedure, the Commission stated:

Because a hearing is not legally required for either purpose, and the period within which both actions must be taken is very short, a typical evidentiary hearing process, involving the prefiling of testimony, discovery, and cross-examination, is not envisioned.

See, *Notice of General Procedures*, New York Public Service Commission, Case 97-C-0271 (rel. February 19, 1997).

In place of the traditional process of filing testimony and conducting a hearing, the New York Commission scheduled technical conferences where the relevant and material issues of fact were identified, and technical experts for the parties participated in technical conferences to consider the issues. The parties were allowed to file pleadings on legal and policy issues. *Id.* In scheduling the technical conferences, the presiding administrative law judges reiterated that the process did not involve evidentiary hearings:

Since the procedure being followed in this case does not include a formal evidentiary hearing, but rather is a special procedure designed to investigate relevant facts to present a record for the FCC's purposes, no motions to strike any parts of affidavits or briefs will be entertained.

Ruling on Schedule, New York Public Service Commission, Case 97-C-0271 (Dec. 8, 1997).

In its comments to the FCC, the New York Commission relied on the results of the technical conferences, rather than on a formal hearing. *See, Evaluation of the New York Public Service Commission*, FCC Docket No. 99-295. Despite that the New York process did not include evidentiary hearings, the FCC praised the New York procedures and gave substantial weight to the New York Commission's recommendation:

The section 271 process in New York exemplifies the way in which rigorous state proceedings can contribute to the success of a section 271 application. . . First, under the auspices of the New York Commission, both competitive LECs and Bell Atlantic participated fully in collaborative sessions and technical workshops to clarify or resolve issues. This ensured broad-based industry participation throughout the proceeding.

See, Bell Atlantic New York Order, ¶¶ 8-9.

In Texas, the workshop process also replaced evidentiary hearings. The Commission Staff first identified 129 open issues relating to SBC's 271 application. The Commission directed that the Staff establish and conduct a collaborative process to consider the issues identified. The Commission held that:

The successful conclusion of the collaborative process and supplementation of the record would allow the Commission to reach a positive recommendation to the FCC on SWBT's application.

See, Order No. 25 Adopting Staff Recommendations; Directing Staff to Establish Collaborative Process, Project #16251, Public Utility Commission of Texas.

In Texas, evidentiary hearings were not held on issues that could not be resolved during the workshops. The Texas Commission decided open issues based upon the record developed during the workshops. The Commission Staff then issued a report on the outcome of the workshops, and the Commission considered the report in an open meeting:

Under the oversight of the Texas Commission, CLECs and SWBT participated in lengthy, often contentious meetings and technical workshops to resolve issues on virtually every aspect of Section 271 compliance. The 129 issues ranged from

billing concerns and LIDB/directory listing database records to OSS change management and SWBT account manager relationship issues. Each of these issues was fully vetted, and where the parties were not in full agreement, the Texas Commissioners decided each individual issue in a series of open meetings in the Fall and Winter of 1998.

See, Evaluation of the Public Utility Commission of Texas, In the Matter of the Application of SBC Communications, Inc., et al. to Provide In-Region, InterLATA Services in Texas.

Memorandum Opinion & Order, at p. 2, FCC Docket No. 00-04 (rel. January 31, 2000).

Thus, U S WEST strongly disagrees with the AT&T's suggestion that the proposed workshop process does not provide adequate safeguards. As stated, the workshop process U S WEST proposes involves the filing of testimony, examination of witnesses under oath, and a discovery process. Furthermore, neither New York nor Texas required formal adjudicatory proceedings. The FCC raised no safeguard concerns over the New York Commission's workshop process. To the contrary, it found the workshop process "particularly important" to the success of Bell Atlantic's application. *See, Bell Atlantic New York Order*, at ¶¶ 8-9.

U S WEST envisions a process modeled upon the New York and Texas procedures, and U S WEST's own experience in Arizona. As stated, the workshop process should provide for U S WEST's submission of written testimony and supporting information and other documentation establishing that it satisfies a particular checklist item; the intervenors' submission of written testimony and supporting information or documentation identifying their concerns; and the parties' participation in workshops where parties will be questioned under oath regarding their submissions. The workshops are designed for the parties to resolve as many issues as possible, and history demonstrates that most issues will be resolved by consensus. The party running the workshop will track areas of agreement and disagreement, prepare a report following each workshop, and submit the report for the Commission's consideration. Based

upon the report and the record developed during the workshop, the Commission can then decide whether U S WEST has satisfied a particular 271 issue. This process would be repeated until the Commission has fully evaluated each aspect of Section 271.

III. U S WEST'S PROPOSAL GIVES ALL CLECs A MEANINGFUL OPPORTUNITY TO PARTICIPATE

AT&T also argues that U S WEST's proposal denies CLECs a meaningful opportunity to participate in the 271 workshops or the 271 process, citing to "limited resources", "scheduling conflicts" and time that CLECs will have to devote to workshops and drafting of comments. AT&T's arguments are much ado about nothing.

To the contrary, U S WEST's suggestion that testimony and supporting documentation be filed on a rolling basis actually aids AT&T and any other the intervenors. Although AT&T, which has hundreds of thousands of employees throughout the country, makes much ado about workshops placing an "undue burden" on its and other CLECs' resources, the truth of the matter is just the opposite. By handling the production of direct and rebuttal testimony on a rolling basis, U S WEST, intervenors and Staff alike are spared the burden of having to prepare and update large amounts of testimony and supporting documentation addressing U S WEST's satisfaction of various checklist items. Instead, parties can *focus* upon responding to the particular checklist item(s) at issue in the scheduled workshop. Not only will this reduce the workload, it should improve the quality of all parties comments by allowing them to focus upon the checklist items at issue in a particular workshop. This is far preferable than numerous commissions addressing "complete applications" at the same time. This is also why U S WEST has suggested that this Commission may want to consider participating in workshops with one or more other state commissions.

Finally, it is true that Section 271 applications involve significant undertakings for the Commission, U S WEST, and intervenors alike. U S WEST is sensitive to resources issues; however, it is also sensitive to the interests of the Commission, CLECs, U S WEST, and South Dakota consumers in finally realizing the full promise of the Telecommunications Act. Section 271 approval will increase competition in both the local market and interLATA markets, as the citizens of New York can now attest. U S WEST's proposal would allow completion of the 271 process roughly contemporaneously with completion of the ROC OSS testing. The return on these undertakings for all concerned parties and for South Dakota consumers outweighs any potential strain on resources.

Accordingly, AT&T's complaints about lacking a meaningful opportunity to participate are nothing more than a manufactured argument and should fall on deaf ears.

IV. THE COMMISSION SHOULD NOT WAIT FOR THE CONCLUSION OF OSS TESTING TO CONSIDER ALL OTHER 271 ISSUES

AT&T also suggests that only checklist items not involving Operational Support Systems ("OSS") be considered now, with all other issues waiting until after the conclusion of OSS testing. U S WEST strongly objects to AT&T's proposal, which would result in only the seven least controversial checklist items being considered in 2000. The more complex and important issues would not be considered until next year. AT&T's suggestion is nothing more than a delay tactic. There is no legitimate reason to wait until the conclusion of OSS testing to consider the remaining checklist items and other 271 issues, such as Section 272 issues, competitive issues and public interest issues. Each checklist item can be considered independent of OSS testing, and the Commission can approve these checklist items conditioned on the results of OSS testing.

Numerous other states have considered the seven OSS-related checklist items before the conclusion of OSS testing. For example, the New York Commission held technical conferences

on all checklist items during OSS testing. *See, Notice*, New York Public Service Commission, Case 97-C-0271 (April 4, 1999) (while KPMG was finalizing the New York test plan, the Commission held a technical conference on all checklist items, including the seven checklist items that involve OSS); *See, Ruling Setting Agenda for Technical Conferences*, New York Public Service Commission, Case 97-C-0271 (April 29, 1999); *Ruling Further Detailing Agenda for Technical Conferences*, Case 97-C-0271 (May 26, 1999) ("We will commence with checklist item (i) [interconnection, one of the seven checklist items with OSS implications], and parties will have the opportunity to present evidence on all non-OSS items."); *Ruling Deciding Motions and Setting Schedule*, New York Public Service Commission, Case 97-C-0271 (June 22, 1999) (noting that the technical conference process had concluded non-OSS issues of checklist items (i), (ii), (v), (xi) and (xiv), all of which are among the seven checklist items impacted by OSS issues); *Letter/Ruling*, New York Public Service Commission, Case 97-C-0271 (July 16, 1999) (setting a further technical conference on, *inter alia*, checklist items (iv)(loops), (v)(switching) and (xi)(number portability)).

In New York, OSS issues of checklist item (2)(unbundled network elements) were resolved in the technical conference process before the conclusion of OSS testing. *See, Letter/Ruling*, New York Public Service Commission, Case 97-C-0271 (August 3, 1999). On August 3, 1999, the administrative law judge overseeing the technical conferences issued a letter ruling concluding that the technical conference process had been concluded for all checklist items, other than checklist items (iv)(loops), (vii)(II)(directory listings), (viii)(white pages listings) and (xi)(number portability):

As a result, the technical conference process in this proceeding is now closed as to all of the checklist items contained in § 271(c)(2)(b) of the Telecommunications Act of 1996, with the exceptions noted above.

See, Letter/Ruling, New York Public Service Commission, Case 97-C-0271 (August 3, 1999).

Before OSS testing was concluded, the New York Commission resolved all checklist items, with the limited exception of loop hot cut issues.

Like New York, the Texas Commission also held workshops on all checklist items before OSS testing was concluded and resolved all 271 issues conditioned on the results of OSS testing. The Texas Commission concluded all checklist items in a workshop process prior to the conclusion of OSS testing:

Under the oversight of the Texas Commission, CLECs and SWBT participated in lengthy, often contentious meetings and technical workshops to resolve issues on virtually every aspect of Section 271 compliance.

See, Evaluation of the Public Utility Commission of Texas, In the Matter of Application of SBC Communications, Inc., et al. to Provide In-Region, InterLATA Services in Texas, at p. 2, FCC Docket No. 00-04 (rel. January 31, 2000).

As in New York, the Texas Commission resolved all issues, including OSS issues, in the workshop process prior to the completion of OSS testing:

The 129 issues ranged from billing concerns and LIDB/directory listing database records to OSS change management and SWBT account manager relationship issues. Each of these issues was fully vetted, and where the parties were not in full agreement, the Texas Commissioners decided each individual issue in a series of open meetings in the Fall and Winter of 1998. *Id.*

Following the conclusion of the workshops, but before the conclusion of OSS testing, the Texas Commission issued an order approving SBC on all checklist items and other 271 issues conditioned on the conclusion of OSS testing. [cite?]

Thus, in both New York and Texas, the BOC was able to file with the FCC shortly after the conclusion of OSS testing. They did so without lengthy workshops or hearings on the seven checklist items impacted by OSS issues.

There are many important issues concerning the seven OSS-impacted checklist items that can be resolved prior to the conclusion of OSS testing. These issues include: 1) whether U S WEST offers the required forms of collocation, 2) whether U S WEST offers the required combinations of unbundled network elements, and 3) whether U S WEST offers all required services for resale without unreasonable restrictions. The Commission and all involved parties can review U S WEST's SGAT to ensure that U S WEST has a concrete legal obligation to provide each item on request.

These issues are very important, and addressing them as soon as possible is in everyone's best interests. Addressing these issues this year is in the best interests of the Commission, CLECs, U S WEST, and South Dakota consumers in finally realizing the full promise of the 1996 federal Telecommunications Act. Thus, the Commission should reject AT&T's suggestion that the workshops be limited to non-OSS issues.

V. AT&T'S POSITION THAT U S WEST'S REQUEST IS PREMATURE UNTIL QWEST AND U S WEST "CONFIRM" POST-MERGER POLICIES IS SIMPLY A DELAY TACTIC

Yet another AT&T delay tactic is its novel suggestion that U S WEST's request is premature until Qwest and U S WEST "confirm" its post-merger plans. First, AT&T argues that "U S WEST and Qwest have stated that no policies have been established for the post-merger companies" related to U S WEST's obligations under Section 271 of the Act. It also argues that the two companies have not provided "assurance that the existing policies of U S WEST will not change." Of course, AT&T provides no substantiation for these vague and general statements.

More importantly, U S WEST and Qwest have specifically advised AT&T and all other intervenors in the various merger dockets throughout U S WEST's 14-state region that the merged company will continue to honor all interconnection agreements, Statements of Generally

Available Terms and Conditions ("SGATs"), tariffs, and FCC and state commission rules and regulations, as well as its obligations under Sections 251, 252, 271 and 272 (and indeed all of provisions) of the 1996 Telecommunications Act and the various state telecommunications laws.

Thus, knowing that the merger is not likely to close until some time in the third quarter of 2000, AT&T simply attempts to delay U S WEST's 271 efforts for no legitimate reason. There is no need to wait until the merger closes to move forward as U S WEST proposes, and thus this Commission should reject AT&T's suggestion on this issue.

CONCLUSION

AT&T, the only intervenor which has filed comments in response to U S WEST's March 17, 2000 filing, is intent on frustrating U S WEST's 271 efforts through any means possible. However, as U S WEST demonstrates here, this Commission should not require U S WEST to file a "complete application" or "direct case" before setting a procedural schedule, as this will only lead to unnecessary work, delays and inefficiencies for all involved. The same holds true for AT&T's suggestion that evidentiary hearings are required or even necessary. In addition, as demonstrated, AT&T and all other CLEC intervenors (and Commission Staff) will have a meaningful opportunity to participate in the 271 process. Finally, there is no legitimate reason to reward AT&T's delay tactics. Thus, the workshops should include all issues, and not just non-OSS issues, and should not await the closing of the Qwest/U S WEST merger.

As U S WEST has previously stated, U S WEST is sensitive to the interests of the Commission, Commission Staff, CLECs, and South Dakota consumers in finally realizing the full promise of the Telecommunications Act of 1996. Section 271 approval will increase competition in both the local market and interLATA markets. It is, of course, true that Section 271 applications involve significant undertakings for the Commission, U S WEST, and

intervenors alike. However, the return on these undertakings for all concerned parties and for South Dakota consumers by using the procedures that U S WEST outlines here clearly outweighs any potential strain on resources.

Accordingly, U S WEST proposes the Commission utilize the procedure that U S WEST has outlined to consider its Section 271 application. U S WEST has suggested two possible approaches. If the Commission is prepared to begin Section 271 consideration immediately, then U S WEST suggests the Commission collaborate with one or more state commissions in conducting workshops consistent to the process and principles U S WEST has previously described. Otherwise, U S WEST suggests the Commission postpone any decision until the fourth quarter of 2000, at which time all parties should be better positioned to select the procedural mechanism (taking administrative notice of the workshops and records developed in other states or conducting a limited number of workshops) that provides for the creation of a comprehensive record in the most effective, efficient, and economical manner.

Dated this 10th day of April, 2000.

Respectfully submitted,

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Inc.

CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of April, 2000, an original and ten (10) copies of **U S WEST COMMUNICATIONS, INC.'S REPLY TO AT&T'S COMMENTS CONCERNING ALTERNATIVE PROCEDURE TO MANAGE THE SECTION 271 PROCESS** was fax filed and forwarded via Federal Express, to the following:

William Bullard, Jr., Executive Director
South Dakota Public Utilities Commission
500 East Capitol
Pierre, South Dakota 57501
(Facsimile: 605-773-3809)

In addition, a true and correct copy was placed in the United States mail, postage prepaid, addressed as follows:

Karen Cremer
South Dakota Public Utilities Commission
500 East Capitol
Pierre, SD 57501

Michel Singer Nelson
AT&T Communications
1875 Lawrence St., Suite 1575
Denver, CO 80202

Richard Coit
SDITC
P.O. Box 57
Pierre, SD 57501

William P. Heaston
McLeodUSA Telecommunications
P. O. Box 66
Irene SD 57037-0066

Andrew M. Jones, Esq.
Counsel for Sprint
8140 Ward Parkway, 5E
Kansas City, MO 64114

Andrew O. Isar
Telecommunications Resellers Assoc.
3220 Uddenberg Lane NW, Suite 4
Gig Harbor, WA 98335

David Gerdes
Counsel for Mideo Communications
503 S. Pierre St.
P. O. Box 160
Pierre SD 57501-0160

Gregory J. Bernard
Counsel for Black Hills FiberCom
625 9th St., 8th Fl.
P. O. box 8108
Rapid City SD 57709-8108

Thomas J. Welk
Boyce, Murphy, McDowell & Greenfield
1001 North Phillips Ave., Suite 600
Sioux Falls, SD 57117-5015


U S WEST Communications, Inc.

U S WEST, Inc.
1801 California Street, Suite 5100
Denver, Colorado 80202
Telephone 303 672-5671
Facsimile 303 295-7069
aduarte@uswest.com

Alex M. Duarte
Senior Attorney

U S WEST
It's better here. ®

VIA FACSIMILE & FEDERAL EXPRESS

RECEIVED

APR 17 2000

April 14, 2000

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

William Bullard, Jr., Executive Director
South Dakota Public Utilities Commission
500 E. Capitol Avenue
Pierre, South Dakota 57501-5070

FAX Received APR 14 2000

RE: Docket No. CT00-011
In Re: Application for interLATA Relief of U S WEST Communications Pursuant
to Section 271 of the Telecommunications Act of 1996

Dear Mr. Bullard:

Enclosed are an original and ten copies of U S WEST Response to Midcontinent's
Motion to Permit Late Filed Comments and Motion to Permit Filing of Reply Comments.

The documents will also be forwarded electronically.

Please stamp and return the enclosed extra copy of this letter in the enclosed addressed,
postage paid envelope.

Sincerely,

Marjorie Herlth

Marjorie Herlth
Secretary to Alex Duarte

Enclosures
/moh



Proud Sponsor
36 USC 380

ABSTRACT

**SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION**

Docket No. TC00-011

RESPONSE

On March 7, 2000, this Commission issued a procedural order in which it set an intervention deadline of March 17, 2000. The Commission also ordered U S WEST to provide detailed information regarding its section 271 filing by March 17, 2000, with responses due by March 31, 2000, and U S WEST's reply due by April 10, 2000. Midcontinent was obviously well aware of this procedural order because it filed its petition to intervene on March 17, 2000.

However, Midcontinent served its petition to intervene on U S WEST by mail, and thus U S WEST did not receive it until March 20th.

Accordingly, when U S WEST filed its detailed proposal on March 17th, it served all parties known to have filed a petition to intervene or to have an interest in the proceedings. However, because U S WEST had not known of Midcontinent's petition to intervene when it filed its detailed proposal on March 17th, U S WEST did not serve Midcontinent. Nevertheless, although Midcontinent was certainly aware that U S WEST had been ordered to file a detailed proposal by March 17th, and that its response was due March 31st, it never contacted U S WEST for a copy of the March 17th filing, nor took any other steps to obtain this document.

Thereafter, on April 4, 2000, the undersigned U S WEST counsel received a telephone call from Commission Staff attorney Karen Cremer advising that Midcontinent (and Black Hills Fibercom) had not been served with U S WEST's March 17th filing. U S WEST's counsel noted that U S WEST had served all parties on March 17th for which it had received petitions to intervene or which had otherwise expressed an interest in these proceedings. Counsel then checked the files and determined that U S WEST had not received petitions to intervene from Midcontinent (and from Black Hills Fibercom) until after March 17th. Thus, that same day (April 4th), counsel sent courtesy copies of this March 17th filing to these companies.

In any event, U S WEST submits it was Midcontinent's responsibility to obtain a copy of U S WEST's March 17th filing, either from U S WEST, another party, or the Commission. There was simply no way that U S WEST could have known Midcontinent had filed a petition to intervene the same day that U S WEST made its filing on March 17th (since Midcontinent had mailed the petition to U S WEST that same day, and U S WEST did not receive it until March 20, 2000). U S WEST further submits it was not its responsibility to serve all previously-filed

documents on parties after it had received petitions to intervene from those parties, and U S WEST is not aware of any such requirement in South Dakota, or in the Commission's rules. U S WEST's only responsibility was simply to add these parties' names and addresses to its service list, which it did here, and to serve these parties with all future filings.

Accordingly, given that U S WEST has already filed its reply comments on April 10th, U S WEST respectfully requests that the Commission allow it to file reply comments to Midcontinent's response comments.

Dated this 14th day of April, 2000.

Respectfully submitted,

By: 

Andrew D. Crain
Charles W. Steese
Alex M. Duarte
U S West Law Department
1801 California Street, Suite 5100
Denver, CO 80202

Thomas J. Welk
Boyce, Murphy, McDowell & Greenfield
101 North Phillips Avenue, Suite 600
Sioux Falls, SD 57117-5015

Attorneys for U S WEST Communications,
Inc.

FAX Received APR 14 2000

RECEIVED

APR 17 2000

CERTIFICATE OF SERVICE

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

I hereby certify that on this 14th day of April, 2000, an original and ten (10) copies of **U S WEST'S RESPONSE TO MIDCONTINENT'S MOTION TO PERMIT LATE FILED COMMENTS AND MOTION TO PERMIT FILING OF REPLY COMMENTS** was fax filed and forwarded via Federal Express, to the following:

William Bullard, Jr., Executive Director
South Dakota Public Utilities Commission
500 East Capitol
Pierre, South Dakota 57501
(Facsimile: 605-773-3809)

In addition, a true and correct copy was placed in the United States mail, postage prepaid, addressed as follows:

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South Dakota Public Utilities Commission
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Sioux Falls, SD 57117-5015

Margaret Herx
U S WEST Communications, Inc.

Davis Wright Tremaine LLP

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FAX (503) 778-5154
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April 14, 2000

VIA UPS

Mr. William Bullard
Executive Director
South Dakota Public Utilities Commission
Capitol Building, 1st Floor
500 East Capitol Avenue
Pierre, South Dakota 57501-5070

RECEIVED
APR 17 2000
SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

Re: In the Matter of the Filing by U S WEST Communications, Inc. of a Notice of Intent to
File a Section 271 Application
Docket No. TC00-011

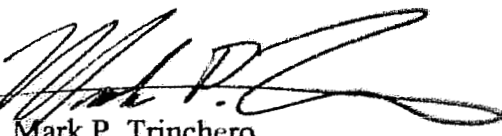
Dear Mr. Bullard:

Enclosed for filing are the original and ten (10) copies of "New Edge Network, Inc. d/b/a New Edge Networks' Petition for Late Intervention" in the above-referenced proceeding.

Thank you for your assistance.

Very truly yours,

Davis Wright Tremaine LLP


Mark P. Trinchero

MPT:djr

Enclosures

cc: Service List (w/encl.)

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE SOUTH DAKOTA**

In the Matter of the Filing by U S WEST
Communications, Inc. of a Notice of Intent
to File a Section 271 Application

)
)
)

Docket No. TC00-011

**NEW EDGE NETWORK, INC. d/b/a NEW EDGE NETWORKS' PETITION
FOR LATE INTERVENTION**

New Edge Network, Inc. d/b/a New Edge Networks ("New Edge") hereby enters its appearance and provides its notice of late intervention in this Docket, or in the alternative, petitions the Commission to allow its late intervention. As grounds for intervention, and as justification for its untimeliness, New Edge states as follows:

1. On February 8, 2000, U S WEST Communications, Inc. ("U S WEST") filed its Notice of Intent to File a Section 271 Application and Motion for Alternative Procedure to Manage the Section 271 Process (herein, U S WEST's "271 Application").

2. New Edge is interested in the issues raised in this proceeding. New Edge is a competitive telecommunications carrier certified to provide service in the state of South Dakota, including U S WEST territory. New Edge intends to provide services that compete with U S WEST's local services in South Dakota. As a competitor of U S WEST in South Dakota, the issues in this proceeding directly impact New Edge.

3. New Edge respectfully requests that its intervention be granted after the initial procedural conference. New Edge has good cause for late intervention in this proceeding. New Edge just recently became aware of this proceeding and any decision in this proceeding and any decision in this proceeding may impact New Edge.

4. This docket represents an attempt on the part of U S WEST to gain approval to enter the in-region interlata telecommunications market, based on the fact that U S WEST has fully cooperated in the opening up of the local exchange carrier market(s) in

South Dakota. Congress established the Section 271 requirement as an incentive for the Bell Operating Companies ("BOCs") to open the local exchange network to competition. A BOC such as U S WEST may only provide in-region interlata services if it has complied with Section 271 and, specifically, the fourteen point checklist set forth in Section 271.

5. New Edge has a legally protected right to participate in this proceeding because it is a customer of U S WEST, whose service and rates will be affected by the outcome of the Section 271 proceeding. In addition, it is a competitor for local exchange telecommunications and in-region interlata telecommunications services.

6. This Petition to Intervene is filed pursuant to Rule 20:10:01:15.02 of the Commission's Rules of Practice and Procedure.

7. New Edge's Petition to Intervene in this Docket will not needlessly enlarge the scope of this proceeding or otherwise cause unnecessary delays.

8. New Edge does not yet know the full scope of its participation in this Docket. However, if allowed to intervene, New Edge will participate as it interests appear, including, but not necessarily limited to, discovery, direct examination and cross-examination of witnesses, briefing legal issues, and appearing at hearings.

9. New Edge requests that all correspondence, pleadings, notices, orders, and other communications concerning these proceedings should be addressed to:

Mark P. Trinchero, Esq.
Davis Wright Tremaine LLP
1300 S.W. Fifth Avenue, Suite 2300
Portland, OR 97201

Penny Bewick
New Edge Network, Inc.
3000 Columbia House Blvd.
Suite 106
Vancouver, WA 98661

WHEREFORE, for the reasons stated above, New Edge's Petition for Late Intervention should be duly recognized by this Commission, or in the alternative, if the Commission believes it appropriate, the Commission should enter an order granting New Edge's petition for late intervention.

Dated this 14th day of April, 2000.

Respectfully submitted,

DAVIS WRIGHT TREMAINE LLP

By:


Mark P. Trinchero (OSB No. 88322)
Davis Wright Tremaine LLP
1300 S.W. Fifth Avenue, Suite 2300
Portland, Oregon 97201
Telephone: (503) 778-5318
Facsimile: (503) 778-5296

ATTORNEYS FOR NEW EDGE

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing "NEW EDGE NETWORK, INC. D/B/A NEW EDGE NETWORKS' PETITION FOR LATE INTERVENTION" upon the parties named on the attachment.

I further certify that said copies were placed in sealed envelopes addressed to said partys'/attorneys' last known addresses as shown and deposited in the United States Mail at Portland, Oregon, and that the postage thereon was prepaid.

Dated this 14th day of April, 2000.

DAVIS WRIGHT TREMAINE, LLP

By: 

Mark P. Trinchero OSB# 88322
Davis Wright Tremaine
1300 SW Fifth Avenue, Suite 2300
Portland, Oregon 97201
(503) 778-5421

SERVICE LIST
Docket No. TC00-011

Mr. Alex Duarte, Senior Attorney
U S WEST Communications, Inc.
1801 California Street, Suite 5100
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Mr. Thomas J. Welk
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Mr. David A. Gerdes
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Mr. John K. Nooney
Mr. Gregory J. Bernard
Morrill Thomas Nooney & Braun LLP
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Rapid City, SD 57709-8108

Ms. Colleen Sevold
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125 South Dakota Avenue, 8th Floor
Sioux Falls, SD 57194

Mr. Andrew O. Isar
Director – State Affairs
Telecommunications Resellers Association
3220 Uddenberg Lane NW, Suite 4
Gig Harbor, WA 98335

Ms. Michel Singer Nelson
AT&T Communications of the Midwest Inc.
1875 Lawrence Street, Room 15-04
Denver, CO 80202-1847

Mr. Andrew Jones
Sprint Communications Company LP
8140 Ward Parkway 5E
Kansas City, MO 64114

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA**

IN THE MATTER OF THE FILING BY U S WEST)	ORDER GRANTING
COMMUNICATIONS, INC. OF A NOTICE OF)	MOTIONS; ORDER
INTENT TO FILE A SECTION 271)	GRANTING INTERVENTION
APPLICATION)	TC00-011

On February 8, 2000, U S WEST Communications, Inc. (U S WEST) filed with the Public Utilities Commission (Commission) its Notice of Intent to File a Section 271 Application and Motion for Alternative Procedure to Manage the Section 271 Process.

On February 10, 2000, the Commission gave notice of the filing and on March 7, 2000, entered an Order setting an intervention deadline of March 17, 2000, and a procedural schedule for filing of comments.

By order dated March 31, 2000, the Commission granted petitions to intervene filed by Telecommunications Resellers Association (TRA), McLeodUSA Telecommunications Services Incorporated (McLeod), Midco Communications, Inc. d/b/a Midcontinent Communications (Midcontinent), AT&T Communications of the Midwest, Inc. (AT&T), Black Hills FiberCom, L.L.C. (Black Hills), and Sprint Communications Company L.P (Sprint).

On April 10, 2000, the Commission received a motion from Midcontinent to late-file comments. On April 14, 2000, U S WEST filed a response to Midcontinent's motion. U S WEST did not object to Midcontinent's motion but filed a motion to file reply comments to Midcontinent's comments. On April 17, 2000, the Commission received a petition for late intervention from New Edge Network, Inc. d/b/a New Edge Networks (New Edge).

The Commission has jurisdiction in this matter pursuant to SDCL Chapter 49-31, 47 U.S.C. Section 271. At its April 27, 2000, meeting, the Commission considered the motions and petition. The Commission granted Midcontinent's motion to late-file comments and U S WEST's motion to file reply comments. The Commission also granted New Edge's petition to intervene.

It is therefore

ORDERED, that Midcontinent's motion to late-file comments and U S WEST's motion to file reply comments are granted; and it is

FURTHER ORDERED, that New Edge's late-filed petition to intervene is granted.

Dated at Pierre, South Dakota, this 4th day of May, 2000.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.

By: Debra K. Kato

Date: 5/4/00

BY ORDER OF THE COMMISSION

James A. Burg
JAMES A. BURG, Chairman

Pam Nelson
PAM NELSON, Commissioner

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA**

IN THE MATTER OF THE FILING BY U S WEST)	ORDER CLOSING DOCKET
COMMUNICATIONS, INC. OF A NOTICE OF)	
INTENT TO FILE A SECTION 271)	TC00-011
APPLICATION)	

On February 8, 2000, U S WEST Communications, Inc. (U S WEST) filed with the Public Utilities Commission (Commission) its Notice of Intent to File a Section 271 Application and Motion for Alternative Procedure to Manage the Section 271 Process.

On February 10, 2000, the Commission gave notice of the filing and on March 7, 2000, entered an Order setting an intervention deadline of March 17, 2000, and a procedural schedule for filing of comments.

By order dated March 31, 2000, the Commission granted petitions to intervene filed by Telecommunications Resellers Association (TRA), McLeodUSA Telecommunications Services Incorporated (McLeod), Midco Communications, Inc. d/b/a Midcontinent Communications (Midcontinent), AT&T Communications of the Midwest, Inc. (AT&T), Black Hills FiberCom, L.L.C. (Black Hills), and Sprint Communications Company L.P. (Sprint).

On April 10, 2000, the Commission received a motion from Midcontinent to late-file comments. On April 14, 2000, U S WEST filed a response to Midcontinent's motion. U S WEST did not object to Midcontinent's motion but filed a motion to file reply comments to Midcontinent's comments. On April 17, 2000, the Commission received a petition for late intervention from New Edge Network, Inc. d/b/a New Edge Networks (New Edge). At its April 27, 2000, meeting, the Commission granted Midcontinent's motion to late-file comments, U S WEST's motion to file reply comments, and New Edge's petition to intervene.

At its May 17, 2000, meeting, the Commission considered how to proceed. The Commission has jurisdiction in this matter pursuant to SDCL Chapter 49-31, specifically 49-31-81, and 47 U.S.C. Section 271. In its comments, U S WEST stated that if the Commission was not prepared to join in a multi-state collaborative, then the Commission should defer a decision concerning the type of procedure it will use to consider U S WEST's Section 271 compliance until the fourth quarter of 2000. Based on the comments of the parties, the Commission voted unanimously to close the docket. At this time, the Commission declines to join a multi-state process. The Commission is concerned that a multi-state process may deter South Dakota's competitive local exchange providers from participating in a proceeding involving U S WEST's section 271 compliance. It is therefore

ORDERED, that this docket is closed.

Dated at Pierre, South Dakota, this 6th day of June, 2000.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.

By:

Nelaine Kelbo

Date:

6/6/00

(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

James A. Burg
JAMES A. BURG, Chairman

Pam Nelson
PAM NELSON, Commissioner

Laska Schoenfelder
LASKA SCHOENFELDER, Commissioner