

ORDER NO. 00-243

ENTERED MAY 5 2000

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**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

UM 823

In the Matter of the Investigation into the )  
Entry of U S WEST Communications, Inc., )  
into In-Region InterLATA Services under ) **ORDER**  
Section 271 of the Telecommunications )  
Act of 1996. )

**ORDER**

**DISPOSITION: MOTION TO MODIFY PROCEDURES AND TO  
SET SCHEDULE GRANTED; MODIFIED  
PREAPPLICATION PROCEDURES ADOPTED**

**Introduction**

More than three years ago, the Commission initiated an investigation in this docket to establish procedures for the review of an expected application to the Federal Communications Commission (FCC) by U S WEST Communications, Inc. (USWC) for authorization to provide in-region interLATA services. In our Order Nos. 97-258, entered July 3, 1997, and 97-428, entered November 3, 1997, we set forth the preapplication procedures USWC would be required to follow in order for the Commission to fulfill its role under Section 271(c) of the Telecommunications Act of 1996 (Act).

In the years following the issuance of our Orders, many changes in the industry and in its regulation have occurred, and other Regional Bell Operating Companies (RBOCs) have completed the state commission Section 271 Application pre-filing process in several jurisdictions. Some state commissions have utilized formal public proceedings presided over by the Commissioners themselves and lasting several days; others have delegated the process to staff and administrative law judges for both formal hearings and informal workshops. In some states, approval has been gained through incremental steps, while in others, a single order contained the findings on all issues. From the orders of other state commissions, as well as the FCC's orders regarding those RBOCs' Section 271 applications, which were often used to comment on

the review processes themselves, we have been able to gain valuable insights into how the process should and should not be carried out.

We further note that those aspects of USWC's application which will be explored in the confines of the Commission's hearing rooms, are only some of the steps which will be required before the Commission can make a positive recommendation to the FCC. Integral to our approval will be the satisfaction of the Section 271 Checklist Items that are related to USWC's Operational Support Systems (OSS). These systems, which are critical to the creation of a truly competitive local exchange service marketplace, will be examined in the region-wide OSS testing being performed under the auspices of the Regional Oversight Committee (ROC).<sup>1</sup> Our examination of USWC's application is also being run in tandem with proceedings in other states, most notably Washington, and many of the parties to this proceeding will be appearing elsewhere and offering testimony on matters we may find relevant.

### **The USWC Motion**

On February 8, 2000, USWC filed a motion to modify the procedures the Commission adopted in those 1997 Orders, requesting that the Commission replace the abbreviated, adversarial process described therein, with an extended workshop-style process. In our previous Orders, we recognized the unique nature of this proceeding: our final action is a recommendation to another administrative body, rather than an adjudication appealable to the state or federal courts. We therefore had considerable flexibility to fashion the rules and procedures that would provide us with the information necessary to make a recommendation which would further the public interest.

By a Notice of Motion issued February 24, 2000, we invited interested parties to reply to USWC's Motion. Responsive pleadings were filed by AARP, AT&T, MCI WorldCom, the Telecommunications Resellers Association, McLeodUSA Telecommunications Services, Inc. and Beaver Creek Cooperative Telephone Company. A procedural conference for the purposes of gathering additional information regarding the positions of various parties was held on March 31, 2000. Intervenors Rhythms Links, MGC Communications, Inc., New Edge Networks, Inc., Electric Lightwave, Inc., Nextlink and Telcom Group, Inc. also participated in the March 31, 2000 conference.

Based upon a review of the information submitted, the comments of various parties elicited at the procedural conference, and our own survey of the activities undertaken in other states, we conclude that modifications to our original procedures are in order. The Commission therefore adopts new preapplication procedures. These procedures, set forth in Appendix A, replace only those which we had previously adopted in Appendix A, "Section 271—Procedural Requirements" in Order No. 97-258, and in our decision with respect to Discussion paragraphs "Draft copy of FCC Application" and "Tentative Recommendation" in Order No. 97-428. In so doing, we note that, at the

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<sup>1</sup> The ROC consists of representatives from the utility regulatory commissions in all of the states in which USWC has local exchange service operations.

March 31, 2000 conference, the parties reached agreement on some of the procedures and a schedule that might be utilized in the first stages of this proceeding. We have, to the extent that they are consistent with the other procedural requirements we impose, adopted those procedures and schedule into this Order. We shall also, by separate notice, schedule a special public meeting, prior to the commencement of Workshop 1, to enable interested persons to comment on the proceedings we now undertake.

**ORDER**

IT IS ORDERED that the Motion of U S WEST Communications, Inc. to Modify Procedures and to Set Schedule is GRANTED and that the preapplication procedures, set forth in Appendix A, are adopted for the review of U S WEST Communications, Inc.'s expected application to the Federal Communications Commission for authorization to provide interLATA long distance services pursuant to Section 271 of the Telecommunications Act of 1996.

Made, entered, and effective \_\_\_\_\_.

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**Ron Eachus**  
Chairman

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**Roger Hamilton**  
Commissioner

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**Joan H. Smith**  
Commissioner

A party may request reconsideration of this order pursuant to ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-014-0095. A copy of any such request must also be served on each party to the proceeding as provided by OAR 860-013-0070(2). A party may appeal this order to a court pursuant to applicable law.

## SECTION 271 PREAPPLICATION PROCEDURES

### A. Submission of Initial Documents by USWC

1. USWC shall have submitted the following documents within seven days of the effective date of this Order:
  - a. A detailed outline of the complete case, indicating the witnesses it intends to call, summaries of their proposed testimony, and a list of the documents they intend to submit with respect to each subparagraph of Section 271(c)(2)(B) Competitive Checklist ("Checklist Item") of the Telecommunications Act of 1996.
  - b. USWC's proposed Statement of Generally Available Terms and Conditions – Interconnection Agreement (SGAT-ICA) with detailed cross-references to the appropriate Checklist Item.
  - c. Direct Testimony for Checklist Items named in Workshop 1, below.

With respect to the subject matter in paragraphs a. and b., above, Intervenor shall first request from USWC any additional information that they believe they require. In the event that Intervenor and USWC cannot agree on the scope or timing of a response, the ALJ may be petitioned to decide the matter in question.

### B. Structure of the Proceeding

2. Workshop Format
  - a. There will be five workshops, with each workshop designated to cover specific issues. Checklist Items and certain other issues will be covered in the first three workshops as follows (Checklist Items are identified by paragraph number):

Workshop 1: (3) Poles, Ducts, Conduit, Rights-of-Way; (7) 911, Directory Assistance, Operator Services; (8) Listings; (9) NXX Administration; (10) Databases, Signaling; (12) Local Dialing Parity; (13) Reciprocal Compensation.

In light of the requirements imposed upon USWC noted in paragraph A., above, we adopt the following schedule for this workshop subject to such alteration as the ALJ shall deem necessary or appropriate: Submission of Intervenor testimony on the Checklist Items in Workshop 1: June 30, 2000; Rebuttal Testimony: July 21, 2000; Workshop 1: August 9-11, 2000; Briefs of Parties on Workshop 1 Checklist Items: August 28, 2000.

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Workshop 2: (1) Interconnection/Collocation—except Digital Subscriber Line and Other Technical Issues; (11) Number Portability; (14) Resale; Section 272 Structural Safeguard Issues.

Tentative date for submission of Direct Testimony in Checklist Items in Workshop 2: August 2, 2000.

Workshop 3: (2) Access to Unbundled Network Elements (UNEs); (4) Unbundled Loops; (5) Unbundled Transport; (6) Unbundled Switching; Satisfaction of Section 271 subparagraphs (c)(1)(A) or (B) (“Track A or Track B”); Public Interest issues.

Workshop 4: Digital Subscriber Line, Open Issues on Operation Support Systems (OSS) testing results and other Technical Issues.

Workshop 5: Resolution of issues where USWC has failed to meet its burden in previous four workshops and examination of changed circumstances on resolved issues.

2. Administration of Proceedings. The conduct of the workshops and preparation of Workshop Findings and Recommendation Reports shall be by a committee (Committee). The Committee shall be chaired by an Administrative Law Judge (ALJ) designated to preside over the proceedings and shall include members of the Commission staff (Staff) designated by the ALJ. The rules regarding *ex parte* communications shall, in this docket, apply to the Commissioners, ALJ and members of the Staff designated as members of the Committee described above. Treatment of any sensitive or proprietary information submitted in this docket will be governed by the Commission’s procedures for the issuance of a Standard Protective Order set forth in OAR 860-012-0035(1)(k). All filings made by USWC and any interested person shall, in addition to being filed on paper, be made in electronic format (3.5 inch computer diskette in Microsoft Word 6.x or pdf ).

3. Review Process. Within 15 days of the completion of each of the first four workshops, the parties shall file briefs containing proposed findings of fact and conclusions of law with respect to each of the matters covered in the respective workshop. Within 30 days thereafter, the Committee shall issue its Workshop Findings and Recommendations Report to the Commission. Parties shall be entitled to submit comments on the Report to the Commission within 15 days thereafter. No reply comments or oral presentations shall be permitted. The Commission shall indicate by Order which issues in the Report have been satisfied by USWC and which have not. Those issues which have been determined to be unsatisfactory shall be remanded for review and resolution in Workshop 5. The burden of proof shall be upon USWC for the purposes of this paragraph.

4. Workshop 5 and Final Commission Review and Decision. Workshop 5 shall be utilized for the following purposes: (a) bringing USWC into compliance with issues the Commission has previously determined to have been performed unsatisfactorily, either in the first four workshops or in the OSS tests; and (b) to examine allegations of changed circumstances or failure to perform by USWC with respect to items for which the Commission has previously found USWC to be in compliance. The burden of proof shall be upon USWC for the purposes of clause (a) and upon Intervenor for the purposes of clause (b). Within 30 days of the completion of Workshop 5, the parties shall file proposed findings of fact and conclusions of law with respect to each of the matters in Workshop 5. Rebuttals shall be filed within 15 days thereafter. Within 60 days thereafter, the Committee shall submit its final Recommendation Report to the Commission. Parties shall be permitted to submit Comments in support or opposition to USWC's application within 30 days from the submission of the final Recommendation Report, and Reply Comments shall be submitted within 15 days thereafter.

### **C. Gathering and Presentation of Evidence**

1. General Rules of Evidence. This matter shall not, in general, be treated as a contested, adversarial proceeding and the ALJ may waive or suspend any of the provisions of OAR 860-014-005 *et seq.* as may be deemed appropriate to further the underlying public interest purposes of this proceeding.
2. Testimony. Written testimony shall be sponsored by witnesses who shall be available for cross-examination. All persons offering proof of factual matters, whether or not sponsoring written testimony, shall testify under oath and be subject to cross-examination.
3. Testimony in Other Jurisdictions. The dates in this proceeding, to the greatest practicable extent, shall be scheduled to succeed the dates wherein evidence on similar Checklist Items will have been offered in other jurisdictions. Parties to proceedings in other jurisdictions may designate which testimony being offered herein is identical to that offered in such other jurisdiction. All parties in this case who are participants in the USWC Section 271 Application proceeding in said other jurisdiction shall be deemed to have notice of such testimony. The parties are encouraged, wherever possible, to stipulate testimony, including transcripts of direct and cross-examination, obtained in such other jurisdictions and thereby avoid squandering limited resources through repetitive examination of witnesses. In the event that all parties cannot agree on such stipulations, any party may offer such evidence for inclusion in the record. The extent to which some or all of the parties in this case have had the opportunity to

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conduct cross-examination of witnesses with respect to identical or similar testimony proffered in other jurisdictions shall be a factor in determining the scope of the examination of witnesses in this proceeding.