Service Date: June 27, 2000

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

IN THE MATTER OF the Investigation	)	UTILITY DIVISION
Into U S WEST Communication, Inc.'s	)	
Compliance with Section 271 of the	)	DOCKET NO. D2000.5.70
Telecommunications Act of 1996	)	ORDER NO. 6254

PROCEDURAL ORDER

Background

1. On May 12, 2000 U S WEST Communications, Inc. (U S West) filed a document titled "U S WEST Communications, Inc.'s Section 271 Application and Motion for Procedure to Manage the Section 271 Process" (Application and Motion). In the Application and Motion U S West asked the Montana Public Service Commission (MPSC) to consider participating in a multistate collaborative process to address 271 issues. On May 23, 2000 the MPSC issued a Notice of Opportunity to Participate, Notice of Commission Action, in which the MPSC indicated its intention to participate in a multistate collaborative on 271 issues and gave an opportunity for interested persons to participate in that process.

2. On May 26, 2000 AT&T Communications of the Mountain States, Inc. (AT&T) filed a response to the Application and Motion (Response). In the Response AT&T made a number of arguments and concluded "AT&T believes that the correct conclusion is for Montana not to join a multi-state process." Response, p.11. The MPSC carefully considered each of AT&T's arguments and, while acknowledging that it is not unreasonable to be skeptical about the multistate process, concluded that on balance the benefits of that process will likely outweigh the disadvantages. Therefore, the MPSC reaffirmed its commitment to the process and directed its staff to issue this procedural order.

Procedural Order

3. Pursuant to delegated authority, MPSC staff issues this procedural order to govern the schedule and other procedural matters in this docket.

Introduction

4. U S West can enter the interLATA market within its 14 state region once the Federal Communications Commission (FCC) determines that U S West meets the requirements of Section 271 in each state independently. Although the FCC will make the ultimate decision about U S West's interLATA entry, the FCC is required by statute to consult with state commissions before making any determination of U S West's satisfaction of the requirements of Section 271. See 47 U.S.C. § 271(d)(2)(B). The FCC has stated that "[i]n order to fulfill this role as effectively as possible, state commissions must conduct proceedings to develop a comprehensive factual record concerning BOC compliance with the requirements of section 271 and the status of local competition in advance of the filing of section 271 applications"[1] The FCC promises to "consider carefully state determinations of fact that are supported by a detailed and extensive record. . . . "[2]

5. The MPSC will join with the Idaho Public Utilities Commission, the Iowa Utilities Board, the North Dakota Public Service Commission, and the Utah Public Service Commission (Commissions) to conduct a joint process to consider aspects of Section 271 through collaborative workshops. The Commissions expect the multistate workshop process to narrow and resolve many 271 issues.

Participation

6. By separate notice the MPSC has provided an opportunity to participate in this docket. Those timely responding to the notice have been made participants by staff action. Notice of Staff Action, June 9, 2000. Late participation may be granted by leave of the MPSC.

Less Controversial Checklist Items

7. Based on US West's assertion that substantial agreement and progress on checklist items numbers 3, 7, 8, 9, 10, and 12 (Poles/Ducts/Conduits, 911/E911, Directory Assistance, Operator Services, White Pages Listings, Number Administration, Signaling/ Assoc. Databases, and Dialing Parity) has been reached among participants in other US West states, and

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[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*").

that any outstanding issues should be able to be discussed and resolved among participants without necessitating an in-person workshop, the Commissions agree to develop the record on these checklist items through written filings. Such a process will include the filing of US West's case, discovery, comment cycles, and either a joint resolution filed by the participants, or a report from staff (developed with the assistance of the Outside Consultant, see below) to each commission based on the written record. To the extent that agreement cannot be reached on these checklist items, mini-workshops on isolated topics may be scheduled or issues may be deferred to the individual state commissions for resolution. The remaining checklist items will be addressed through a series of three workshops as outlined below.

Workshop Record

8. The workshops will be transcribed by a court reporter. Some settlement discussions may occur off of the record. The court reporter will maintain a continuing list of exhibits introduced as evidence in the workshops. Participants to the proceeding must provide the Outside Consultant with a complete e-mail list of all persons to whom materials distributed in this combined docket should be distributed; service shall be electronic only, unless a participant is unable to receive electronic distribution. Any participant who is unable to receive service by e-mail is responsible for providing all participants with alternative instructions for service, including an express service account number if overnight delivery is requested. Pre-filed testimony and legal pleadings must be filed with each of the state commissions, according to the rules of that state. The record from the workshops will be considered a part of the official record of the proceeding in each of the five states.

Written Testimony

9. U S West and all participants filing pre-filed testimony must file such testimony or comments under oath according to the schedule set forth at Attachment "A". All participants are strongly encouraged to be as forthcoming as possible in the pre-filed materials, such as testimony or comments. Additional materials will only be considered to the extent that they were not available at the time that original materials were filed. The Commissions recognize that there

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[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, ¶ 18 (rel. Oct. 13, 1998) (*"BellSouth Louisiana II").*

will be circumstances when evidence is newly discovered or arises for the first time in rebuttal, thereby requiring participants to present new evidence at the workshops; however, these circumstances should be the exception.

Questioning of Witnesses

10. The collaborative workshops will be less formal than adjudicative proceedings, and all participants will have the opportunity to question witnesses at each workshop. Questioning does not have to be conducted through attorneys. All witnesses shall offer testimony and explanation under oath during the course of the workshops.

Discovery

11. All participants have the ability to submit relevant, focused written discovery according to the schedule set forth at Attachment "A". Participants may commence discovery immediately after U S West files its direct testimonies. All discovery and non-confidential responses must be served upon all participants in each individual state's proceeding. A participant in only one state or responding to data requests that are specific to a particular state may limit service of responses and responsive materials that the party has designated as confidential to parties in that state's proceeding pursuant to paragraph 15 of this procedural order. Each party shall have seven (7) business days to respond to and/or object to written discovery propounded upon it. Reasonable extensions of time to respond to discovery shall be extended where the circumstances warrant. Any participant to the proceeding that has a discovery dispute must raise the dispute in a brief letter to the decision-maker identified by the Commissions as responsible for overseeing the discovery process. If the discovery dispute persists, the decision-maker must have oral argument (either in person or via telephone) on the issue within three (3) business days from receipt of the letter, which argument shall be transcribed by a court reporter and included as a part of the official record of the proceeding.

Outside Consultant

12. The states will select and retain one Outside Consultant or consulting firm to coordinate the multistate proceeding and workshops. The consultant will be retained by the state commissions collectively, but will be funded by U S West. The Outside Consultant's responsibilities will be to:

a. Coordinate and run the collaborative workshops;

b. Maintain a complete record of the proceeding including issue resolution;

c. Assist commission staff members from each state to draft a report of the agreed upon and unresolved issues in each workshop;

d. Manage the discovery; and

e. Keep all parties to the workshop proceedings on task and timely moving toward resolution.

State Staff

13. Staff from each state may participate in each of the workshops. Staff shall have advisory, not advocacy, responsibilities; however, if desired, a commission may identify separate adversarial staff, which may not have *ex parte* contacts with advisory staff regarding the multi-state workshops. Staff shall have the opportunity to submit discovery according to the schedule and to ask pertinent questions of participants during the course of the workshops.

Unresolved Issue Resolution Process

14. If the parties are unable to reach agreement on an issue, then the issue shall be considered “unresolved.” Once an issue is considered to be in agreement during the workshop process, it will not be reopened unless new information or evidence, not previously available to the parties, justifies reopening the issue. Each commission shall have independent authority to resolve each unresolved issue in the manner it deems appropriate. For example, a commission could resolve an issue based on the record from the workshops or, on its own motion or the motion of a participant, through the taking of additional evidence, or some combination thereof.

Treatment of Confidential Material

15. Confidential material will be protected from disclosure via the processes used by each state for protecting confidential or trade secret information in that state. All participants to the proceeding shall abide by the terms and conditions of each Protective Order.

Schedule

16. The schedule for this proceeding is contained in Attachment "A" which is attached hereto and incorporated herein by this reference. Participants to the proceeding shall make all conceivable good faith efforts to keep to the schedule. Modifications will be made as necessary as determined by the Outside Consultant in consultation with the Commissions and staff.

Post-OSS Testing Evaluation

17. U S West's Operational Support Systems (OSS) are currently being tested under the auspices of the U S West Regional Oversight Committee (ROC). When the testing is complete, the Commissions will determine what process to utilize to evaluate the results of the ROC test.

Follow-Up Workshops

18. Follow-up workshops on isolated topics may be necessary to complete full resolution of issues. To the extent necessary, the Outside Consultant shall work with all participants to schedule the additional workshops as necessary. It is anticipated that these follow-up workshops will be shorter in duration and more focused thereby allowing them to be scheduled shortly after the primary workshop on the checklist item has occurred.

Reports of Findings and Disputes

19. Within twenty (20) days after each workshop and any follow-up workshops are complete, commission staff members from each state, together with the assistance of the Outside Consultant, will prepare and submit a report of the agreed upon and unresolved issues in each workshop, identifying draft findings of fact and conclusions of law, differing views on resolution of the disputed issues and recommended findings of disputed issues. Within ten (10) days of submission of such report, the participants may file any proposed additional or revised findings of fact, conclusions of law, and/or clarification of disputed issues. Within ten (10) days after the parties comments are submitted, the staff in consultation with the Outside Consultant will file their reports with each of the Commissions.

Resolution of Unresolved Issues

20. Unresolved issues shall be submitted to each Commission for its independent resolution. As stated in ¶ 14, for example, a Commission could resolve an issue based on the record from the workshops or, on its own motion or the motion of a party, through the taking of additional evidence or some combination thereof. Each Commission shall set a process and schedule that will allow complete resolution of these issues. Participants will at a minimum have an opportunity to file briefs and reply briefs and argue the disputed issues before each state commission.

Remote Participation

21. U S West will make provision for participants that do not want to travel to a workshop in a distant state to participate by telephone using a toll free number. To the extent reasonably practical, U S West will also make one site available in each fully participating state for participation by videoconference. Videoconferencing will not be made available in the following circumstances:

a. In the state that is hosting the workshop;

b. If no participants from the state notifies U S West at least three weeks in advance of the workshop that it intends to participate in the workshop via video conference; and

c. If no video conferencing equipment is reasonably available on the dates of the scheduled workshop.

Each of the commissions will work with U S West to identify and obtain the use of state video conferencing facilities where practical and/or less expensive than similar private facilities.

Submission to FCC

22. Once these workshops are complete and each commission has made a determination on unresolved issues for its state, the Commissions anticipate that the record will be sufficiently developed such that U S West can make its 271 filing to the FCC and the Commissions can make a reasoned recommendation pursuant to Section 271(d)(2)(B) of the Act.

DONE AND DATED this 27th day of June, 2000, by delegation to Commission staff as the Order of the Montana Public Service Commission.

BY THE MONTANA PUBLIC SERVICE COMMISSION

DAVE FISHER, Chairman
NANCY MCCAFFREE, Vice Chair
BOB ANDERSON, Commissioner
GARY FELAND, Commissioner
BOB ROWE, Commissioner

ATTACHMENT □A□

PROCEDURAL SCHEDULE
Docket No. D2000.5.70, Order No.6254

Deadline*	**Action**
June 9, 2000	U S West will file Statements of Generally Available Terms and Conditions (SGAT) in each of the participating states and an overview of its entire 271 case, including the to greatest extent possible, identifying all evidence it intends to produce to support its case that it is now in compliance with section 271.
June 2000	The Commissions retain the Outside Consultant.
July 14, 2000	U S West Overview of Entire 271 Case

Filing/Comments on Checklist Item Numbers. 3, 7, 8, 9, 10 and 12:

September 5, 2000	U S West's Direct Testimony
October 13, 2000	Intervenor Comments
November 3, 2000	All Parties Rebuttal Comments
	Filing of joint resolution or staff report

Workshop Number 1:

Subject: Checklist Item Numbers 1 (interconnection and collocation), 11 (number portability), 13 (reciprocal compensation) and 14 (resale) as well as Section 272.

July 31, 2000	U S West's Direct Testimony
September 5, 2000	Intervenor Responsive Testimony
September 18, 2000	All Parties Rebuttal Testimony
October 3-6, 2000	Workshop Dates, Salt Lake City, Utah

Workshop Number 2:

Subject: Emerging Services including Line Sharing, Checklist Item Number 5, including Dark Fiber, Subloop Unbundling, Packet Switching

October 27, 2000	U S West's Direct Testimony
November 24, 2000	Intervenor Responsive Testimony
December 8, 2000	All Parties Rebuttal Testimony

December 18-21, 2000	Workshop Dates, Boise, Idaho or Helena, Montana

Workshop Number 3:

Subject: Checklist Item Numbers 2 (combinations), 4, and 6 (to the extent not previously covered), Public Interest (including the Performance Assurance Plan) and Track A

January 19, 2001	U S West's Direct Testimony
February 23, 2001	Intervenor Responsive Testimony
March 9, 2001	All Parties Rebuttal Testimony
March 26-30, 2001	Workshop Dates, Des Moines, Iowa