

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of US West) Application No. C-1830
Communications, Inc., Denver,)
Colorado, filing its notice of)
intention to file Section 271(c)) FACTUAL FINDINGS AND
application with the FCC and) PARTIAL VERIFICATION
request for Commission to verify)
US West compliance with Section)
271(c).) ENTERED: April 9, 1999

BY THE COMMISSION:

This matter came before the Nebraska Public Service Commission (Commission) on June 23, 1998. The Federal Telecommunications Act of 1996 (the Act; the Federal Act; or the Telecommunications Act) provides that before any regional bell operating company (RBOC) such as US West Communications (US West) is eligible to provide in-region interLATA telecommunications service, it first must demonstrate to the Federal Communications Commission (FCC) that it has opened its local markets to competition. A RBOC's local market is considered open once it demonstrates compliance with the "fourteen-point checklist" found in subsection 271(c) of the Act, along with other measures.¹ The FCC has 90 days from the filing of an application to make its determination. The Act provides that the FCC should consult with the applicable state commission as to whether the RBOC has satisfied the requirements of Section 271.

On August 18, 1997, the Commission entered an order in Application No. C-1540 setting forth the procedural schedule to be followed in processing a US West §271 application. In that docket, the Commission ordered US West to file an application with the Commission at least 90 days prior to its filing an application with the FCC. US West filed its intention with the Commission on June 23, 1998, and it was docketed as Application No. C-1830. Notice of the application was published in the Daily Record, Omaha, Nebraska, on June 25, 1998.

¹ Generally, to meet the checklist requirements of 47 USC 271(c)(2)(B), US West must demonstrate that it provides access or interconnection to: 1) interconnection; 2) network elements; 3) poles, ducts, conduits, and rights-of-way; 4) local loops; 5) local transport; 6) local switching; 7) 911 and E911, directory assistance, and operator call completion services; 8) white pages directory listings; 9) telephone numbers; 10) databases and signaling; 11) interim number portability; 12) local dialing parity; 13) reciprocal compensation; and 14) resale. US West must also show: that it has a facilities based competitor [under 47 USC 271(c)(1)(A)]; that it has a separate affiliate for competitive activities [under 47 USC 272]; and that approval of the application be in the public interest [under 47 USC 271(d)(3)(C)].

In Application No. C-1540, the following parties indicated their interest to participate in US West's §271 application: Aliant Communications; AT&T Communications of the Midwest (AT&T); Cox Nebraska Telecom (Cox); MCI Telecommunications Corp. (MCI); Nebraska Independent Telephone Association (NITA); Nebraska Telephone Association (NTA); and Sprint Communications Company, L.P./United Telephone Company of the West (Sprint). US West and the U.S. Department of Justice were also made parties to the proceeding. When US West filed Application No. C-1830 with the Commission, each of these parties were automatically made parties to the application. After notification of Application No. C-1830 was published, GTE and McLeod also filed as intervenors in the docket.

On June 30, 1998, the Commission entered a procedural order in Application No. C-1830 which modified the time frames originally set forth in the Application No. C-1540 order. Due to disputes between the parties as to discovery and other issues, the time lines established in the June 30 order were modified several times through a series of procedural progression orders.

On July 21, 1998, in Procedural Progression Order No.2, the Commission appointed retired district court judge Samuel Van Pelt to act as a special master for discovery-related matters. The Commission provided that Judge Van Pelt's rulings had the full force and effect of rulings of the Commission.

Through the course of discovery in this docket, several of the intervenors appealed one of Judge Van Pelt's orders to the full Commission. After hearing arguments, the Commission upheld the bulk of the Special Master's rulings, while reversing a portion of the order. In reaction to the portions of the ruling that were upheld, AT&T, Sprint, and McLeod withdrew their prefiled testimony. Under procedural guidelines established in this docket, a party that did not intend to present witnesses at the hearing was not required to respond to discovery requests. Such "limited intervenors" could, however, cross-examine witnesses and file post-hearing briefs in the application.

The Commission held a hearing on the application beginning November 16, 1998. Since the majority of intervenors withdrew their testimony and assumed a more limited role in the proceeding, Aliant Midwest was the only party to present a witness other than US West. A complete list of witnesses is attached to this order as Appendix A.

Supreme Court Ruling

After the hearing on the application, the US Supreme Court issued a ruling in AT&T v. Iowa Utilities Board, 119 S.Ct. 721 (1999) that struck down certain FCC rules, while reinstating other rules. The Commission held an oral argument to assess the effect of the Supreme Court's ruling on the present application. In summary, the Court's opinion 1) affirmed that the FCC has the jurisdiction to issue pricing rules; 2) vacated Rule 319; 3) reinstated Rule 315(b); 4) reinstated the "pick & choose" rule; and 5) affirmed the "all elements rule." Of these, the Commission was most concerned with the Court's vacation of Rule 319 and reinstatement of Rule 315(b).

47 CFR §51.319 [Rule 319] provided that an incumbent local exchange carrier (ILEC) shall provide nondiscriminatory access to the following network elements on an unbundled basis: local loop, network interface device, switching capability, interoffice transmission facilities (including shared transport), signaling network & call-related databases, operation support systems (OSS), and operator services and directory assistance.

The Court rejected Rule 319 because in determining the network elements that should be made available, the FCC failed to consider whether access to the listed elements was "necessary" and whether the failure to provide such elements would "impair" the ability of a carrier to compete.

In its ruling, the Court also reinstated 47 CFR §51.315(b) [Rule 315(b)]. This rule directs that unless requested, an ILEC shall not separate network elements that the ILEC already combines before providing them to a competitive local exchange carrier (CLEC).

In the wake of the reinstatement of Rule 315(b), US West must demonstrate that it provides already-combined network elements as combined. However, at the oral argument, US West asserted that in light of the Supreme Court's vacation of Rule 319, it now does not know which network elements it must provide as already combined. Until the FCC issues a replacement for Rule 319, neither US West, nor this Commission, will know exactly what standard US West will be required to meet.

Therefore, where possible, the Commission evaluated this application in light of the rules and laws in effect today. In those areas where the applicable standard may be unclear, we conducted our analysis based upon what we knew at the time of the hearing.

Pricing Issues

Throughout the proceedings, the joint intervenors argued that because the rates for unbundled network elements (UNEs) contained in US West's interconnection agreements are only interim in nature, US West should fail on several of the checklist items. The Commission has a docket pending (Application No. C-1415) that will true up these rates. As that docket is still pending, and outside of the control of US West, the Commission has not held the interim nature of UNE prices against the applicant.

Burden of Proof

Despite the limited intervenor evidence in the record, US West still has the ultimate burden of proof with respect to factual issues "even if no party opposes [US West's] application."² US West 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 ruling in the BOC's favor. [The FCC] emphasize[d], however, that the BOC applicant retains at all times the ultimate burden of proof that its application satisfies section 271.³

Even with only limited intervenor evidence in the record, US West has a tremendous burden. While in today's order we find that US West has not demonstrated that it complies with all of the elements of the checklist, we also acknowledge the strides that US West has taken. Competition has arrived in Omaha. In this Order, the Commission has tried to provide a road map for US West. While identifying the evidence and data that we found persuasive, we have also specifically identified the areas that we feel deserve more attention.

In short, we find that US West complies with checklist items 3, 7, 8, 9, 10, 11, 12, and 14. US West has not demonstrated that it complies with items 1, 2, 4, 5, and 6. Matters related to checklist item No. 13, reciprocal compensation, are currently under

² *Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Service in Michigan*, CC Docket No. 97-137, Memorandum Opinion and Order, ¶43 (rel. Aug. 19, 1997) (Ameritech Michigan).

³ Ameritech Michigan, ¶44.

consideration before both this Commission and the FCC. Therefore, we are unable to issue an opinion on that item at this time.

The Commission emphasizes that in many of the areas where US West has not demonstrated compliance, our findings are not based upon evidence that demonstrates US West has fallen short of standards. Rather, for several of the checklist items, the evidence in the record is simply insufficient for the Commission to reach a conclusion as to US West's performance. Where this is the case, the Commission has no choice but to find that US West has failed to meet its burden. It should be noted that US West did attempt to update certain information up to, and after the date of, the hearing. We accepted some of this information into the record. However, where later-filed materials would have escaped public review and the opportunity for cross-examination, we refused to accept the late filings. Where possible in this order, we have attempted to give US West specific guidance for future filings in this application. However, as US West moves forward in this docket, the Commission may request additional information which is not set forth at this time in this order. In general, the Commission urges that as US West provides further data in this docket, that it do so in a format that facilitates comparison or analysis. That is, sample sizes, means, and standard deviations for CLECs and US West along with Z-scores (or P-values) and critical values should be reported. Moreover, it should be clear what indicator is being measured and what the unit of measurement is for the indicator, as well as the time span for which data is being reported. It would be appropriate for US West to include explanations of calculation methods and footnotes discussing findings or standards for evaluation given the nature of the data (e.g. small sample sizes). Statistical information submitted in this manner would constitute a basis for meaningful evaluation.

A N A L Y S I S

1. Interconnection

47 USC 271(c)(2)(B)(i)

Statutory Requirement

1. The first competitive checklist item with which US West must demonstrate compliance is interconnection. Section 271(c)(2)(B)(i) states that in order for a RBOC to meet the requirements of checklist item No.1, it must provide interconnection in accordance with the requirements of Sections 251(c)(2) and 252(d)(1).

2. Section 251(c)(2) imposes upon US West the duty to provide interconnection with its networks for "(A) the transmission and routing of telephone exchange service and exchange access." Section 251(c)(2) further directs that this interconnection must be: (B) provided at any technically feasible point within US West's network; (C) at least equal in quality to that provided by US West to itself or to any other party to which US West provides interconnection; and (D) provided on rates, terms, and conditions that are just, reasonable, and nondiscriminatory.⁴ Section 252(d)(1) provides that just and reasonable rates under Section 251 (c)(2) shall be based upon cost and may include a reasonable profit.

Evidence

Interconnection at any technically feasible point

3. Section 251(c)(2)(B) directs that interconnection must be provided "at any technically feasible point" within US West's network. Mr. Michael Weidenbach indicated that CLECs may terminate at any of the following six points of interconnection defined in ¶210 of the First Report and Order: (1) line-side local switch; (2) trunk-side local switch; (3) trunk interconnection tandem switch; (4) central office cross-connection points; (5) signal transfer points; and (6) points of access to unbundled elements.⁵ Additional connection points are available through the Bona Fide Request Process.⁶ Weidenbach testified that US West offers these modes through the options of physically collocated facilities, virtually collocated facilities, mid-span meet (two carriers build to interconnect office-to-point), and entrance facilities (two carriers connect office-to-office).⁷ The CLEC has the choice in interconnection mode.⁸ The level of traffic determines the most efficient interconnection mode. US West provides training, facility tours, its Interconnection and Resource Guide, and individual consultations to assist CLECs with ordering and obtaining interconnection.⁹ Aliant Midwest's witness, Brad Hedrick, testified that US West was unable to provide a certain switching

⁴ 47 U.S.C. §251(c)(2); *Application of BellSouth Corp., BellSouth Telecomm., Inc., and BellSouth Long Distance, Inc. for provision of In-Region, InterLATA Service in Louisiana*, CC Docket No.98-121, Memorandum Opinion and Order, ¶61 (rel. Oct. 13, 1998) (BellSouth Second Louisiana).

⁵ Weidenbach, Tr. at 256.

⁶ Weidenbach, Exh. 7 at 6-7.

⁷ Weidenbach, Exh. 7 at 5.

⁸ Weidenbach, Exh. 7 at 9.

⁹ Weidenbach, Exh. 8 at 6.

application.¹⁰ In its post-hearing brief, US West said that this complaint was "somewhat of a mystery" and the type of "isolated incident" that is insufficient to demonstrate that US West does not meet checklist item No.1.¹¹

Equal in Quality

4. Section 251(c)(2)(C) provides that interconnection must be "at least as equal in quality to that provided by [US West] to itself or to . . . any other party to which the carrier provides interconnection."

5. US West contends that because it does not provide interconnection to itself, it meets the "equal in quality" burden if it can demonstrate that it provides interconnection in an equivalent manner to each of the parties to which it provides interconnection.¹² As a result, US West did not provide any data or performance measures to track how, and within what time frames, it provides interconnection to itself.¹³ Mr. Weidenbach did testify, however, that "US West provides the same standard for engineering and provisioning CLEC trunks as we provide to ourselves in our internal arrangements."¹⁴

6. US West has seventeen local interconnect trunks spread among four CLEC networks, in three Nebraska cities (Grand Island, Norfolk, and Omaha).¹⁵ Calls have been exchanged over 47 trunk groups involving 4,431 trunks.¹⁶ Weidenbach testified that in six of the nine months between January and September of 1998, no Nebraska local final interconnection group experienced blocking in excess of 2 percent.¹⁷ By contrast, local final trunk groups between US West end offices or end offices and tandems in Nebraska were blocked more than 2 percent in each of those nine months.¹⁸ So it appears that while US West, overall, does not meet the quality standard

¹⁰ Hedrick, Tr. at 1102-1121.

¹¹ US West, Post Hearing Brief at 14, Footnote 7.

¹² Williams, Tr. at 892.

¹³ Williams, Tr. at 892, 899.

¹⁴ Weidenbach, Tr. at 201.

¹⁵ Weidenbach, Exh. 8 at 8; Weidenbach, Tr. at 200-01.

¹⁶ Weidenbach, Exh. 8 at 8; Weidenbach, Tr. at 201.

¹⁷ Weidenbach, Tr. at 201.

¹⁸ Weidenbach, Tr. at 201.

established by this Commission,¹⁹ interconnecting CLECs have experienced lower blockage rates than US West.

7. The prefiled testimony of Ms. Jane Smith addresses US West's primary comparative performance data. This testimony lists provisioning and repair criteria in existence and under development by US West for interconnection.²⁰ The indicators presented at the hearing as part of Mr. Williams testimony address interconnection installation and repair, including reports to CLECs about performance in these areas.²¹ Ms. Smith included tables with indicator results in her testimony.²²

8. Although US West proposed numerous measures to track the collocation provided to CLECs, the original submission made it difficult to evaluate US West's performance. For example, while US West proposed six performance indicators to measure blocking of interconnection provided to CLECs, it originally only produced data for two of those measures.²³ The other four were "under development."²⁴ For other indicators, US West only provided one month's data.²⁵ At the Commission's request, US West did submit additional data to demonstrate interconnection installation and repair. The data showed that in a few cases, US West failed to provide statistically significant (99% confidence level) nondiscriminatory service.

9. Smith states that because US West has provided requested trunks on time at a 90 percent rate, any blockages are probably due to CLECs not ordering sufficient trunks.²⁶ She does not, however, provide any other evidence to support this statement. Thus, it is difficult for the Commission to evaluate this criterion.

10. Brad Hedrick, of Aliant Midwest, testified that US West has provided Aliant Midwest with interconnection. In his prefiled testimony, Mr. Hedrick stated that he was unable to evaluate the issue of quality parity because he is not knowledgeable about the

¹⁹ Rule 003.05A of the Nebraska Public Service Commission's Telecommunications Rules and Regulations requires that "On toll connecting trunks ... sufficient quantities of trunks be provided so that ninety-nine percent (99%) of all telephone calls offered to any trunk group will not encounter an all trunks busy condition."

²⁰ Direct Testimony of Jane Smith at 13-14, attached to Williams, Exh. 38.

²¹ Williams, Exh. 38 at 13-15; Williams, Exh. 39 at 10-11.

²² Direct Testimony of Jane Smith at 15-20, attached to Williams, Exh. 38.

²³ Exh. MGW-R5, attached to Williams, Exh. 38.

²⁴ Williams Tr. at 897, 909-910.

²⁵ Exh. MGW-R7, attached to Williams, Exh. 38.

²⁶ Direct Testimony of Jane Smith at 21, attached to Williams, Exh. 38.

service US West provides to itself. He further stated three instances in which his company has had difficulty with US West concerning use of the interconnection trunks.²⁷ For example, Mr. Hedrick testified that US West has failed to turn up interconnection trunks as instructed and has failed to properly overflow interconnection traffic to the local tandem.²⁸ However, at the hearing Mr. Hedrick stated that he felt that US West now meets this checklist item.²⁹

11. Mr. Wiedenbach explained that US West responded promptly to Aliant Midwest's concern and that the interconnection traffic was overflowing to the tandem switch as the interconnection transport system was designed.³⁰ Since the initial incident, Aliant Midwest has not experienced any similar problems.³¹

12. Mr. Hedrick also identified an occasion on which US West failed to activate a trunk group on the specified date.³² Weidenbach responded that US West acknowledged that it had made this error because it had mistakenly believed that it had already activated the trunk but corrected the problem as soon as the company was notified of it.³³

13. Weidenbach further testified that US West offers the options of physical collocation, virtual collocation, mid-span arrangements, and entrance facilities for CLECs wishing to interconnect in Nebraska.³⁴ For CLECs who only wish to combine unbundled elements, US West offers a single point of termination (SPOT) frame as an additional form of collocation. Although the Commission has not ordered US West to provide cageless and shared collocation, US West did commit to providing such collocation at the hearing.³⁵

14. Unless it is deemed infeasible, US West will provide a CLEC with its first option among three types of physical collocation: caged, cageless, and shared physical.³⁶ Weidenbach cites response standards US West will meet in providing floor space, cage construction, and the like, for requesting CLECs.³⁷

²⁷ Hedrick, Exh. 45 at 3-4.

²⁸ Hedrick, Exh. 45 at 3-4.

²⁹ Hedrick, Tr. at 1103.

³⁰ Weidenbach, Exh. 8 at 6.

³¹ Aliant Response to US West Data Request No. 22.

³² Hedrick, Exh. 8 at 7.

³³ Weidenbach, Exh. 8 at 7.

³⁴ Weidenbach, Tr. at 198.

³⁵ Weidenbach, Exh. 7 at 14-15; Weidenbach, Tr. at 203-04.

³⁶ Weidenbach, Exh. 7 at 13-15.

³⁷ Weidenbach, Exh. 7 at 22.

15. In 1998, US West received six requests for physical collocation from at least two companies in eleven wire centers in Omaha and Grand Island. It will actually provide physical collocation at any Nebraska wire center if a carrier negotiates an alternative collocation arrangement through the BFR process.

Rates, terms, and conditions

16. Section 251(c)(2)(D) states that interconnection must be "provided on rates, terms, and conditions that are just, reasonable, and nondiscriminatory."³⁸ Section 252(d)(1) provides that such rates may be calculated based upon cost plus a reasonable profit.

17. US West has a concrete and specific legal obligation to provide interconnection in the AT&T, Aliant Midwest, Cox, and TCG interconnection agreements. The Commission has approved the terms, conditions, and interim rates in US West's interconnection agreements.³⁹ The Commission is currently addressing permanent interconnection pricing in Application No. C-1415. As such, the interim rates may be subject to true-up by the Commission.

Opinion and Findings

18. Although US West has numerous approved interconnection agreements on file with the Commission, it must demonstrate that it is meeting all of its obligations under those agreements in a non-discriminatory fashion.

19. US West claims that it is not possible to measure whether it provides CLECs with the same degree of interconnection that it provides itself. US West asserts it is one big network and that it does not provide itself interconnection. As a result, US West continues it need only demonstrate that it does not discriminate between CLECs in its provision of interconnection to satisfy the requirements of checklist item No. 1. We disagree with this analysis.

20. US West has certain functions that it could measure to compare whether CLECs enjoy the same level of interconnection that it enjoys. One such function measures traffic usage and trunk group service levels (i.e. blockages, delays, etc.) on end-office to end-office trunk groups and end-office to tandem-final trunk

³⁸ 47 U.S.C. §251(c)(2); BellSouth Second Louisiana Order, ¶61.

³⁹ Bergman, Exh. 42, at 2.

groups. This internal area of responsibility is often referred to as the traffic administration/traffic engineering function within a carriers customer service organization. These types of measurements could be used to help the Commission assess whether comparability exists. Without them, the Commission cannot conclude that US West demonstrated that it provides nondiscriminatory interconnection.

21. In the areas that US West did propose performance measures, it did not always present sufficient data for the Commission to assess its performance. At the Commission's request, US West did submit additional data to illustrate its record for interconnection installation and repair. This revised information indicated US West offers adequate service. The data did show that US West failed to provide statistically significant (99% confidence level) nondiscriminatory service in a few cases. However, these instances were isolated and not indicative of a trend. While this is the type of data that the Commission feels is necessary to evaluate US West's application, it in itself was not enough for the Commission to conclude that the company was in compliance with the first checklist item.

22. Further, since the hearing on this application, the Supreme Court has moved some of the targets at which US West must shoot to demonstrate compliance with the checklist. As discussed above, one such area is the provision of previously bundled elements as bundled. The substance of this requirement falls under checklist item No. 2. However, US West must also demonstrate a concrete and specific legal obligation to provide such elements as bundled. US West argues that although it knows it must provide some elements as already combined, it does not know which ones. US West has not shown that it has a legal obligation, under interconnection agreements or elsewhere, to provide bundled elements.

23. Therefore, the Commission is of the opinion and finds that US West has not demonstrated that it meets the requirements of checklist item No. 1.

2. ACCESS TO NETWORK ELEMENTS

47 USC 271(c)(2)(b)(ii)

Statutory Requirements

24. To comply with checklist item No. 2, US West must demonstrate that it provides access to network elements on an unbundled basis at any technical feasible point on rates, terms,

and conditions that are just, reasonable, and nondiscriminatory.⁴⁰

25. The FCC had defined network elements to include local loop, the network interface device, switching capability, interoffice transmission facilities (including shared transport), signaling network and call-related databases, operation support systems (OSS), and operator services and directory assistance.⁴¹

26. ILECs must provide nondiscriminatory access to unbundled network elements (UNEs). The FCC had also required that under Rule 315(b) ILECs were to combine elements for CLECs.⁴² Prior to the hearing in this docket, a ruling by the 8th Circuit Court of Appeals had vacated this requirement.⁴³ Since the hearing, however, the U.S. Supreme Court has reinstated Rule 315(b).⁴⁴

27. In arguing what US West must demonstrate under this language to satisfy checklist item No. 2, both US West and the intervenors cited various FCC rules and the 8th Circuit Court of Appeals decision in *Iowa Utilities Board v. FCC*. However, as discussed above, since the hearing on this application, the U.S. Supreme Court has issued its opinion in *AT&T v. Iowa Utilities Board*. This opinion reverses several aspects of the 8th Circuit's ruling that US West relied upon at the time of the hearing. The Commission requested that the parties submit briefs on the effect of the Supreme Court's ruling on this docket and held an oral argument on the subject.

28. AT&T pointed to the FCC's Local Competition Order which provides that except where technically infeasible, Section 251(c)(3) of the Act requires ILECs to provide CLECs with access to network elements in a manner that is at least equal in quality to that which the ILEC provides to itself.⁴⁵

29. At the hearing, US West argued that this nondiscrimination standard directs that there shall be no discrimination in US West's provision of elements to the various CLECs. The standard does not

⁴⁰ 47 USC 251(c)(3).

⁴¹ Rule 319

⁴² Rule 315(b)

⁴³ *Iowa Utilities Board v. FCC*, 120 F.3d 753 (8th Cir. 1997).

⁴⁴ Stewart, Exh. 11 at 2-3.

⁴⁵ FCC Local Competition Order, ¶312. See also 47 C.F.R. §§ 51.311(b), 51.313(b). Further, this provision was upheld in *Iowa Utilities Board v. FCC*, 120 F.3d, 753, 814 (8th Cir. 1997).

concern, the argument continues, the quality of access that US West enjoys.⁴⁶

Evidence

US West addressed the OSS and UNE access elements separately.

Access to Operations Support Systems (OSS)

30. Operations support systems (OSS) are systems that facilitate providing telephone service to customers. OSS includes five areas of functionality to which US West must provide access: 1) pre-ordering, 2) ordering, 3) provisioning, 4) maintenance and repair, and 5) billing. These functions are highly visible to customers and thus can be important in influencing customers' impressions of the quality of service local exchange carriers provide. US West must have systems in place to allow CLECs to have access to the various OSS functions. It must also provide training in the use of those systems so that CLECs may access the function. Finally, US West must demonstrate that CLECs experience the same level of flow-through as it enjoys.

Interface systems

31. US West offers CLECs several options for using its OSS functions, including computer-to-computer and human-to-computer interfaces.⁴⁷ All the options are mediated, allowing US West to keep its systems secure while enabling CLEC access. US West focused primarily on its Interconnection Mediated Access (IMA), Electronic Data Interchange (EDI), and Electronic Bonding - Trouble Administration (EB-TA).

32. IMA is a human-to-computer system, which is used to support pre-order, order, provisioning, and repair and maintenance operations.⁴⁸ EDI and EB-TA are computer-to-computer systems that together support pre-ordering, ordering and provisioning, and repairs.⁴⁹ Ms. Notarianni testified that when real-time access is not possible, practicable, or necessary with these systems, all of the data is gathered over a period of time, and exchanged at once.⁵⁰

⁴⁶ Stewart, Exh. 11 at 2. See also Tr. at 307.

⁴⁷ Notarianni, Exh. 32 at 16-21.

⁴⁸ Notarianni, Exh. 32 at 16.

⁴⁹ Notarianni, Exh. 33 at 38-40.

⁵⁰ Notarianni, Tr. at 607.

US West administers this "batch processing" in a nondiscriminatory manner, Notarianni continued.⁵¹

33. US West provided very limited data as to ordering and maintenance/repair intervals under the resale checklist item and pre-ordering process. The pre-ordering data suggests there may be discriminatory treatment, particularly in appointment scheduling and obtaining a telephone number. US West does not propose any measurements to evaluate its own performance in several of the categories including gateway availability time and billing. Still other measures are "under development."

Training and Assistance

34. Ms. Notarianni addressed the resources US West has dedicated to assisting CLECs in using US West's OSS.⁵² A US West team is assigned to assist CLECs when they approach the company. There are various help desks and a website from which the CLECs can seek assistance. Moreover, IMA upgrades have been developed frequently and notices of them are distributed in a timely fashion. US West has also offered a series of training sessions for CLECs to aid them in using its support systems.⁵³ The testimony is supplemented by pages of exhibits, among them lengthy, detailed descriptions of the support systems; copies of forms and manuals; reproductions of computer screens from the website; training schedules and agendas; IMA update notices; and the New Customer Questionnaire, a document that a US West account manager and CLEC representative complete jointly when a CLEC asks for OSS from US West.

35. Mr. Hedrick testified that Aliant personnel have received training from US West on using IMA for pre-ordering, ordering, provisioning, maintenance, and repair functions.⁵⁴

Functionalities

36. Each of the five functionalities identified above consist of various components that comprise an individual customer's profile. For example, pre-ordering could consist of various elements such as address validation, carrier listing, service availability, etc.

⁵¹ Notarianni, Exh. 33 at 54-55.

⁵² Notarianni, Exh. 32 at 29-39. See generally Notarianni Tr. at 651-653.

⁵³ Notarianni, Tr. at 652-53.

⁵⁴ Hedrick, Exh. 45 at 7-8.

37. US West testified that in most cases, the processes utilized by the CLEC and the US West retail unit are the same.⁵⁵ For simple listings, both the CLEC and the US West retail unit can validate rural or descriptive addresses.⁵⁶ Notarianni cites "telephone number selection" as a transaction in which CLECs actually receive better service than the US West retail unit.⁵⁷ The CLEC receives nine numbers with one query, whereas the US West retail unit receives only one telephone number and must enter another systems to receive three more.⁵⁸ New and existing products supported by US West's electronic interfaces include 1) POTS resale; 2) ISDN basic rate interface; 3) private line; 4) Centrex; 5) unbundled loop; 6) local number portability; 7) interim number portability; 8) unbundled loop with long-term number portability; 9) unbundled loop with interim number portability; 10) unbundled line-side analog switch port; and 11) DID trunks.⁵⁹ US West allows the CLECs to order unbundled network elements individually or for the purpose of combining them. A CLEC can use EDI or the IMA GUI to order the unbundled loop and ports to combine with shared transport by using a related purchase order number (RPON) and the line cost code filed on the local service request.⁶⁰

38. US West asserts that the IMA GUI and the EB-TA repair electronic interfaces support repair transactions for all products and services in substantially the same time and manner as the OSS used by the US West retail unit.⁶¹

39. US West goes on to cite numerous other components that are supported by the interfaces.⁶² However, CLECs desiring combinations must also order each element separately on separate order forms. Some of the forms are processed electronically, while others are processed manually.⁶³ Further, there are certain complex services that are not available through the interfaces including primary rate ISDN, frame relay, central office automatic call distribution, and multi-point private line.⁶⁴ As of the date of the hearing, no CLECs had requested these functionalities in Nebraska.

⁵⁵ Notarianni, Exh. 33 at 17.

⁵⁶ Notarianni, Exh. 33 at 10.

⁵⁷ Notarianni, Tr. at 843-844.

⁵⁸ Notarianni, Tr. at 843-844.

⁵⁹ Exh. LN-R-01 attached to Notarianni, Exh. 33.

⁶⁰ Notarianni, Tr. at 682-93.

⁶¹ Exhs. BJB-05, BJB-06 attached to Notarianni, Exh. 32, adopted testimony by Barbara Brohl; and LN-R-05, attached to Notarianni, Exh. 33.

⁶² See generally Notarianni Tr. at 681-84, 695, 701, 705-08, 720, 756-59, 762-70, and 836-37.

⁶³ Notarianni, Tr. at 689-690, 727.

⁶⁴ Notarianni, Tr. at 697.

Flow-Through

40. The FCC defines "flow-through" as those orders that are transmitted electronically through the gateway and accepted into [the RBOC's] back office ordering systems without manual intervention."⁶⁵ In the BellSouth Second Louisiana Order, the FCC stated that "Although the [FCC] has not required a demonstration of order flow-through in its previous decisions under section 271, [it] has found a direct correlation between the evidence of order flow-through and the RBOC's ability to provide competing carriers with nondiscriminatory access to the RBOC's OSS functions."⁶⁶ The FCC gives "substantial consideration" to order flow-through rates because they "demonstrate whether a BOC is able to process competing carriers' orders, at reasonably foreseeable commercial volumes, in a nondiscriminatory manner. Evidence of flow-through also serves as a clear and effective indicator of other significant problems that underlie a determination of whether a BOC is providing nondiscriminatory access to its [OSS]."⁶⁷ Therefore, this Commission gives significant weight to whether US West has demonstrated parity in order flow-through.

41. As discussed above, US West asserts that its interfaces utilize batch processing where real-time processing is unavailable or unnecessary. The pre-order transactions supported by the IMA GUI and the EDI are processed in real-time, as are the repair transactions supported by the IMA GUI and the EB-TA.⁶⁸ All order transactions supported by the IMA GUI and EDI other than the notification of order completion are processed in real-time.⁶⁹ US West asserts that POTS resale orders are the most common orders CLECs place with US West. Ms. Notarianni testified that to prevent "fallout" from errors in service orders, the Firm Order Manager (FOM) reviews these orders for accuracy.⁷⁰ Over a period of minutes or days,⁷¹ the FOM will review, research, evaluate or retype orders as it determines appropriate.⁷² US West's own orders do not pass through the FOM. Notarianni said that by US West eliminating the need to reject many CLEC orders, it provides CLECs better service

⁶⁵ BellSouth Second Louisiana Order, ¶107.

⁶⁶ BellSouth Second Louisiana Order, ¶107.

⁶⁷ BellSouth Second Louisiana Order, ¶108.

⁶⁸ Notarianni, Tr. at 622-23, 853.

⁶⁹ Notarianni, Tr. at 625.

⁷⁰ Notarianni, Tr. at 625.

⁷¹ Notarianni, Tr. at 747.

⁷² Data Response 19; Brohl Direct Testimony, Exh. BJB-27 at 3, attached to Notarianni, Exh. 32.

than US West enjoys.⁷³ US West does not present any data to demonstrate the amount of time that CLEC orders await review and processing in the FOM.

Access to Network Elements

42. As stated above, since the U.S. Supreme Court vacated Rule 319, this Commission cannot be sure which elements in US West's network it must provide nondiscriminatory access to on an unbundled basis. The appropriate standard to apply will remain undetermined until the FCC promulgates new rules to replace Rule 319 in accordance with the Supreme Court's direction. At the time of the hearing, US West presented evidence to demonstrate that it was providing unbundled access to the elements listed in Rule 319. This Commission can only assume that the FCC will find that at least some of those elements will meet the necessary and impair tests cited by the Court. Therefore, we will conduct our analysis on the rules that were in effect at the time of the hearing. When the FCC does adopt its new rules, it can consider or disregard the various portions of this analysis as appropriate to the new rule.

43. Under the standard that was in place at the time of the hearing, US West was required to unbundle local loops, switching capability, interoffice transmission facilities, database and signaling systems, operation support systems, and operator services and directory assistance.⁷⁴ Even after the Supreme Court's ruling, several of these UNEs are individually the subject of other checklist points. However, unlike the individual availability requirements of the several items contained in other checklist points, checklist item No. 2 is concerned with the ability of CLECs to combine the various elements as they choose. Other UNEs can be requested in addition to these elements and must be provided if it is determined it is technically-feasible for the ILEC to do so. Ms. Stewart mentions a response time of 15 days for these additional UNEs and a quote for technically-feasible additional UNEs within 90 days. US West does not include a time line for response to the previously-mandatory UNEs.⁷⁵

44. In addition to providing nondiscriminatory access to the seven elements listed in Rule 319, Stewart testified that US West offers CLECs access to additional UNEs pursuant to a BFR process.⁷⁶

⁷³ Notarianni, Tr. at 751-52 and 845-47.

⁷⁴ Stewart, Exh. 11 at 4.

⁷⁵ Stewart, Exh. 11 at 5.

⁷⁶ Stewart, Exh. 11 at 6.

45. US West contends that it is prepared to fill any reasonably-foreseeable CLEC demand for UNEs on a nondiscriminatory basis. To demonstrate this contention, it points to testimony that it had installed more than 300 unbundled loops in Nebraska.⁷⁷ Ms. Stewart also testified that US West has thoroughly tested its ability to provide access to UNEs in a nondiscriminatory manner.⁷⁸ US West has not, however, submitted the results of such testing to support its application.

Combination of UNEs

46. US West has not received any requests from CLECs wishing to combine UNEs, and US West has not offered any testing results to demonstrate its provisioning of UNEs.⁷⁹ Stewart testifies that US West has made provision for future requests to combine through its willingness to provide a physically-located SPOT frame. The SPOT frame is an intermediate frame that will be located in US West's central office to which US West requires that any network element is connected before it is delivered to the CLEC.⁸⁰ At this frame, CLECs will have the option of combining their own equipment, combining their equipment with US West equipment, or combining their equipment with another CLEC's equipment.⁸¹ The SPOT frame is connected to US West's COSMIC frame and the CLEC's physical collocation space through a series of tie cables and jumpers.⁸² Ms. Stewart indicated that these connections are considered permanent and result in very few failures.⁸³ US West uses similar intermediate frames for special services, private-line circuits and unique, design services.⁸⁴ Stewart testified that US West provides the SPOT frame as a low-cost option for CLECs to access UNEs⁸⁵ with costs ranging from \$15,000 to \$150,000 per SPOT frame per central office.⁸⁶ In its post-hearing brief, US West admits that "To be sure, combining elements at the SPOT frame is not as easy as having US West combine those elements for CLECs."⁸⁷ However, at the time of the hearing, US West was operating under the 8th Circuit's ruling that ILECs did not have to combine elements for CLECs. US West

⁷⁷ Harris, Tr. at 147.

⁷⁸ Stewart, Exh. 11 at 7-8.

⁷⁹ Stewart, Exh. 11 at 6.

⁸⁰ Stewart, Exh. 12 at 10-13.

⁸¹ Stewart, Exh. 11 at 9-10, 13-14; Exh. 12 at 11-17; Tr. at 301.

⁸² Stewart, Tr. at 326-30; 379-82.

⁸³ Stewart, Tr. at 331, 381-82.

⁸⁴ Stewart, Tr. at 295.

⁸⁵ Stewart, Tr. at 301.

⁸⁶ Stewart, Tr. at 338.

⁸⁷ US West Post Hearing Brief at 26.

offers a variety of physical collocation options, including caged, cageless, shared, and the SPOT frame. None of US West's interconnection agreements reference or explain the SPOT frame.⁸⁸

47. US West does not address the cost of collocation.

48. Mr. Hedrick of Aliant testified that US West will provide nondiscriminatory access to UNEs, but at discriminatory rates. To support his claim, he points to interconnection agreements under which Aliant Midwest pays \$28.15 per month for an unbundled loop, while AT&T pays \$15.79.⁸⁹ He also testified that the provisioning of unbundled loops through the SPOT takes up to four months.⁹⁰ While Aliant uses the SPOT frame for access to unbundled local loops in the Omaha and Grand Island markets, it does not attempt to obtain multiple network elements, or combinations thereof, from US West.

⁸⁸ Stewart, Exh. 11 at 10.

⁸⁹ Hedrick, Exh. 45 at 4.

⁹⁰ Hedrick, Tr. at 1105.

OPINION AND FINDINGS**OSS**

49. US West has in place IMA, EDI, and EB-TA systems as its means for CLECs to access its OSS. It also provides reasonable training to assist CLECs in using these systems. While US West seems to provide each of the functionalities through one or more of these systems, it is unclear whether they do so in a nondiscriminatory manner or on a timely basis. US West argues that it does not necessarily have to demonstrate flow-through if it can show that the functionalities are provided in a nondiscriminatory and timely manner. We are not persuaded that US West's utilization of the FOM to process CLEC orders provides a heightened service to the CLECs. Nor did US West provide enough data with respect to the FOM to demonstrate flow-through, timeliness, or nondiscrimination. US West gives CLECs electronic access to US West systems, but it is not real-time access. That is, CLECs can carry out transactions on computer screens, but when they submit information, it is not immediately entered into the US West databases. By contrast, US West has real-time access. When US West enters its own customer data into the computer, it goes immediately into the database. US West argues that the FOM provides a better service to CLECs by preventing errors before fallout occurs. However, it did not present data to demonstrate nondiscrimination (let alone a benefit) with respect to CLECs. Further, US West does not even offer CLECs a choice between true flow-through and the FOM.

50. In addition, while US West does provide flow-through with the EDI system, this system does not handle the same number of daily transactions for CLECs that US West's OSS system can handle.

51. Until we see this type of information, we cannot conclude that US West provides nondiscriminatory access to OSS functionalities or that US West satisfies checklist item No. 2.

Unbundled Network Elements

52. Network elements are the facilities and services carriers put together, or "bundle," to provide telephone service. Switching of calls and the loop that connects a premise with a central office are examples of network elements.

53. Section 271 requires that US West make available unbundled network elements (UNEs) on a nondiscriminatory basis to CLECs. In fact, three of the fourteen checklist points (iv, v, and vi) deal specifically with access to UNEs. The intent of granting access to

UNEs is to give CLECs a chance to provide local telephone service without having to build their own complete telephone systems. A CLEC might, for example, bundle together a number of network elements with its own facilities to provide service or it might take only a few elements.

54. At the time of the hearing, US West proceeded under the ruling of the 8th Circuit Court of Appeals that it could sell the network elements individually, or on an unbundled basis, and that the CLECs had to rebundle the elements for their own use. US West has proposed using a single point of termination (SPOT) frame as a means for accomplishing this unbundling. Since the hearing, the Supreme Court has indicated that, if requested, RBOCs must provide already-combined elements as combined, without separating them. In light of the bundling requirement being reinstated after the hearing, we cannot find that US West satisfies this aspect of checklist item No. 2.

55. US West asserts that while it knows that it must provide certain elements as combined, it does not know what those elements are in light of the Supreme Court's ruling. AT&T asserts that under 47 CFR 51.315(b), the standard should be all network elements. We find that the AT&T proposal overstates any reasonable combination requirements. We will not know what standard to apply until the FCC issues a replacement for Rule 319. However, we can evaluate whether US West is providing access to the elements that were identified in Rule 319. This was the standard we were operating under at the time of the hearing. We can also look to those elements to assess whether US West is providing combinations of elements. At the time of the hearing, US West was not combining those elements and did not present performance measures to demonstrate that it was providing nondiscriminatory access to switches, loops, transport, or OSS. US West is providing loops to competitors but submitted insufficient data to demonstrate that they do so in a nondiscriminatory fashion. Further, for other elements that have not been requested by CLECs, US West indicated that it has conducted internal testing. However, it has not presented the data produced by such testing to demonstrate compliance with checklist item No. 2.

56. Therefore, for the reasons stated above, the Commission is of the opinion and finds that US West has not demonstrated that it meets the requirements of checklist item No. 2.

3. ACCESS TO POLES, DUCTS, CONDUITS AND RIGHTS-OF-WAY

47 U.S.C. §271(c)(2)(B)(iii)

Statutory Requirements

57. The third checklist item that US West must demonstrate is that it provides "[n]ondiscriminatory access to the poles, ducts, conduits, and rights-of-way owned or controlled by [US West] at just and reasonable rates . . ."

Evidence

58. Mr. Weidenbach testified that US West permits CLECs direct access to its poles and various pole attachments (e.g. cable, equipment, facilities, apparatuses, or appurtenances) that are used in providing telecommunications services.⁹¹ Likewise, US West provides access to its various ducts and conduits that house communications cables to the extent permissible under existing rights-of-way permits and easements.⁹² When an authorized carrier seeks access to US West's poles, ducts, etc., US West provides a copy of its Pole and Anchor Attachment and/or Duct Occupancy Agreement to such carrier.⁹³ The carrier must then submit a description of the requested access. Within ten days of receipt, US West verifies the details of equipment affected by the request and issues a response. If the requesting provider agrees with the response, US West completes a field verification (construction feasibility and cost estimate) within 35 days. Thereafter, US West will complete the work.⁹⁴

59. Mr. Weidenbach notes that US West is allowed to recover all costs associated with providing pole and conduit space.⁹⁵ He includes a schedule of costs for annual usage fees with his testimony.⁹⁶

60. Mr. Weidenbach closes his testimony by saying that one CLEC has placed five orders for duct access. At the time of the hearing, these orders were in the verification stages.⁹⁷ US West did not present any other testimony on this checklist item and does not offer any data to show whether it is meeting its deadlines or

⁹¹ Weidenbach, Tr. at 31-32.

⁹² Weidenbach, Tr. at 32-33.

⁹³ A copy of such agreement is attached to MJW-03, Weidenbach Exh. 7.

⁹⁴ Weidenbach, Exh. 7 at 35-37.

⁹⁵ Weidenbach, Exh. 7 at 37-41.

⁹⁶ Exh. MJW-04 attached to Weidenbach, Exh. 7.

⁹⁷ Weidenbach, Exh. 7 at 41.

whether the deadlines given to a CLEC are the same as for the Applicant.

61. In his testimony, Mr. Brad Hedrick of Aliant Midwest gave US West a "qualified yes" to being in compliance with checklist item No. 3. Mr. Hedrick testified that initially Aliant Midwest was not given access to US West conduit between the first and second manholes outside central offices.⁹⁸ However, US West changed its policy to allow the access. As long as such access is continued, Hedrick says, then it is his judgment US West is in compliance.⁹⁹

62. Mr. Hedrick also expressed concern regarding US West's provisioning of a large request Aliant made for access to conduit. Mr. Weidenbach acknowledged troubles with that order due to difficulty with duct work. However, he testified that US West was working diligently to provide access to Aliant.¹⁰⁰ Hedrick testified that in his opinion, once US West completes this work, US West will have satisfied this checklist item.¹⁰¹

Opinion and Findings

63. The Commission is persuaded that despite the delays cited by Mr. Hedrick and the absence of any performance data, US West has met the requirements of 47 U.S.C. §271(c)(2)(B)(iii). The delays cited by Mr. Hedrick do not appear to interfere with US West's compliance with this checklist item. Mr. Hedrick testified that these isolated incidents seem to have been resolved or are being resolved.

64. Further, while the Commission would like to have seen more performance data measuring response times, equal treatment, etc., we do not feel that this lack of data is fatal to US West's compliance with this checklist item.

65. US West's Pole and Anchor Attachment and/or Duct Occupancy Agreements contain the terms and conditions pursuant to which competing providers may obtain access to US West's poles, ducts, conduit, and rights-of-way. US West has a concrete and specific legal obligation to provide access to US West's poles, ducts, conduits, and rights-of-way as referenced in the AT&T¹⁰², Aliant

⁹⁸ Hendrick, Exh. 45 at 4.

⁹⁹ Hendrick, Exh. 45 at 5.

¹⁰⁰ Weidenbach, Tr. at 207-09.

¹⁰¹ Hendrick, Tr. at 1104.

¹⁰² See Attachment IV, Section 3.2.1, of the AT&T Agreement.

Midwest¹⁰³, Cox¹⁰⁴, and TCG¹⁰⁵ interconnection agreements approved by this Commission. Under the dispute resolution clauses of these agreements, CLECs have a forum in which to voice any grievances with respect to access to poles, ducts, conduits, and rights-of-way. The rates, terms, and conditions contained in these agreements have been approved by this Commission and thus are found to be just and reasonable.

66. Therefore, the Commission finds, and is of the opinion that, US West has demonstrated that its processes, procedures, and capabilities for providing access to poles, ducts, conduits, and rights-of-way satisfy the requirements of checklist item No. 3.

¹⁰³ See Section IV, of the Aliant Agreement.

¹⁰⁴ See Section 9.9, of the Cox Agreement.

¹⁰⁵ See Section IV, of the TCG Agreement.

4. Unbundled Local Loops

Section 271(c)(2)(B)(iv)

Statutory Requirements

67. To satisfy the fourth checklist item, US West must demonstrate that it provides "local loop transmission from the central office to the customer's premises, unbundled from local switching of other services." A local loop is a transmission facility between a distribution frame in an ILEC central office, and the NID at the customer premises. FCC Rule 319 defined loops to include two-wire and four-wire analog voice-grade loops and two-wire and four-wire loops conditioned to transmit the digital signals needed to provide services such as ISDN, ADSL, HDSL, and DS1-level signals.¹⁰⁶ US West must offer unbundled loops in a manner that permits efficient CLECs with a meaningful opportunity to compete.¹⁰⁷ To do this, US West must demonstrate that it provides unbundled loops to CLECs within a reasonable time frame and with a minimum of service disruption.¹⁰⁸ Further, US West must provide CLECs loops of the same quality as those it utilizes to serve its own customers.¹⁰⁹

Evidence

68. US West contends that since it does not provide unbundled loops to itself, it must only demonstrate that it does not discriminate in its provision of loops among CLECs.¹¹⁰

69. Ms. Stewart testified that US West offers CLECs unbundled loops in a manner consistent with the requirements of both the Act and FCC rules.¹¹¹ US West offers unbundled loops that connect the main distribution frame at the US West central office with the NID

¹⁰⁶ 47 C.F.R. §51.319(a); BellSouth Second Louisiana Order, at ¶184. Although the Supreme Court vacated Rule 319 in AT&T vs. Iowa Utilities Board, the definition of "local loops" was not the basis for the Court's ruling. In its "Brief Regarding the United States Supreme Court Decision AT&T vs. Iowa Utilities Board," US West argued that the Commission's evaluation of US West's compliance with checklist item No. 4 should be unaffected by the Court's ruling. As discussed previously, US West argued that the only checklist item affected is checklist item No. 2, access to unbundled network elements.

¹⁰⁷ BellSouth Second Louisiana Order at ¶198.

¹⁰⁸ 47 C.F.R. § 51.313(b); 47 CFR § 51.311(b); BellSouth Second Louisiana Order at ¶185.

¹⁰⁹ 47 C.F.R. § 51.313(b); 47 CFR § 51.311(b); BellSouth Second Louisiana Order at ¶185.

¹¹⁰ Stewart, Tr. at 308.

¹¹¹ Stewart, Exh. 11; Stewart, Tr. at 291.

at the customer premises.¹¹² Further, Stewart testified that US West provides unbundled access to US West's NID¹¹³ and to the cross-connects between loops and CLEC facilities¹¹⁴. It offers two-wire and four-wire analog voice-grade loops, as well as two-wire and four-wire loops conditioned to provide digital functionality.¹¹⁵ Where US West uses integrated digital loop carrier (IDLC) technology, it provides CLECs with unbundled loops through alternate technology.¹¹⁶ When a CLEC desires to serve a customer using an unbundled loop, US West disconnects the existing connection between the loop and US West's switch at its COSMIC frame. It then reconnects the loop to the SPOT frame through the use of jumper connections and tie cables. At the SPOT frame, the CLEC can connect the loop to its own switch facilities.¹¹⁷ Brad Hedrick of Aliant testified that providing unbundled local loops in this manner can take up to four months.¹¹⁸

70. Mr. Williams cited US West's service installation guide for loops, entered into evidence as a part of Ms. Notarianni's testimony,¹¹⁹ saying US West provides 1) basic installation of loops; 2) basic installation with performance testing; and 3) coordinated installation with cooperative testing. In an effort to provide and repair loops in a nondiscriminatory manner, Williams testified that US West has developed various performance measures to evaluate US West's provision of loops. These measurements include data on the amount of time it takes US West to install analog loops,¹²⁰ the ordering and provisioning intervals for loops provided to CLECs, and the repair and maintenance of loops provided to CLECs. US West's measures do not include intervals for ordering, provisioning, or maintenance and repair of loops utilized by US West, or assessments of cut-over time intervals. These measures do reveal that US West's standard intervals for providing unbundled loops to CLECs are significantly longer than the amount of time required for US West to provide POTS to its retail customers.¹²¹

¹¹² Stewart, Exh. 11 at 13-17.

¹¹³ Stewart, Exh. 11 at 17-18; Bergman, Exh. 42 at 13-14; Stewart, Tr. at 289.

¹¹⁴ Stewart, Exh. 11 at 16.

¹¹⁵ Stewart, Exh. 11 at 13-17.

¹¹⁶ Stewart, Exh. 11 at 13-17; Stewart, Exh. 12 at 19-20.

¹¹⁷ Stewart, Tr. at 303-304.

¹¹⁸ See MGW-R10, attached to Williams, Exh. 38.

¹¹⁹ Williams, Tr. at 1024, referring to Exh. BJB-05, attached to Notarianni, Exh. 32.

¹²⁰ Exh. MGW-R5 attached to Williams, Exh. 38.

¹²¹ See Exhs. MGW-R5, MGW-R7, and BJB-10. As noted above, US West argued that it does not provide unbundled loops to itself. Therefore, it did not submit the data allowing comparisons between US West's provision of loops to itself as

Opinion and Findings

71. The Commission is of the opinion and finds that US West does not satisfy checklist item No. 4. While there is no retail equivalent to a local loop, we reject US West's contention that it does not have an obligation to offer CLECs the same quality in access to unbundled loops that it uses to provide service to its own customers. US West must provide performance measurements that compare the service it provides itself for loops with the quality of loop service it provides to competitors. However, it has failed to do so. The issue is one of quality. A CLEC will not have a fair opportunity to compete by way of unbundled network elements if delays in the provision of those elements favors the ILEC. US West has failed to demonstrate that it provides unbundled loops to CLECs within a reasonable time frame and with a minimum level of service disruption.

72. We also find that US West's SPOT frame proposal does not satisfy the requirements of checklist item No. 4 for the same reasons we detail in our discussion of checklist item No. 2.

73. Therefore, the Commission is of the opinion and finds that US West has not demonstrated that it satisfies checklist item No. 4.

5. Unbundled Local Transport

Section 271(c)(2)(B)(v)

Statutory Requirements

74. To meet the requirements of checklist item No. 5, US West must demonstrate that it provides "[l]ocal transport from the trunk side of the wireline local exchange carrier switch unbundled from switching or other services." US West must provide shared transmission facilities between end offices and tandem switches and dedicated transmission facilities between ILEC central offices or between those offices and CLEC central offices.¹²²

compared to others. However, because at least a portion of the loops provided to CLECs will be used to provide POTS, the Commission chose to compare the standard intervals for US West's provision of POTS to its retail customers with its provision of loops to CLECs.

¹²² FCC Interconnection Order ¶¶ 439-44.

75. Both the FCC¹²³ and the 8th Circuit Court of Appeals¹²⁴ require that a BOC provide transmission facilities that are shared between the ILEC and a CLEC (shared transport).

Evidence

76. Although US West claims that it is ready to provide unbundled transport, it has not actually received any requests for transport in Nebraska.¹²⁵ Ms. Stewart indicated that US West's interconnection agreement with TCG is an example of its legal obligation to provide local transport.¹²⁶ Stewart asserts that US West is able to provide unbundled access to dedicated transmission facilities between US West end offices and US West and CLEC end offices.¹²⁷ This includes interoffice transmission between: 1) US West's end offices and serving wire centers (SWCs); 2) its SWCs and interexchange carriers' (IXCs) points of presence (POP); 3) its SWCs and tandem switches; 4) its end offices and tandem switches; and 5) its SWCs and CLEC SWCs.¹²⁸ US West is ready to provide transmission capabilities such as DS1, DS3 and optical facilities, and access to digital cross-connect system (DCS) functionality.¹²⁹

77. At the time of the hearing on this application, US West indicated that it did not provide shared transport.¹³⁰ Since that time, however, it has agreed to provide shared transport¹³¹ and has requested that the Commission issue an order obligating it to provide shared transport, if the Commission determines that such an order is necessary for US West to meet checklist item No. 5.¹³² US West did not provide any performance measures for shared transport because, it argues, in a shared environment it cannot discriminate against CLECs. Further, shared transport must be provisioned in combination with a switch port for which there are already performance measures.¹³³

¹²³ Third Order on Reconsideration and Further Notice of Proposed Rulemaking, In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act 1996, CC Docket Nos. 96-98, 95-185 (rel. Aug. 18, 1997).

¹²⁴ Southwestern Bell Tel. Co. v. FCC, 153 F.3d 597 (8th Cir. 1998).

¹²⁵ Stewart, Exh. 11 at 32; Williams, Tr. at 1025.

¹²⁶ Stewart, Exh. 11 at 24-33.

¹²⁷ Stewart, Exh. 11 at 24.

¹²⁸ Stewart, Exh. 11 at 24-25.

¹²⁹ Stewart, Exh. 11 at 25, 27.

¹³⁰ Stewart, Exh. 11 at 29.

¹³¹ Stewart, Tr. at 357.

¹³² Stewart, Tr. at 386-87.

¹³³ Williams, Tr. at 1025-28.

78. Stewart testified that US West has ordering and repair procedures in place to address CLEC trouble reports with the same timeliness as reports for US West's interoffice transport facilities.¹³⁴ Further, US West has developed performance measures to assess US West's provision of unbundled transport.¹³⁵

Opinion and Findings

79. The Commission is of the opinion and finds that US West has not met the requirements of checklist item No. 5. No CLEC has ordered unbundled transport in Nebraska. Where evidence of commercial use does not exist, the FCC has said the RBOCs can submit testing results as evidence of their ability to provide UNEs. Ms. Stewart testified that US West has conducted tests for the provision of this element. However, it did not include such test results as part of the record in this application. Without this information, we cannot conclude that US West has satisfied its obligations under checklist item No. 5.

80. Therefore, the Commission is of the opinion and finds that US West has not met the requirements of checklist item No. 5.

6. Unbundled Local Switching

Section 271(c)(2)(B)(vi)

Statutory Requirements

81. To comply with checklist item No. 6, US West must demonstrate that it provides access to local switching unbundled from transport, local loop transmission, or other services. The FCC defined local switching to include line-side and trunk-side facilities, plus all of the features, functions and capabilities of the switch.¹³⁶ The features, functions and capabilities of the switch include the basic switching function, as well as the same basic capabilities that are available to the ILEC's customers.

¹³⁴ Stewart, Exh. 11 at 32.

¹³⁵ Williams, Exh. 38 at 29-30.

¹³⁶ 47 C.F.R. §51.319(c); BellSouth Second Louisiana Order, ¶206. When the Supreme Court vacated Rule 319 in AT&T vs. Iowa Utilities Board, it did base its ruling upon the definition of "local switching" Rule 319. In its "Brief Regarding the United States Supreme Court Decision AT&T vs. Iowa Utilities Board," US West argued that the Commission's evaluation US West's compliance with checklist item No. 6, should be unaffected by the Court's ruling. As discussed above, US West argued that the only checklist item affected is checklist item No. 2, access to unbundled network elements.

Local switching also includes all of the vertical features the switch is capable of providing, as well as any technically-feasible customized routing functions.¹³⁷

Evidence

82. As of the date of the hearing, US West has not had any requests for unbundled switching.¹³⁸ Ms. Stewart indicated that US West has, however, tested its unbundled switching to insure its functionality.¹³⁹ Stewart testified that US West is prepared to offer unbundled switching as required by the Act.¹⁴⁰ She identified the US West-TCG agreement as an illustration that the line-side facilities US West offers in conjunction with unbundled switching include the connection between a loop termination at a main distribution frame and a switch-line card.¹⁴¹ The trunk-line facilities offered include the connection between the trunk termination at the trunk-side cross-connect and a trunk card.¹⁴² In addition to offering CLECs basic switching functions such as connecting lines to lines, lines to trunks, trunks to lines, and trunks to trunks, Ms. Stewart indicated that US West also extends the same basic vertical features that are available to US West's customers. These features include telephone number, directory listing, dial tone, signaling, and access to 911, operator services, and directory assistance.¹⁴³ Stewart noted that each of these features are also available separately as part of a switch pricing schedule.¹⁴⁴

83. To the extent that it is possible with 1A ESS switches, US West's unbundled switch offering includes custom routing.¹⁴⁵ Stewart indicated that this limitation will be eliminated when US West replaces any remaining 1A ESS switches.¹⁴⁶ CLECs can order unbundled analog switching electronically.¹⁴⁷ Further, Stewart points to the Cox agreement to demonstrate that US West offers unbundled tandem switching.¹⁴⁸

¹³⁷ FCC Local Competition Order; 47 C.F.R. §51.319(c); and BellSouth Second Louisiana Order, ¶207.

¹³⁸ Stewart, Exh. 12 at 25.

¹³⁹ Stewart, Exh. 12 at 25.

¹⁴⁰ Stewart, Tr. at 290.

¹⁴¹ Stewart, Exh. 11 at 34.

¹⁴² Stewart, Exh. 11 at 35.

¹⁴³ Stewart, Exh. 11 at 35.

¹⁴⁴ Stewart, Exh. 11 at 36; Stewart, Tr. at 387-88.

¹⁴⁵ Stewart, Exh. 11 at 36-37.

¹⁴⁶ Stewart, Exh. 12 at 26.

¹⁴⁷ Exh. LN-R-01 attached to Notarianni, Exh. 33.

¹⁴⁸ Stewart, Exh. 12 at 38.

Opinion and Findings

84. The Commission is of the opinion and finds that US West has not met the requirements of checklist item No. 6. No CLEC has ordered unbundled switching in Nebraska. As we indicated in our opinion and findings for checklist item No. 5, where there is no evidence of commercial use, the RBOCs should submit testing results as evidence of their ability to provide UNEs. Ms. Stewart indicated that US West has conducted tests for the provision of unbundled switching. However, the applicant did not include the results of such testing in the proceedings in this docket. Without such testing results, the Commission does not have any way to evaluate US West's provisioning of unbundled switching. Therefore, the Commission is of the opinion and finds that US West has not met the requirements of checklist item No. 6.

7. ACCESS TO 911/E911, DIRECTORY ASSISTANCE AND OPERATOR SERVICES

47 U.S.C. 271(c)(2)(B)(vii)

Statutory Requirement

85. To meet the requirements of checklist item No. 7, US West must demonstrate that it provides nondiscriminatory access to (I) 911 and E911 services; (II) directory assistance services; and (III) operator call completion services.

Evidence**Access to 911/E911**

86. The FCC has directed that to meet the 911/E911 service requirements of section 271(c)(2)(B)(vii), US West must demonstrate that it provides competitors access to such services in the same manner it obtains such access and that it maintains its 911 database entries for CLECs with the same accuracy and reliability with which it maintains the data for its own retail customers.¹⁴⁹

87. James Overton described US West's 911 and E911 services. Mr. Overton testified that 911 routes a customer's call directly from the customer's end office switch to the Public Safety Answering Point (PSAP). E911 identifies the calling party's

¹⁴⁹ BellSouth Second Louisiana Order; ¶235

name and address (Automatic Line Identification or ALI) and enables US West to route the call to the appropriate PSAP based upon the calling party's telephone number.¹⁵⁰ The ALI database is managed by an independent third party, SCC. SCC uses industry standard formats for the exchange of customer records. Mr. Overton testified that through its interconnection and resale agreements, US West currently provides access to both 911 and E911 to one reseller and three facilities-based carriers.¹⁵¹ These calls are routed in the same manner in which US West routes its customers 911/E911 calls¹⁵² and neither US West, nor the Commission, has received any complaints about US West's provision of 911/E911 services.¹⁵³

88. US West does not charge CLECs for access to 911 service or 911/E911 trunking facilities. Overton testified that there may be a charge to both US West and the CLECs for SCC's management of the E911 database.¹⁵⁴

89. Other than facilities-based CLECs or those relying upon US West's unbundled switching, US West updates CLEC customer information in the database under the same schedule and time frames it utilizes for updates to its customer information.¹⁵⁵ US West has established procedures to allow CLECs to verify the accuracy of its customer data in the database.¹⁵⁶

90. Brad Hedrick testified that Aliant Midwest has leased direct trunking to the US West E911 facilities in Omaha and has received US West's cooperation to ensure seamless operation of emergency call networks. US West has also placed Aliant customers' information in its listings databases and allows Aliant customers access to US West directory assistance.¹⁵⁷ As such, Mr. Hedrick concluded that Aliant believes that US West meets the 911/E911 service requirements of checklist item No. 7.

91. US West presented very little performance data with respect to the provision of nondiscriminatory access to 911 and E911 services. At the time of the hearing, US West only provided one month's data on two performance measures that were

¹⁵⁰ Overton, Exh. 24 at 2.

¹⁵¹ Overton, Exh. 24 at 2-4, 6, 11.

¹⁵² Overton, Tr. at 513-14.

¹⁵³ Overton, Exh. 24 at 11.

¹⁵⁴ Overton, Exh. 24 at 11.

¹⁵⁵ Overton, Exh. 24 at 7-8.

¹⁵⁶ Overton, Exh. 24 at 7-8.

¹⁵⁷ Hedrick, Exh. 45 at 5.

"under development."¹⁵⁸ US West did not provide any testing as an alternative.

Access to Directory Assistance and Operator Services

92. To meet the requirements of checklist item No. 7, a RBOC must also show that it allows CLEC customers to obtain directory assistance services and to obtain telephone numbers and call completion services.¹⁵⁹

93. Directory assistance is a service by which a customer can obtain telephone numbers and addresses of other customers. Lori Simpson, Director of Interconnection, testified that US West places all CLEC listings in its directory assistance database, and CLECs have the same options as US West end-users with respect to appearance of directory assistance listings.¹⁶⁰ US West has over 15 approved agreements in Nebraska that incorporate the Telecom Act standards for directory assistance and operator service access.¹⁶¹

94. If a CLEC does not choose to utilize US West's directory assistance, it may provide its own directory assistance service or obtain the service through a third party.¹⁶² Like a US West subscriber, a customer of a reseller who utilizes US West's directory assistance services need only dial 411 or 1+411 to access the service. A facilities-based CLEC must purchase dedicated trunks from the CLECs end office to US West's designated directory assistance platform to avail itself of US West's directory assistance services.¹⁶³ In such case, the facility-based CLEC's customer must dial a number selected by the CLEC to reach US West's directory assistance services.¹⁶⁴ US West will provide a directory list service or an end-user subscriber list to any CLEC that desires to build its own listing database.¹⁶⁵

95. Ms. Simpson indicated that US West is prepared to offer CLECs electronic access to the US West listings database so that

¹⁵⁸ Exh. MGW-R5, attached to Williams, Exh. 38.

¹⁵⁹ BellSouth Second Louisiana Order, ¶¶239-242.

¹⁶⁰ Simpson, Tr. at 447-48.

¹⁶¹ Simpson, Tr. at 447.

¹⁶² Simpson, Exh. 21 at 5-7.

¹⁶³ Simpson, Exh. 21 at 4.

¹⁶⁴ Simpson, Exh. 21 at 4.

¹⁶⁵ Simpson, Tr. at 449.

a CLEC operator can obtain listings from the US West database without incurring the cost of building its own database.¹⁶⁶

96. US West has agreed to provide CLECs with branding of Directory Assistance service to make classification of callers possible if a CLEC purchases a dedicated trunk.¹⁶⁷ Ms. Simpson indicated that branding is not technologically feasible in some Nebraska DA platforms.¹⁶⁸

97. US West indicated that some of its contracts with ILECs prevent it from including the listings of those ILECs. It requested that the Commission order it to include such listing if we feel such an order is necessary for US West to comply with checklist item No. 7.

98. Mr. Hedrick of Aliant Midwest testified that it is his opinion that US West met the checklist's requirements for nondiscriminatory access to directory assistance.¹⁶⁹

99. Operator Services include services such as long-distance call placement, busy interrupt, and busy verification. US West is obligated under its interconnection agreements to provide such services.¹⁷⁰ At the time of the hearing, US West provided operator services for 3,900 resold lines in Nebraska.¹⁷¹ A CLEC may provide branded operator services, its own, or through a third party. Neither the Commission nor US West has received any complaints about its provision of operator services.¹⁷²

100. US West did not present any data to differentiate between directory assistance and operator position calls made by US West or CLEC customers. Williams explained that all such calls, whether carried by US West or a CLEC, are commingled and served on a first-come, first-serve basis.¹⁷³ Therefore, there is no way to distinguish between the calls or to discriminate based upon the customer's carrier.

¹⁶⁶ Simpson, Exh. 21 at 6.

¹⁶⁷ Simpson, Tr. at 486; See also Cox Agreement, ¶9.4.6.

¹⁶⁸ Simpson, Exh.21 at 7.

¹⁶⁹ Hedrick, Exh. 45 at 5.

¹⁷⁰ Simpson, Exh. 21 at 8; see also Cox Agreement, section 9.6.

¹⁷¹ Simpson, Tr. at 442

¹⁷² Simpson, Exh. 21. at 7-10.

¹⁷³ Williams, Exh. 38 at 36.

101. Brad Hedrick of Aliant Midwest testified that Aliant Midwest provides its own operator call completion services. He believes, however, that US West has satisfied the operator services requirements.¹⁷⁴

Opinion and Findings

102. US West has demonstrated through affidavit and other evidence that it provides nondiscriminatory access to (I) 911 and E911 services; (II) directory assistance services; and (III) operator call completion services. As US West provides updated data on this checklist item, it should more specifically identify why it cannot include certain CLEC DA listings (See ¶ 97).

103. The Commission therefore finds, and is of the opinion that, US West satisfies the requirements of checklist item No. 7.

8. WHITE PAGE DIRECTORY LISTINGS

47 USC 271(c)(2)(B)(viii)

Statutory Requirements

104. To meet the requirements of section 271(c)(2)(B)(viii) US West must demonstrate that the access and interconnection it provides to interconnecting carriers includes: "White pages directory listings for customers of the other carrier's telephone exchange service."

105. To comply with this checklist item, US West must demonstrate that it provides white pages and directory listings for customers who are served by other carriers. US West must demonstrate that it provides nondiscriminatory appearance and integration of white pages listings to customers of competitive carriers and that US West provides white pages listings for competitor's customers with the same accuracy and reliability that it provides its own customers.¹⁷⁵

Evidence

106. Ms. Lori Simpson described US West's procedures for including, verifying, and updating CLEC customer information in its DEX subsidiary's white pages.

¹⁷⁴ Hedrick, Exh. 45 at 5.

¹⁷⁵ BellSouth Second Louisiana Order, ¶257.

107. US West has processes and procedures in place to ensure the accuracy and reliability of CLECs' white page listings, and such listings are as accurate as the listings that they provide themselves. US West is legally bound to provide such services as evidenced by its interconnection agreements with Cox and Aliant.¹⁷⁶ US West provides CLEC end users the same options for directory listings as it does its own customers.

108. Primary listings, including a listing of the customer's name, address, and telephone number, are available at no additional charge to the CLEC. Premium and privacy listings are also available, as well as end-user advertising through the directory's publisher.

109. A CLEC has access to the same white page directory listing processes, personnel, and systems that US West uses for its listings. Each night, US West submits new or changed listings of both its and CLECs' end users to the directory publisher. CLECs are automatically provided a "verification proof" report on a monthly basis so that the existence and accuracy of the listing in the database can be verified. CLEC listings are commingled with, and are indistinguishable from, US West's listings in white page directories. CLECs also have the option of publishing their own directories. In such cases, US West makes its listings available to the CLEC by magnetic tape, electronically, or by other means.

110. Simpson notes that in 1997 and 1998, the company has successfully handled more than 1,500 listing orders.¹⁷⁷ To date, US West has provided over 5,000 listings on behalf of CLECs to DEX in Nebraska.¹⁷⁸

111. US West does not provide any data to compare the timeliness, accuracy, and updating of entries in the white pages. However, the FCC has determined that for this checklist item, affidavit evidence is sufficient to establish compliance.

112. Brad S. Hedrick of Aliant Midwest testified that Aliant Midwest's customer information has been incorporated by US West DEX into the white page listings and by US West into its

¹⁷⁶ See Cox Nebraska Telcom, Inc. Interconnection Agreement, Section 11.6; and Aliant Midwest, Inc. Interconnection Agreement.

¹⁷⁷ Simpson, Exh. 22 at 3. See, for example, Cox Interconnection Agreement, sections 9.5 and 11.6.

¹⁷⁸ Simpson, Tr. at 447.

directory assistance.¹⁷⁹ In his opinion, US West satisfies this checklist item.

Opinion and Findings

113. Based on the affidavit evidence presented, the Commission finds, and is of the opinion that, US West satisfies the requirements of checklist item No. 8. US West's approved inter-connection agreements with CLECs provide all required access to white pages listings, including: (1) placing CLEC end-user listings in US West's listings database; (2) upgrading US West's Directory Assistance records consistent with the needs of the CLEC; and (3) furnishing listings to US West's directories and to other directory publishers for use in publishing local directories. CLEC listings are commingled with, and are indistinguishable from, US West's listings in white page directories. US West does not charge CLECs for these listings and delivers directories free to customers of CLECs.

9. NONDISCRIMINATORY TELEPHONE NUMBER ASSIGNMENT

47 U.S.C. 271(c)(2)(B)(ix)

Statutory Requirements

114. Section 271(c)(2)(B)(ix) provides that "[u]ntil the date by which telecommunications numbering guidelines, plan, or rules are established, nondiscriminatory access to telephone numbers for assignment must be provided to [CLECs] telephone exchange service customers. After that date, compliance with such guidelines, plan or rules." To meet the requirements of checklist item No. 9, US West must demonstrate that it provides telephone numbers to permit competing providers access to these numbers that is identical to the access that US West provides itself.¹⁸⁰

Evidence

115. Margaret Bumgarner, Manager-Federal Regulatory Issues, Public Policy Organization, US West, testified that on September 1, 1998, control of the numbering function shifted to Lockheed-Martin IMS, the North American Numbering Plan Administrator.¹⁸¹

¹⁷⁹ Hedrick, Exh. 45 at 6.

¹⁸⁰ FCC Local Competition Order; BellSouth Second Louisiana Order, ¶260.

¹⁸¹ Bumgarner, Tr. at 394.

116. Prior to this shift, US West managed number assignment to other carriers in the same manner as it managed number assignment to its own customers. US West set aside blocks of numbers for CLECs. When a customer of a CLEC requested a number, it was given one from within the block. US West assigned thirteen NXX codes to new local exchange service providers in Nebraska¹⁸² and seven NXX codes for its own use within the past twelve months.¹⁸³ All such numbers have been assigned within 10 days of the request. Bumgarner reports the average CLEC assignment of a number was carried out in 2.9 days, whereas US West assignment averaged 5.1 days. US West did not charge for number assignment or activation of central office codes.¹⁸⁴ In response to questions from counsel for AT&T regarding activation complaints in Arizona, Ms. Bumgarner testified that she personally examined the matter and could not find any problems originating from US West's network.¹⁸⁵ Regardless, US West did not receive any complaints concerning assignment or activation in Nebraska, nor did US West refuse any NXX assignment requests in this state.¹⁸⁶ Ms. Bumgarner went on to state that US West has added additional resources to ensure accurate and timely activation of NXXs and developed a process to update its switches to recognize a new NXX assigned to a CLEC.¹⁸⁷

117. Brad Hedrick of Aliant Midwest testified that Aliant Midwest has assigned its own NXX codes and so is unable to assess whether US West meets the requirements of checklist item No. 9.¹⁸⁸

Opinion and Findings

118. Prior to the transfer of central office code administration responsibilities to Lockheed Martin on September 1, 1998, US West provided nondiscriminatory access to telephone numbers for assignment by CLECs to their telephone exchange customers in accordance with the industry Central Office Code Assignment Guidelines. US West was legally bound to do so by

¹⁸² Bumgarner, Exh. 19 at 5.

¹⁸³ Bumgarner, Exh. 19 at 6.

¹⁸⁴ Bumgarner, Exh. 20 at 2; and Tr. at 395.

¹⁸⁵ Bumgarner, Tr. at 407-09.

¹⁸⁶ Bumgarner, Exh. 20 at 2.

¹⁸⁷ Bumgarner, Exh. 19 at 5-6.

¹⁸⁸ Hedrick, Exh. 45 at 6.

its interconnection agreements with Aliant Midwest¹⁸⁹, TCG¹⁹⁰, Cox¹⁹¹, and AT&T.¹⁹² US West applied the same guidelines and procedures for requests for central office codes (NXXs) to CLECs that it followed itself. It did so without a charge to the carrier. In accordance with industry guidelines, US West has assigned all such numbers within 10 days of the request. As of the date of the hearing, US West had not received any complaints concerning US West's administration of central office codes in Nebraska.

119. On September 1, 1998, the responsibility for the administration of central office codes was transferred to Lockheed Martin. As such, US West no longer is responsible for number administration in its region. US West has committed to comply with the industry-established guidelines and FCC rules as applied by Lockheed Martin with oversight by the FCC and its federal advisory committee, the North American Numbering Council.

120. As such, the Commission is of the opinion and finds that US West satisfies checklist item No. 9, nondiscriminatory access to telephone numbers.

10. ACCESS TO DATABASES AND SIGNALING

Section 271(c)(2)(B)(x)

Statutory Requirements

121. To comply with checklist item No. 10, US West must demonstrate that it offers nondiscriminatory access to databases and associated signaling necessary for call routing and completion. Signaling is the exchange of call control information between the various switching elements of a telecommunications network.¹⁹³ Under the FCC's rules, US West must provide access to its signaling links and signaling transfer points (STPs), to the call-related databases necessary for call routing and completion, advanced intelligent network(AIN) databases via an STP, and its Service Management System (SMS).¹⁹⁴

¹⁸⁹ See Aliant Midwest interconnection agreement §§ VI.A, VI.B.

¹⁹⁰ See TCG interconnection agreement §§ VI.A, and VI.B.

¹⁹¹ See Cox interconnection agreement §§ 12.1, 12.4, and 12.6.

¹⁹² See AT&T interconnection agreement §§ 7.6.1, 7.6.2, 7.6.4, and 7.6.7.

¹⁹³ Overton, Exh. 24 at 12.

¹⁹⁴ BellSouth Second Louisiana Order, ¶¶266, 267. FCC Interconnection Order ¶¶479, 484, 486, 492-93.

Evidence

122. James Overton explained that US West utilizes a common channel, or SS7, signaling telecommunications network.¹⁹⁵ This packet switched network enables call control messages to be transported on a dedicated high-speed data network that is separate from the voice communication network.¹⁹⁶ The signaling network facilitates communications between multiple switches and between switches and the various cell-related databases associated with the signaling network.¹⁹⁷

123. Overton testified that if a CLEC purchases US West's unbundled switching, its signaling traffic is routed over US West's network in the same manner as US West's signaling traffic.¹⁹⁸ However, if a CLEC interconnects its own switch to US West's signaling network, a SPOT frame may be used to interconnect the CLEC's signaling links to the US West STP.¹⁹⁹ Overton identified Aliant Midwest as a company that currently accesses US West's signaling network in the same manner that US West does.²⁰⁰

124. Overton testified that through US West's agreements with AT&T, Aliant Midwest, TCG, and Cox, it provides unbundled signaling through the STP port, the entrance facility, and the direct link transport.²⁰¹ Through its unbundled signaling offering, US West also provides access to LIDB, 800/888, and AIN call-related databases.²⁰² However, Brad Hedrick of Aliant did express concern regarding access to US West's AIN database for single number service.²⁰³ Overton also indicated that access to the permanent number portability database would also be available once it is deployed in Nebraska.²⁰⁴

125. The US West witness indicated that for the LIDB service, the company was implementing a service provider identifier applied to each user-line record in the database so that the records of one provider remain confidential.²⁰⁵ The AIN database

¹⁹⁵ Overton, Exh. 24 at 12.

¹⁹⁶ Overton, Exh. 24 at 12.

¹⁹⁷ Overton, Exh. 24 at 12-13.

¹⁹⁸ Overton, Exh. 25 at 15.

¹⁹⁹ Overton, Exh. 25 at 14-15.

²⁰⁰ Overton, Tr. at 500.

²⁰¹ Overton, Exh. 24 at 14-18.

²⁰² Overton, Exh. 24 at 15-17; Overton, Exh. 25 at 18; Exhs. JCO-7 and JCO-8.

²⁰³ Hedrick, Tr. at 1104, 1106.

²⁰⁴ Overton, Exh. 24 at 15-17.

²⁰⁵ Overton, Exh. 24 at 17.

will also include a specific identifier for each customer record.²⁰⁶ To further this confidentiality, the only persons that have access to these databases are the US West employees who manage such databases.²⁰⁷

126. Both Overton and Brad Hedrick of Aliant Midwest testified that US West allows unbundled access to STP ports and to call-related databases as well as access to associated service management systems. US West also makes available additional databases required for call routing and completion.²⁰⁸

Opinion and Findings

127. Affidavit and other evidence demonstrates that CLECs obtain access to the same signaling network as US West uses itself. As such, the Commission is of the opinion and finds that US West satisfies checklist item No. 10.

11. INTERIM NUMBER PORTABILITY

Section 271(c)(2)(B)(xi)

Statutory Requirements

128. One of the primary objectives of the Telecommunications Act of 1996 was to give consumers a choice in local telephone providers. If a customer had to change telephone numbers to select an alternative provider, the value of the choice would be diminished. When the Act was signed, there was no permanent number database accessible to provide portability. Recognizing these two factors, Congress provided a means for customers to retain their telephone numbers when changing local service providers. Checklist item No. 11 provides that a RBOC must provide interim number portability with as little impairment of functionality, quality, reliability, and convenience as possible, until the FCC establishes long-term number portability (LNP) regulations.²⁰⁹ Checklist item No. 11 sets out that the interim number portability (INP) can be established through remote call forwarding, direct inward dialing trunks, or other comparable arrangements. The Act provides that once the FCC establishes LNP regulations, the BOC must demonstrate full

²⁰⁶ Overton, Exh. 24 at 18.

²⁰⁷ Overton, Exh. 24 at 18.

²⁰⁸ Hedrick, Exh. 45 at 6; Overton, Exh. 25 at 19.

²⁰⁹ BellSouth Second Louisiana Order, ¶274.

compliance with such regulations. The FCC regulations provide for the deployment of permanent number portability in the 100 largest metropolitan statistical areas (MSAs) during a period from October 1997 to December 1998. Under the FCC regulations, LNP was scheduled to begin not later than December 31, 1998, in Omaha. It was actually implemented on November 23, 1998. However, at the time of the hearing on US West's application in Nebraska, LNP was not yet required to be in place within the Omaha MSA.

Evidence

129. At the hearing, US West presented evidence to demonstrate its compliance with its requirement to provide INP. Margaret Bumgarner testified that US West provides number portability through call forwarding, direct inward dialing, route indexing, and local exchange routing guide (LERG) reassignment.²¹⁰

130. Ms. Bumgarner testified that US West has taken several steps to facilitate the INP process. US West's service hours are 7:00 a.m. to 7:00 p.m., and they offer after-hour conversion and both coordinated and non-coordinated conversions.²¹¹ US West formed an INP Quality Action Team to improve the overall success of INP.²¹² The team contacts the CLEC 48 hours prior to and on the date of conversion to be sure that the conversion takes place smoothly. Any problems are referred to US West work centers for corrective action.²¹³

131. By the end of October 1998, US West had ported 3,172 numbers in Nebraska. All of these occurred in Omaha. US West did not charge CLECs for INP.

132. At the hearing, counsel for AT&T questioned Ms. Bumgarner about a letter containing alleged complaints about US West's provision of INP in Nebraska. Ms. Bumgarner, however, was neither aware of the letter nor any complaints in Nebraska.²¹⁴

133. US West argued that because it does not port numbers to itself,²¹⁵ it cannot compare its provision of INP to CLECs with the provision of INP to itself.²¹⁶ It did, however, submit

²¹⁰ Bumgarner, Tr. at 397-98.

²¹¹ Bumgarner, Tr. at 401.

²¹² Bumgarner, Exh. 20 at 10-11.

²¹³ Bumgarner, Tr. at 401.

²¹⁴ Bumgarner, Tr. at 418-420.

²¹⁵ Williams, Exh. 38 at 42.

²¹⁶ Williams, Exh. 38 at 42.

performance indicators to measure its provision of INP to CLECs.²¹⁷ For a small set of requests, US West presented data showing that it met installation standards nearly 100 percent of the time.²¹⁸ However, during a US West strike in September of 1998, US West only met 72.9 percent of its commitments. The company admits that this is unacceptable.²¹⁹ US West does not provide certain performance measures identified by the FCC in other RBOC applications. For example, US West does not provide performance data indicating the amount of time that a customer is out of service during the completion of INP.²²⁰ US West also indicated that several proposed measures were "under development" at the time of the hearing. For example, US West indicated that it would develop a measure segregating its performance for provisioning loops with number portability separately from loops provisioned without number portability.²²¹ However, no such measure was available at the time of the hearing.²²²

134. In his direct testimony, Brad S. Hedrick of Aliant Midwest indicated that Aliant Midwest has had some difficulties with US West's provisioning of INP. There have been instances where the process has taken many hours to work, causing service interruptions for new customers. Moreover, some Aliant Midwest customers have continued to receive bills from US West for up to four months after switching carriers.²²³ Hedrick testified that these problems created confusion and frustration for Aliant's customers.²²⁴ US West presented testimony that there have been difficulties in the proper provisioning of INP.²²⁵ Mr. Williams stated that although the implementation of INP can temporarily disrupt a customer's ability to receive incoming calls, it should not affect a customer's ability to place outgoing calls, such as to 911.²²⁶ Williams further testified that US West has made efforts to try to minimize the out-of-service time between the disconnect and reconnect orders.²²⁷ Upon questioning at the

²¹⁷ William, Exh. 38 at 41; Proprietary Exh. MGW-R5; Williams Tr. at 1029.

²¹⁸ Smith testimony, at 41-42.

²¹⁹ Bumgarner, Tr. at 424.

²²⁰ BellSouth Second Louisiana Order, ¶281-282.

²²¹ Exh. MGW-R7, attached to Williams, Exh. 38; See Also BellSouth Second Louisiana Order, ¶282.

²²² Bumgarner, Tr. at 413.

²²³ Hedrick, Exh. 45 at 6-7.

²²⁴ Hedrick, Exh. 45.

²²⁵ Bumgarner, Exh. 20 at 10.

²²⁶ Williams, Exh. 38 at 14-15.

²²⁷ Williams, Exh. 38 at 14.

hearing, Mr. Hedrick indicated that process changes implemented by US West have resolved Aliant Midwest's concerns with INP.²²⁸

135. On November 23, 1998, the Omaha MSA transitioned to LNP. The transition to LNP should eliminate the loop cut-over problems identified above.

Opinion and Findings

136. At the time of the hearing, US West appears to have been in compliance with checklist item No. 11. US West lists the hours of service for requesting portability and the intervals for service to be established following a request. The intervals are said to be the same as for provisioning of portability to US West customers.²²⁹ As US West submits additional information on those checklist items where they have not demonstrated compliance, we expect US West to also provide updates on those items where they meet the checklist. In this way, we can be sure that US West continues to meet its obligations. In the area of number portability, we specifically will want to continue to monitor whether US West is meeting service objectives.

12. LOCAL DIALING PARITY

47 USC 271(c)(2)(B)(xii)

Statutory Requirements

137. In order to meet the requirements of checklist item No. 12, US West must demonstrate that it provides "Nondiscriminatory access to such services or information as are necessary to allow the requesting carrier to implement local dialing parity in accordance with the requirements of section 251(b)(3)." Section 251(b)(3) requires all LECs to provide dialing parity to competing providers so that they have nondiscriminatory access to telephone numbers, operator services, directory services, directory assistance, and directory listings, without unreasonable dialing delays. Further, under the FCC's dialing parity rules, all LEC customers should dial the same number of digits for a local call.²³⁰

Evidence

²²⁸ Hedrick, Tr. at 1114.

²²⁹ Bumgarner, Exh. 20 at 13-15.

²³⁰ Bumgarner, Tr. at 401 discussing 47 C.F.R. 51.207.

138. Margaret Bumgarner testified that US West has specific obligations to provide dialing parity in its Commission-approved interconnection agreement with TCG.²³¹ US West provides CLEC customers with dialing parity with respect to dialing local telephone numbers, operator services, and directory assistance, and such calls are processed in the same manner as US West's customers' calls. Bumgarner asserts that customers of US West and CLECs experience the same call set-up times for the same switch for the same type of call because the switch cannot distinguish between the customer's carrier.²³² Neither US West, nor the Commission, has received any complaints about US West's dialing parity.

139. Brad S. Hedrick of Aliant Midwest testified that Aliant Midwest handles dialing parity through its own switches. It was Mr. Hedrick's opinion that US West meets the requirements of checklist item No. 12.²³³

Opinion and Findings

140. Therefore, based upon affidavit and other evidence, the Commission is of the opinion and finds that US West satisfies the requirements of checklist item No. 12.

13. RECIPROCAL COMPENSATION

47 USC 271(c)(2)(B)(xiii)

Statutory Requirements

141. To comply with checklist item No. 13, US West must demonstrate that it provides reciprocal compensation arrangements in accordance with Section 252(d)(2). When considering whether the terms of reciprocal compensation are just and reasonable in accordance with Section (d)(2), a state commission shall consider whether (i) the terms and conditions provide for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier, and (ii) such terms and conditions determine such costs on the basis of a reasonable approximation of the additional costs of terminating such calls.

²³¹ Bumgarner, Exh. 19 at 21-22.

²³² Bumgarner, Exh. 20 at 17.

²³³ Hedrick, Exh. 45 at 7.

Evidence

142. Michael Weidenbach testified that through the terms of its interconnection agreements, US West provides cost-based reciprocal compensation for call transport and termination.²³⁴ To illustrate his point, Weidenbach pointed to provisions in the Cox agreement that obligate US West to provide termination of local traffic, transport of local traffic, transit traffic, LATA-wide termination, and toll traffic.²³⁵ The rate elements for call transport under this agreement include a fixed per-month charge and a fixed per-mile charge per month for direct-trunked transport, as well as a fixed per-minute use rate, a fixed per-mile per-minute use rate, and a tandem switching charge for tandem-switched transport.²³⁶

143. Weidenbach pointed out that a CLEC could avoid these costs by extending its facilities to the desired end user. Further, US West attempts to reduce the cost of transport and termination. When US West uses a portion of a two-way trunk to transport traffic to a CLEC, it reduces the price for transport to reflect US West's usage for originating traffic to the CLEC.²³⁷

144. At the hearing, Brad Hedrick of Aliant Midwest complained that US West does not pay for traffic to Internet service providers (ISPs). US West's response to these allegations is that reciprocal compensation need only be paid to providers for local telecommunications traffic. Traffic to ISPs is neither local in nature nor telecommunications traffic, continues the argument.²³⁸ Since the time of the hearing on US West's application, the Commission has released preliminary conclusions in Application No. C-1960 that traffic to ISPs is local in nature. We have not taken a direct position on whether such services are in fact telecommunications services or whether it is subject to reciprocal compensation arrangements. Parties filed additional comments in Application C-1960 on April 1, 1999. The FCC is also currently examining these issues. The reciprocal compensation arrangement between US West and Aliant Midwest provides that US West need only pay Aliant Midwest if traffic is more than 5 percent out of balance.²³⁹ US West

²³⁴ Weidenbach, Exh. 7 at 26; Weidenbach, Tr. at 211.

²³⁵ Weidenbach, Exh. 7 at 26.

²³⁶ Weidenbach, Exh. 7 at 27.

²³⁷ Weidenbach, Exh. 7 at 28.

²³⁸ Post-hearing Brief of US West at 70.

²³⁹ Hedrick, Tr. at 1116.

contends that excluding ISP traffic, the traffic between the two carriers falls within 5 percent of the balance. In addition to the dispute over ISP traffic, Hedrick also testified that US West has failed to comply with its obligations for traditional voice telephony traffic.²⁴⁰ US West did not offer any evidence to refute this allegation.

145. At the time of BellSouth's second application for Section 271 relief in Louisiana, the FCC determined that it would not consider BellSouth's unwillingness to pay reciprocal compensation for ISP traffic when assessing its compliance with checklist item No. 13.²⁴¹ However, the issues of how carriers should be reimbursed for traffic to ISPs is still pending before both the FCC and this Commission.

Opinion and Findings

146. Aliant Midwest strongly disagreed with US West's contention that just and reasonable agreements are in place. To illustrate, Mr. Hedrick stated that US West was not including ISP traffic as local traffic. On cross-examination, Mr. Hedrick further indicated that no one from US West was working with Aliant Midwest on the matter.

147. In examining BellSouth's compliance with checklist item No. 13 in Louisiana, the FCC stated that it would not consider BellSouth's unwillingness to pay reciprocal compensation for ISP traffic. In Application No. C-1960, this Commission issued a preliminary ruling that traffic to ISPs is local in nature. We did not, however, make a specific ruling with respect to whether such traffic was subject to reciprocal compensation. Since the date of the hearing, the FCC has determined traffic to ISPs to be jurisdictionally mixed and primarily interstate in nature. The FCC is continuing to examine how carriers should be compensated for such traffic.

148. In general, US West appears to have just and reasonable agreements in place with respect to reciprocal compensation. However, in light of the FCC ruling and the continued review by both the FCC and this Commission, we cannot make an affirmative statement as to whether US West has demonstrated that it meets its obligations under checklist item No. 13. Further, to verify US West's contention, the Commission would like US West to submit monthly reports to show the amount of traffic exchanged

²⁴⁰ Hedrick, Tr. at 1117.

²⁴¹ BellSouth Second Louisiana Order, ¶303.

between companies. Therefore, the Commission is of the opinion and finds that whether US West has met its obligations under checklist item No. 13 cannot be determined without further review.

14. RESALE AT WHOLESALE RATES

47 USC 271(c)(2)(B)(xiv)

Statutory Requirements

149. To demonstrate compliance with checklist item No. 14, US West must show that any telecommunication service that it offers for retail is also available for resale at wholesale rates. Section 252(d)(3) requires state commissions to determine the wholesale rate of resale services on the basis of the retail rate of the service minus the costs that will be avoided by the ILEC by selling its services at wholesale. A RBOC is not in compliance with checklist item No. 14 if it places "presumptively unreasonable" restrictions on resale of service.²⁴² It may place restrictions on resale, but such restrictions must be narrowly tailored, reasonable, and nondiscriminatory.²⁴³

Evidence

150. Lori Simpson testified that the Commission has approved 15 US West resale agreements.²⁴⁴ To illustrate, Simpson cites the agreement US West has entered with Cox to provide services including basic exchange, intraLATA toll, WATS, listings, CO features, Centrex Plus (grandfathered), operator services, directory assistance, optional calling plans, private line, and ACS.²⁴⁵ The wholesale discount rates negotiated in these interconnection agreements are interim in nature and are subject to "true up" as the Commission considers permanent wholesale discounts in Application No. C-1415. That docket is currently pending.

151. Simpson pointed out that this Commission has approved certain limited restrictions on the services that are available for resale. The first is a cross-class restriction. Residence, lifeline, and grandfathered services (Centrex Plus) may not be resold to customers who cannot purchase them from US West.²⁴⁶ Services that are not

²⁴² *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Second Report and Order, FCC 96-333 (released August 8, 1996) ¶939.

²⁴³ Second Report and Order, FCC 96-333, ¶939.

²⁴⁴ Simpson, Tr. at 441.

²⁴⁵ Simpson, Exh. 21 at 16-17.

²⁴⁶ Simpson, Tr. at 441.

telecommunications are also not available for resale. This includes customer premise equipment, enhanced services, inside wire, promotions of less than 90 days, and US West's Winback tariff.²⁴⁷ Further, dedicated or switched access are not available.²⁴⁸

152. Counsel for McLeod raised concerns over US West's withdrawal of Centrex. McLeod, MCI and AT&T raised these concerns in a separate proceeding before the Commission (FC-1252; FC-1253; & FC-1254). In that forum, the Commission approved US West's withdrawal and subsequent grandfathering of Centrex. Although the Nebraska Supreme Court reversed the findings of the Commission and dismissed the complaint²⁴⁹, a majority of the Commission continues to stand behind the reasoning of our order that the withdrawal of Centrex and subsequent grandfathering of the service was reasonable and not discriminatory.

153. On cross-examination, Simpson also testified that US West does not offer XDSL service for resale.²⁵⁰ US West pointed out in its post-hearing brief that the FCC has a rulemaking pending that will determine whether such service must be offered for resale, as well as whether, and under what terms, an ILEC may avoid the resale provisions of Section 251(c) if it offers such services through a subsidiary.²⁵¹ As of the date of the hearing, no CLEC had requested XDSL for resale.²⁵²

154. US West allows carriers to order services for resale either manually or through its IMA and EDI interfaces.²⁵³ US West offers an Interconnection and Resale Resource Guide on the internet which provides product descriptions, standard intervals for products, pre-ordering and ordering information, contact telephone numbers, and training schedules.²⁵⁴ It provides a "help desk" to assist CLECs with interacting with the IMA interface. Further, once a contract is executed, US West assigns each CLEC an Account Executive from US West's Carrier/Wholesale division to answer questions and facilitate CLEC interaction with US West.²⁵⁵

²⁴⁷ Simpson, Tr. at 441-42

²⁴⁸ Simpson, Tr. at 441-42

²⁴⁹ *McLeodUSA v. US West*, 255 Neb. 202 (1998). The Court found that neither McLeod nor AT&T had standing to bring the complaint, and that the district court was the appropriate body to hear the grievance.

²⁵⁰ Simpson, Tr. at 484.

²⁵¹ US West post-hearing brief at 73.

²⁵² Simpson, Tr. at 490.

²⁵³ Simpson, Exh. 21 at 18-19.

²⁵⁴ Simpson, Exh. 21 at 19.

²⁵⁵ Simpson, Exh. 21 at 20.

155. US West has developed some performance indicators to measure nondiscriminatory service to CLECs. However, Mr. Williams testified that there was too little activity for those indicators to measure anything statistically relevant.²⁵⁶ The lack of data and absence of certain types of performance measures make it difficult to assess whether US West provides CLECs a de facto nondiscriminatory service. US West only provided two months of performance data for provision of average installation intervals for residential customers. This data showed that it took US West an average of one to two days longer than the average installation interval for its own customers.²⁵⁷ US West did not submit data measuring the flow-through rates for US West's provision of resold services, or any measures relating to jeopardy notices. US West did provide some measures for identifying its performance in providing Firm Order Confirmation and rejection notices to itself, although none for design services.

156. It is also difficult to evaluate the data as provided by US West. Some results are measured in hours, while still others are measured in days,²⁵⁸ or even business days.²⁵⁹ Further, when reviewing the data for orders rejected as compared to those not rejected, the total does not add up to 100 percent.²⁶⁰ These types of discrepancies and lapses in data make it difficult to objectively measure US West's performance.

Opinion and Findings

157. Despite some difficulties in evaluating the data submitted by US West, the Commission is of the opinion and finds that US West satisfies the requirements of checklist item No. 14. US West submitted evidence that as of October 31, 1998, CLECs had resold approximately 3,900 US West lines. Such resale arrangements are governed by Commission-approved interconnection agreements.

TRACK A

47 USC 271(c)(1)(A)

Statutory Requirements

158. A RBOC seeking 271 relief may apply for approval under either 271(c)(1)(A) [Track A] or 271(c)(1)(B) [Track B]. To meet the requirements of Track A, the RBOC must demonstrate that it is providing

²⁵⁶ Williams, Exh. 38 at 12; Williams, Exh. 39 at 24.

²⁵⁷ Exh. MGW-R5, Performance measure OP-5, attached to Williams, Exh. 38.

²⁵⁸ Exh. MGW-R7, definition of indicator DOP-5, attached to Williams, Exh. 38.

²⁵⁹ Exh. MGW-R7, definition of indicator OP-5, attached to Williams, Exh. 38.

²⁶⁰ Exh. MGW-R5, attached to Williams, Exh. 38.

access to one or more unaffiliated competing providers. In the absence of a request for access from a CLEC provider in the RBOC's region, it may seek to demonstrate, pursuant to Track B, that it is willing to provide access. US West presented evidence to show that it is providing access to one or more unaffiliated competing providers. There is no "market share" threshold to determine the significance of competition.

Evidence

159. Mr. Harris testified that CLECs have interchange agreements with US West. The evidence presented demonstrates unaffiliated providers are competing with US West in the Omaha and Grand Island markets. The carriers are Cox Communications, which serves residential and business customers via its cable television distribution facilities; TCG (recently acquired by AT&T), providing service to numerous businesses on its own 200-mile fiber-optic network in Omaha; and Aliant Midwest, serving businesses and large apartments with PBX and other services in Omaha and Grand Island. In addition, FirstTel and NT&T are planning to compete in smaller Nebraska communities.²⁶¹

Opinion and Findings

160. Based upon the evidence presented, the Commission is of the opinion and finds that US West satisfied the requirements of Track A.

SEPARATE LONG DISTANCE SUBSIDIARY

47 USC 272

Statutory Requirements

161. Under Section 272, a RBOC must establish a separate long-distance subsidiary.

Evidence

162. Rex Fisher testified that US West Long Distance, Inc. (US West LD) was established in 1995. It has been authorized by the Secretary of State to conduct business in Nebraska. It does not share officers or employees with US West Communications, the owner of US West LD.

Opinion and Findings

²⁶¹ Harris, Exh. 3 at 16-22.

163. Although the Commission has not yet granted US West LD a Certificate of Public Convenience and Necessity, the company meets the arms-length requirements of Section 272 of the 1996 Telecommunications Act.

PUBLIC INTEREST CRITERION
47 USC 271(d)(3)(C)

Statutory Requirements

164. US West must demonstrate to both this Commission and the FCC that interLATA entry is in the public interest.

Evidence

165. Dr. Harris testified that granting US West's request for interLATA entry will serve the public interest by increasing competition in local and interLATA markets. Competition will lead to lower prices, greater choice, and better quality in telephone service.

Opinion and Findings

166. While US West has not demonstrated compliance with all of the checklist items, this in itself does not mean that competition has not occurred in Nebraska. The Omaha MSA is rapidly becoming a competitive local market. As US West continues to provide the types of information detailed in this order, we will continue to evaluate whether competition will thrive. Once we are satisfied that the customers of CLECs that rely on US West receive the same level of service as US West's own customers, we would welcome US West into the interLATA market.

F U R T H E R F I N D I N G S

In this order, the Commission provides US West guidance as to what additional evidence is required before we can fully endorse its application. If US West wishes to acquire our full endorsement prior to applying at the FCC, it may present the required evidence on all the checklist items in one showing, or item by item. However, before the Commission enters a final order, US West must provide updated data on those items where we have already found compliance. By so doing, the Commission can evaluate whether US West is continuing to meet its obligations. Any sensitive information can be treated as proprietary as provided in the Protective Order entered in this docket.

MADE AND ENTERED at Lincoln, Nebraska, this 9th day of April, 1999.

COMMISSIONERS CONCURRING: NEBRASKA PUBLIC SERVICE COMMISSION

ATTEST:

Executive Director

A P P E N D I X A

List of Witnesses

For US West:

Rex Fisher	Vice President, US West Nebraska
Dr. Robert Harris	Economist, Principal in LECG
Michael Weidenbach	Manager-interconnection
Karen Stewart	Director, Markets-Regulatory Strategy
Margaret Bumgarner	Manager-Federal Regulatory Issues
Lori Simpson	Director, Interconnection
James Overton	Manager, Interconnection Strategies
Teresa Million	Manager, Technical Accounting
Judith Brunsting	Director of Regulatory
Lynn Notarianni	Information Technologies Wholesale
Michael Williams	Director, Wholesale Interconnection
Alan Bergman	Director-State Marketing Strategies (NE)

For Aliant:

Brad Hedrick	General Manager, Aliant Midwest
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