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EX PARTE OR LATE FILED

U S WEST

Elridge A. Stafford
Executive Director-
Federal Regulatory

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OFFICE OF SECRETARY

February 22, 1995

EX PARTE

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Mail Stop 1170
Washington, D.C. 20554

RE: PR Docket Nos. 94-104 and 94-110

DOCKET FILE COPY ORIGINAL

Dear Mr. Caton:

Please be advised that Joe O'Neil, Vice President - Carrier and Government Relations, U S WEST NewVector Group, Lawrence E. Sarjeant, Vice President - Federal Relgulatory, U S WEST, Elridge Stafford, Executive Director - Federal Regulatory, U S WEST and Luisa Lancetti, Attorney - Wilkinson, Barker, Knauer, and Quinn, met today on behalf of U S WEST NewVector Group, with Dave Siddall, Office of Commissioner Susan Ness. The purpose of this meeting was to discuss the points raised by U S WEST NewVector Group in its filings in the above mentioned proceedings. The attached material summarizes these points.

In accordance with Section 1.1206(a)(2) of the Commission's rules, the original and one copy of this letter are being filed with your office. Acknowledgment and date of receipt of these transmittals are requested. Please contact me should you have any questions concerning this matter.

Sincerely,

Elridge Stafford

Attachments

cc: Dave Siddall

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February 22, 1995

PR Docket Nos.

94-104 and 94-110 —

U S WEST NewVector Group, Inc. Response to

Arizona and Wyoming

Petitions to Retain Rate/Entry

Authority Over CMRS Providers

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* US WEST NewVector Group, directly or through partnerships in which it has a partial interest, provides cellular service in the two Arizona MSAs (Phoenix and Tucson) and in four of the six Arizona RSAs (nos. 2, 4, 5 and a portion of recently partitioned RSA 6); U S WEST NewVector Group provides cellular service in the Casper, Wyoming RSA and the Wyoming RSAs 4 and 5. (U S WEST Cellular of California, Inc. also provides commercial mobile service in the San Diego MSA service area.)

The Request for Entry Jurisdiction Must be Denied As a Matter of Law

Both Wyoming and Arizona seek to regulate CMRS provider entry into the market.

- No reason is given for the request.
- The Budget Act absolutely prohibits continued entry jurisdiction and this Commission is not authorized to entertain petitions to retain entry authority.

> "[N]o state or local government shall have any authority to regulate the entry of . . . any commercial mobile service . . . ."

Section 332(c)(3)(A).

The Petitions Fail to Meet the Statutory Burden for Continued CMRS Rate Authority

Both Wyoming and Arizona seek to regulate CMRS rates.

- Neither petition meets the statutory conditions imposed for extended rate authority.
  - The petitions do not establish the presence of anticompetitive market conditions.
  - The petitions do not demonstrate that any CMRS is a substantial substitute for landline exchange service for exchange service customers within these states.
- As recognized by Chairman Hundt, the CMRS market is competitive and cellular rates are falling. According to Hundt "continued rate regulation in a demonstrably competitive market disserves the interests of consumers." Chairman Hundt has also emphasized the "substantial burden of proof" imposed on the states before the Commission will grant extended rate authority.[1] Arizona and Wyoming have not met this burden.

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[1] See Speech by Reed E. Hundt before the 106th Annual Regulatory Luncheon of the National Association of Regulatory Utility Commissioners, November 15, 1994.

Arizona

- The Arizona Corporation Commission ("ACC") currently only regulates wholesale cellular services. Consistent with Budget Act requirements, the ACC can only seek to retain authority over wholesale rates charged by wholesale cellular carriers.

- The ACC petition fails to demonstrate that cellular services are a replacement for landline exchange service anywhere in the state. (The percentage of Arizona households with landline service was 94.1% in March 1994, a penetration level greater than the national average of 93.9%. Wireline service is less expensive than cellular.)

- The ACC petition fails to establish the presence of anticompetitive market conditions. (Cellular rates have been declining, a fact not challenged by the ACC. There are two licensed cellular operators in each cellular service area; the entry of additional CMRS licensees will further ensure super-competitive market conditions.)

- The ACC petition contains numerous misstatements of fact concerning the scope of CMRS regulation; the state of CMRS competition; and the level of cellular substitution for landline service.

Wyoming

- The Wyoming petition is time-barred as it was filed after the statutory deadline. Congress did not empower the FCC to waive the filing deadline. (See Conference Report at 493-94: "[I]f the State fails to file a petition within this time, the State authority is preempted as all other states are preempted under subsection (c)(3)(A).".)

- The request for authority to require wholesale cellular carriers to file price lists is contrary to the FCC's determination that price list filings are not in the public interest and that such filings may inhibit competition. (Second CMRS Order.)

- The PSC has not shown that CMRS market conditions require continued rate authority. (Cellular rates have been declining and non-cellular CMRS rates are stable. CMRS competition is expanding. Section 202 of the Communications Act provides protection against unreasonably discriminatory rates, and the FCC has continued complaint jurisdiction.)

- The PSC argues that competitive harm will result from U S WEST's plans to eliminate rural radio service and improved mobile telephone service. However, some 30,000+ CMRS customers exist in the state — of that number U S WEST has 125 IMTS customers and no customers for RRS service. These services are not competitive, which is why they are not successful.

- Lastly, the PSC can still entertain customer complaints, under its retained term and condition authority.