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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Implementation of the Local Competition Provisions in the Telecommunications Act of 1996	)	CC Docket No. 96-98
	)	
Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers	)	CC Docket No. 95-185
	)	CCBPol 96-25

ERRATUM TO
REPLY TO OPPOSITIONS

U S WEST Communications, Inc. ("U S WEST") hereby files this Erratum to its January 21, 1997, Reply to Oppositions filed with the Federal Communications Commission ("Commission") in the above-captioned proceeding. An error occurred in the final printing which caused a sentence to be truncated. The sentence at the bottom of page eight and continued on the top of page nine reads in the filed version "No comment." The sentence should read "No purpose would be served by requiring periodic reports with the opportunity for comment."

U S WEST requests that the Commission append this corrected version of its Reply to Oppositions, attached hereto, to the affidavit and attachments of its January 21, 1997 filing.

U S WEST apologizes for any inconvenience this may have caused the

Commission. All parties originally served will also be served with this Erratum and corrected text version.

Respectfully submitted,

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Its Attorney

Of Counsel,
Dan L. Poole

February 3, 1997

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Implementation of the Local Competition Provisions in the Telecommunications Act of 1996	)	CC Docket No. 96-98
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REPLY TO OPPOSITIONS

U S WEST Communications, Inc. ("U S WEST") hereby replies to oppositions to its request for waiver of the Federal Communications Commission's ("Commission") requirements established in the First Report and Order[1] that incumbent local exchange carriers ("LEC") have electronic interfaces to certain operational support systems ("OSS") by January 1, 1997.[2] In this Reply and attached Affidavit of Robert H. Van Fossen, U S WEST demonstrates that there is good cause for granting a waiver of the January 1, 1997 requirement and for finding

[1] In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers, CC Docket Nos. 96-98 and 95-185, First Report and Order, FCC 96-325, rel. Aug. 8, 1996 (or "Order" or "Interconnection Order").

[2] See U S WEST's Petition for Waiver, filed herein Dec. 11, 1996. See also Public Notice, Pleading Cycle Established for Comments on U S WEST's Petition for Waiver of Operation Support Systems Implementation Requirements, DA 96-2179, rel. Dec. 23, 1996.

that U S WEST's plan complies with the Commission's OSS electronic access requirements.

I. INTRODUCTION AND SUMMARY

Five parties filed oppositions to U S WEST's Petition for Waiver.[3] These oppositions were not unexpected given the contentious nature of many of the regulatory proceedings associated with implementing the 1996 Telecommunications Act.[4] Among other things, opponents criticize U S WEST for failing to anticipate the provisions of the Commission's Order[5] and for not accommodating their individual desires in negotiation sessions at the state level.[6] In this Reply and

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[3] Oppositions were filed on January 10, 1997 by: AT&T Corp. ("AT&T"); MCI Telecommunications Corporation ("MCI") (MCI filed an Opposition on Dec. 23, 1996 and Supplemental Comments on Jan. 10, 1997); ICG Communications, Inc. ("ICG"); Telecommunications Resellers Association ("TRA"); and American Communications Services, Inc. ("ACSI").

[4] Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) ("Act").

[5] For example, ICG states "What USWC does not assert is that it would have been impossible to comply had USWC begun to engage in a diligent effort to comply and to plan for electronic interfaces to its OSSs, even on a contingent basis, when the possibility of such a requirement began to be publicly discussed." ICG at 3 (emphasis in original). This type of rhetoric is nonsense and is irrelevant to the merits of the instant waiver. ICG ignores the fact that U S WEST is not asking for a waiver of the Commission's underlying electronic access requirements but for a waiver of the incredibly short period of time within which to comply with these requirements. Contrary to the assertion of ICG, U S WEST did anticipate some type of electronic access requirement -- what U S WEST did not anticipate is that the Commission would adopt a requirement that such access be up and running in less than five months.

[6] AT&T's arguments, although more sophisticated, mirror those of ICG. AT&T's basic argument in opposing U S WEST's waiver is that U S WEST would not need a waiver if it had met AT&T's individual requirements in state negotiations. This faulty logic leads AT&T to the conclusion that U S WEST's inability to meet the Commission's January 1, 1997 requirement is "of its own making." AT&T at 11-12. As with ICG, AT&T ignores the fact that U S WEST was not subject to any specific

Mr. Van Fossen's attached Affidavit, U S WEST responds to specific allegations concerning its efforts to comply with the Commission's electronic access requirements contained in the First Report and Order rather than opponents' claims as to what U S WEST should have been doing in anticipation of the Order.

Opponents provide no evidence of bad faith on U S WEST's part nor can they -- other than the bald assertion that U S WEST's inability to fully satisfy the January 1, 1997 requirement is sufficient reason to apply sanctions.[7] U S WEST has demonstrated that it has made a good faith effort to comply and there is good cause for the Commission to grant U S WEST's request for waiver of the January 1, 1997 electronic access requirement.[8]

II. THERE IS "GOOD CAUSE" FOR THE COMMISSION TO GRANT U S WEST'S WAIVER REQUEST

Contrary to the assertions of opponents, U S WEST has shown that its particular circumstances justify the grant of a waiver of the January 1, 1997

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electronic access requirements until after the Commission issued its Interconnection Order. Furthermore, AT&T's claim that "U S West refused even to negotiate with CLECs who sought more than the minimal OSS access U S West was willing to concede was necessary" (AT&T at 2) is patently false. As Mr. Van Fossen points out in his Affidavit, AT&T and U S WEST have been involved in extensive negotiations concerning how U S WEST can best satisfy AT&T's particular OSS access needs.

[7] See TRA at 8; ICG at 2.

[8] ICG and TRA basically assert that U S WEST's Petition is a petition for reconsideration rather than a petition for waiver. (ICG at 5, n.5; TRA at 1) There is no merit to this assertion. U S WEST is not requesting modification in the Commission's general rules which would apply to all affected parties -- it is requesting a waiver based on its own special circumstances under Section 1.3 of the Commission's Rules.

requirement.[9] Mr. Van Fossen's initial Affidavit, which accompanied the waiver request, contains extensive detail on U S WEST's efforts to comply with the Commission's OSS requirements along with a discussion of the software/network architecture that is being employed and a deployment schedule for electronic access to different OSS functionality. U S WEST is not challenging the validity of the Commission's electronic access requirement in its waiver -- it is only requesting more time with which to comply with this requirement.

Section 1.3 of the Commission's Rules allows the Commission to grant waivers for "good cause." U S WEST agrees with those opponents who cite WAIT Radio v. FCC and Northeast Cellular Telephone Co., L.P. v. FCC as establishing the standards for evaluating waivers of Commission Rules.[10] These standards can be summarized as follows:

- It is not necessary to attack the validity of the general rule since a waiver request assumes that the general rule is valid.[11]
- While the Commission must give meaningful consideration to waivers, it need not tolerate "evisceration" of a rule by waivers.[12]
- A "waiver is appropriate only if the special circumstances warrant a deviation from the general rule and such deviation will serve the public interest."[13]

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[9] See ICG at 2. Clearly, there is no basis for ICG's assertion that a grant of U S WEST's waiver Petition would "eviscerate" the Commission's electronic access requirement. Id. at 5. Also see ACSI at 6.

[10] ICG at 2; AT&T at 11. See also Wait Radio v. FCC, 418 F.2d 1153 (D.C. Cir. 1969); Northeast Cellular Telephone Company v. FCC, 897 F.2d 1164 (D.C. Cir. 1990).

[11] See WAIT Radio at 1158.

[12] See id. at 1159.

[13] Northeast Cellular at 1166.

U S WEST believes that its waiver request fully satisfies the above criteria and that a waiver would be in the public interest. U S WEST has demonstrated that its special circumstances justify a waiver.[14] A grant of U S WEST's waiver request will in no way undercut the Commission's general rule that electronic access be made available to competitive LECs -- it will only allow U S WEST additional time to comply with the general rule.

U S WEST has demonstrated that it has made a good faith effort to comply with the Commission's electronic access requirements within the allotted, but very short, time frame and that it is impossible to do so. The Commission has previously held that a showing of impossibility of complying with an order constitutes "good cause" sufficient to waive or suspend the requirements of an order and should do so in this case.[15]

III. U S WEST REQUIRES A WAIVER DUE TO A LACK OF TIME, NOT DUE TO INSUFFICIENT NATIONAL STANDARDS

[14] Opponents provide no evidence as to how U S WEST could have met the Commission's complex electronic access requirements within the short time period between August 8, 1996 and January 1, 1997 -- other than to assert that U S WEST should have begun development prior to the adoption of the rules that are the subject of this waiver request. The fact that other incumbent LECs were developing electronic access to OSS in response to state mandates prior to the issuance of the Commission's Order is not relevant to the question of whether U S WEST has made a good faith effort to comply with the Commission's Rules.

[15] See, e.g., In the Matter of Provision of Access for 800 Service, Order, 7 FCC Rcd. 5019, 5021-22 ¶¶ 13-18 (1992); In the Matter of Telecommunications Relay Services, and the Americans with Disabilities Act of 1990, Order, 8 FCC Rcd. 8385, 8386 ¶¶ 6-7 (1993).

Opponents make much of U S WEST's comments on the status of national standards for electronic interfaces to LEC OSS.[16] As Mr. Van Fossen points out in his attached Affidavit, U S WEST is well aware of the status of national standards activities and has been an active participant in these activities. Mr. Van Fossen also states, contrary to MCI's claims,[17] that U S WEST's Mediation Gateway was developed in accordance with the most current "draft" national standards available at the time U S WEST commenced its development efforts and that U S WEST continues to "true-up" its Gateway development efforts as national standards are finalized.[18]

While the availability of clear-cut national standards and product definitions as of August 8, 1996, would have accelerated U S WEST's software development efforts, U S WEST, in all likelihood, would have still found it necessary to file a waiver. U S WEST's waiver request is the result of insufficient time to develop the necessary interfaces. As Mr. Van Fossen pointed out in his original Affidavit and reiterates in the attached Affidavit, the development of electronic interfaces to the required OSSs is a very complex time-consuming work effort.[19] U S WEST's claim of impossibility is based on the lack of time -- not the insufficiency of national standards.[20]

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[16] See, e.g., AT&T at 7-8; MCI at 4-5.

[17] MCI at 6, 9.

[18] Van Fossen Affidavit at 4.

[19] Id.

[20] MCI wants to have it both ways -- criticizing U S WEST for not complying with national standards that have been developed since the release of the Commission's

IV. U S WEST COULD NOT SIMULTANEOUSLY DEVELOP ELECTRONIC ACCESS TO POTS AND DESIGN SERVICES PRIOR TO JANUARY 1, 1997

TRA and ICG[21] criticize U S WEST for failing to provide electronic access to design services by January 1, 1997. U S WEST has demonstrated in its waiver Petition that it was unable to satisfy the January 1, 1997 access requirement for both POTS and design services. U S WEST decided to devote its efforts to developing access to those services -- POTS -- where it anticipated the greatest initial demand for resale.[22] From this foundation, U S WEST has proceeded to develop electronic access to design services -- a much more complex task. U S WEST continues to believe that its decision to concentrate first on providing electronic access to POTS services was the correct decision.

V. U S WEST ACKNOWLEDGES THAT ACCESS TO PRE-ORDERING AND ORDERING FOR POTS SERVICES REQUIRE A LIMITED AMOUNT OF MANUAL INTERVENTION

Both in its waiver Petition and in Mr. Van Fossen's attached Affidavit, U S WEST acknowledges that a limited amount of manual intervention will be required for a limited period of time.[23] Despite this, U S WEST believes that the

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Order while at the same time asserting that the lack of national standards is not a justifiable reason for failing to comply with the January 1, 1997 requirement for electronic access. (MCI at 4-5; Edgerly Affidavit generally) AT&T, being slightly more consistent than MCI, argues that the lack of national standards is not a reason for failing to meet the January 1, 1997 date. (AT&T at 7-8). While U S WEST differs with AT&T and MCI on the status of national standards as Mr. Van Fossen notes in his Affidavit, U S WEST will not debate the point since it is not the basis of U S WEST's waiver request.

[21] ICG at 7; TRA at 5.

[22] See Van Fossen Dec. 10, 1996 Affidavit at 6.

[23] Id.

access provided to POTS services is "substantially similar" to that which U S WEST provides to itself. Development is underway to eliminate manual intervention at the earliest possible date.[24]

If the Commission determines that U S WEST's access to POTS services doe not satisfy the requirements of the First Report and Order, U S WEST requests that the Commission also grant a waiver of any such requirements.

VI. AT&T PROVIDES A VERY SELF-SERVING ONE-SIDED VIEW OF STATE ARBITRATION DECISIONS

U S WEST does not deny that some state arbitration decisions on OSS access have not been to U S WEST's liking. Conversely, U S WEST has been pleased with the outcomes in other arbitration decisions. No purpose would be served by U S WEST citing "favorable language" in these arbitration decisions to counter AT&T's selected quotes which portray U S WEST in a bad light. U S WEST has provided sufficient information in its waiver Petition to demonstrate that it has made a good faith effort to meet the Commission's electronic access requirements and has made significant progress towards this goal.

VII. NO PURPOSE WOULD BE SERVED IN REQUIRING U S WEST TO FILE PROGRESS REPORTS

AT&T and MCI urge the Commission to require regular reports on the status of U S WEST's implementation efforts.[25] U S WEST opposes such a requirement. U S WEST has provided a detailed deployment schedule in its waiver request.

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[24] Van Fossen Affidavit at 8.

[25] AT&T at 12; MCI at 9.

No purpose would be served by requiring periodic reports with the opportunity for comment. U S WEST is committed to meeting its deployment schedule and another reporting requirement will only detract from this effort.

VIII. CONCLUSION

U S WEST has demonstrated that there is good cause for the Commission to grant a waiver of its electronic access requirements. A waiver would serve the public interest by allowing U S WEST additional time to comply with these requirements.

Respectfully submitted,

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January 21, 1997

CERTIFICATE OF SERVICE

I, Kelseau Powe, Jr., do hereby certify that on this 3rd day of February, 1997, I have caused a copy of the foregoing **ERRATUM TO REPLY TO OPPOSITIONS** to be served via first-class United States Mail,* postage prepaid, upon the persons listed on the attached service list.**

Kelseau Powe, Jr.

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* **Via Hand-Delivery**

** **As required by the December 23, 1996 Public Notice (DA 96-2179), the 3 x 5 inch diskette is filed with the Office of the Secretary of the FCC, along with the original and hard-copies.**

(CC9698J.COS/BM/lh)

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