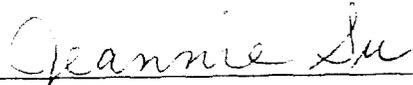


CONCLUSION

Development of competition in the advanced services marketplace is the best means of speeding deployment of advanced services and of information services to all consumers, in all areas, both rural and urban. The Department thus supports specific modifications to the FCC's proposals that will encourage the development of competition in this increasingly important market. The Department urges the FCC not to exempt any advanced services incumbent LEC affiliate from nondominant regulation, at least not for a transition period until the various incumbent LEC corporate entities demonstrate that they are not granting one another any competitive advantage. The Department's experiences with U S WEST's offering of advanced services indicate that, absent careful oversight, U S WEST's various corporate sections will do their best to favor one another at the expense of competitors. The FCC should also continue to require any BOC advanced services affiliate to offer competing ISPs nondiscriminatory access to telecommunications services utilized by the BOC information services. In addition, the FCC should adopt some minimum pro-competitive restraints on joint marketing among affiliates, which state regulators could supplement as necessary to encourage and protect competition. Furthermore, transfers of customer accounts and CPNI from an incumbent LEC to its advanced services affiliate, as well as joint marketing, should be deemed to make that affiliate an assign of the incumbent LEC. Moreover, the Department generally supports the FCC's proposals to strengthen collocation and access to loop requirements for incumbent LECs, and to examine additional unbundling requirements. Finally, the FCC should not allow BOCs to carry packet-switched traffic across LATA boundaries; however, if the FCC does allow this, a BOC should be

required to demonstrate its commitment to specific rollouts of service in the rural areas that are the basis of its request for modification of LATA boundaries in order for its request to be granted. In all these matters, the FCC should deem any requirements it enacts as a minimum beyond which state agencies can impose additional requirements as necessary to advance competition in the advanced services and information services markets in their specific states.

Dated: September 25, 1998



JEANNIE SU
Assistant Attorney General
Suite 1200 NCL Tower
445 Minnesota Street
St. Paul, MN 55101-2130
(651) 296-5671 (Voice)
(651) 296-1410 (TTY)

ATTORNEY FOR THE MINNESOTA
DEPARTMENT OF PUBLIC SERVICE

AG 150106 v1

CERTIFICATE OF SERVICE

I, Jeannie Su, hereby certify that on this 24th day of September, 1998, I caused copies of the foregoing **Comments of the Minnesota Department of Public Service** to be served via federal express and/or U.S. Mail upon those persons listed below.

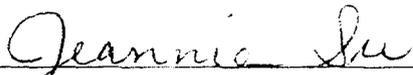
MAGALIE ROMAN SALAS
OFFICE OF THE SECRETARY
FEDERAL COMMUNICATIONS COMM'N
ROOM 222
1919 M ST N W
WASHINGTON D C 20554
(federal express)

JANICE MYLES
COMMON CARRIER BUREAU
POLICY & PROGRAM PLANNING DIV
ROOM 544
1919 M ST N W
WASHINGTON D C 20554
(federal express)

INTERNATIONAL TRANSCRIPTION
SERVICES INC
1231 20TH STREET N W
WASHINGTON D C 20036
(federal express)

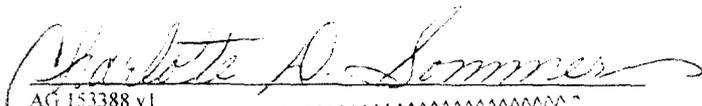
WILLIAM T LAKE
JOHN H HARWOOD II
JONATHAN J FRANKEL
WILMER CUTLER & PICKERING
2445 M ST N W
WASHINGTON D C 20037
(U.S. Mail)

ROBERT B McKENNA
JEFFRY A BRUEGGMAN
U S WEST INC
1020 19TH ST N W
WASHINGTON D C 20036
(U.S. Mail)



JEANNIE SU

Subscribed and sworn to before me
this 24th day of September 1998.


AG 153388 v1
CHARLOTTE D. SOMMERS
NOTARY PUBLIC-MINNESOTA
DAKOTA COUNTY
COMMISSION EXPIRES JANUARY 31, 2000



MINNESOTA
DEPARTMENT OF
PUBLIC SERVICE

PUBLIC COPY

September 10, 1998

Burl W. Haar
Executive Secretary
Minnesota Public Utilities Commission
121 East 7th Place, Suite 350
St. Paul, Minnesota 55101

Re: Complaint of the Department of Public Service and the
Office of the Attorney General
Docket No. P421/EM-98-471

Dear Mr. Haar:

Enclosed please find copies of the complaint of the Department of Public Service and the Office of the Attorney General regarding the roll out of US WEST's MegaBit Services. A faxed copy of Mr. Mike Davis' affidavit is included with this letter. An original copy will be forwarded shortly.

Please contact me at 296-1483 if you have any questions regarding this complaint.

Sincerely,

ELLEN GAVIN
ASSISTANT ATTORNEY GENERAL

EG/fh
Enclosure

NEW
AREA CODE
651
1st of July 1998

STATE OF MINNESOTA
BEFORE THE PUBLIC UTILITIES COMMISSION

Edward Garvey
Joel Jacobs
Marshall Johnson
LeRoy Koppendrayner
Gregory Scott

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of an Investigation into
U S WEST Communications, Inc.'s
Provision of MegaBit Services

**COMPLAINT OF THE DEPARTMENT
OF PUBLIC SERVICE AND THE
OFFICE OF ATTORNEY GENERAL**

Docket No. P421/EM-98-471

I. INTRODUCTION

1. The Department of Public Service (Department) and the Office of Attorney General (OAG) bring this complaint against U S WEST Communications, Inc. (U S WEST) for offering its tariffed MegaBit services in a discriminatory manner in violation of Minn. Stat. § 237.09 and other sections of Minn. Stat. ch. 237, and in violation of state and federal requirements to offer services at a wholesale rate to resellers found at 47 U.S.C. 251 and Minn. Stat. § 121(5). The Department and the OAG request that the Commission provide relief by requiring U S WEST to take specific actions to ensure that independent internet service providers (ISPs) are treated in the same manner as its affiliate internet service provider U S WEST.NET. The Department and the OAG further request that the Commission require U S WEST to offer MegaBit services for resale.

2. The Department is represented in this Complaint by Ellen Gavin, Office of the Attorney General, 1200 NCL Tower, 445 Minnesota Street, St. Paul, MN 55101. The OAG is represented by Scott Wilensky, Office of the Attorney General-RUD, 1200 NCL Tower, 445 Minnesota Street, St. Paul, MN 55101. The respondent is represented by Kevin Saville, U S WEST Communications Inc., Suite 390, 200 South 5th Street, Minneapolis, MN 55402.

II. JURISDICTION.

3. The Commission has jurisdiction over the Complaint and authority to grant the relief requested herein under Minn. Stat. §§ 216A.237.09, 237.121, 237.06, and 237.081.

III. U S WEST IS A MONOPOLY PROVIDER OF MEGABIT SERVICE IN ITS SERVICE TERRITORY.

4. Under Minn. Stat. § 216A.07, the Department is charged with investigating and enforcing, among other things, Chapter 237 and Commission Orders made pursuant to that chapter. The Department's investigation into U S WEST's provision of MegaBit services has found that U S WEST is engaging in discriminatory behavior that is harming ratepayers.

5. Under Minn. Stat. § 8.33, the Attorney General represents residential and small business interests in public utility matters before the Commission. In this complaint, the Attorney General alleges that U S WEST is engaging in discriminatory behavior that is harming residential and small business consumers.

6. U S WEST is an Incumbent Local Exchange Company (ILEC) in the State of Minnesota. As an ILEC, U S WEST is the dominant provider in the provision of local exchange facilities in approximately 162 exchanges in the State, representing approximately 2.2 million access lines. In the Twin Cities Metropolitan Area (Metro), U S WEST has approximately 50 exchanges and 1.4 million access lines.

7. On April 13, 1998, U S WEST introduced MegaBit Service in Minnesota (effective date of MegaBit Tariff Filing). On April 22, 1998, U S WEST submitted revisions to the MegaBit Service by reducing non-recurring charges for the service. U S WEST submitted the MegaBit filing on April 3, 1998 under Minn. Stat. §§ 237.60, subd. 2(f) and 237.63, subd. 4(b).

8. MegaBit Service is a much anticipated service that allows simultaneous use of voice grade service--i.e., plain old telephone service (POTS), and high speed data service--i.e., Digital Subscriber Line (DSL) service over a single pair of copper wires. MegaBit Service allows end-use customers to transmit data at speeds between 5 times and 250 times faster than

conventional analog modems. The most anticipated use of MegaBit Service is to access the Internet through ISPs that support MegaBit Service

9. The MegaBit Service involves two categories of services--MegaSubscriber service and MegaCentral service. The MegaSubscriber service is the "retail" service provided by U S WEST directly to U S WEST telephone subscribers (or end-users). There are six MegaSubscriber services which vary in speed from 256 kbps (bi-directional) to 7 Mbps receive/1Mbps send. The month-to-month rates for the six different MegaSubscriber services range from \$40.00 per month for the lowest speed (256 kbps) service, to \$875.00 per month for the highest speed (7 Mbps receive/1Mbps send) service. The installation charge for MegaSubscriber service is \$110.00. In addition, subscribers must purchase a \$295.00 modem from U S WEST. The total setup charge for MegaSubscriber Service is \$405.00.

10. The MegaCentral Service is a "hub" service provided by U S WEST to small businesses, corporations, or Internet Service Provider (ISPs) who wish to aggregate data transmissions from multiple MegaSubscribers. With MegaCentral Service, for example, ISPs can aggregate Internet traffic at a central office for its Internet customers who subscribe to the MegaSubscriber Service. The MegaCentral Service is available at two different speeds: 1.5 MegaBits per second (Mbps); and 3 Mbps-45Mbps at 3 Mbps increments.

11. In order to establish MegaCentral Service, the MegaCentral customer must purchase a MegaCentral Link to interconnect their facilities with U S WEST facilities. The MegaCentral Link is a type of Private-Line Transport. If a U S WEST-provided Private-Line Transport of 1.544 Mbps (DS1) or 45 Mbps (DS3) is used, it must be ordered and billed separately. MegaBit Tariff, Section 8, p. 9.

12. MegaCentral customers must also pay a non-recurring charge and a monthly rate for each Central Office Connecting Channel (COCC). A COCC provides the ongoing interconnection from a MegaCentral Access Link to a MegaCentral Port. The non-recurring COCC charge is \$20.00. The recurring COCC month-to-month charge is \$5.00 per COCC for

1.5 Mbps speeds and \$10.00 per COCC for 3 to 45 Mbps speeds. MegaBit Tariff, Section 8, p. 13.

13. MegaCentral customers must also pay a non-recurring charge and a recurring charge for each MegaCentral Port. The MegaCentral Port is a port on the Asynchronous Transfer Mode (ATM) switching system. The non-recurring MegaCentral Port charge is \$500.00. The recurring MegaCentral month-to-month charge is \$910.00 per port for 1.5 Mbps speeds, and \$1,456.00 per port for 3 to 45 Mbps speeds. MegaBit Tariff, Section 8, p. 13.

14. As described by U S WEST in its MegaBit filing:

[t]hese two categories correspond to the 'hub' and 'spoke' nature of the service architecture. The MegaCentral location is the hub (or host), and each MegaSubscriber is a spoke. One MegaCentral location will serve multiple MegaSubscribers. Each of the spoke connections must be associated with a host.

U S WEST April 3, 1998 MegaBit Filing, Exh. A, p. 1. Through this hub and spoke architecture, U S WEST controls all access points in the network and wields significant market power and influence.

IV. MEGABIT SERVICE IS EXCLUSIVELY AN INTRASTATE TELECOMMUNICATIONS SERVICE.

15. The Commission's recently adopted local competition rules define telecommunications service as follows:

"Telecommunications Service" means the offering of telecommunications under the commission's jurisdiction for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

Minn. R. 7812.0100, subp. 47. The Commission's rules define "telecommunications" as follows:

"Telecommunications" means any transmission, between or among points as specified by the user, or information of the user's choosing, without change in the form or content of the information as sent and received.

Minn. R. 7812.0100, subp. 45. Thus, MegaBit services are appropriately classified and regulated as a telecommunications service under Minnesota law. U S WEST offers the service for a fee

directly to the public. In providing the MegaBit Service, U S WEST transmits information of the customer's choosing, between and among points specified by the MegaSubscriber customer, without change in the form or content of the information. The fact that the MegaBit Service is a high speed data service does not change the fact that it is a regulated telecommunications service.

16. All MegaSubscriber service is an intrastate service. MegaSubscriber customers have their local loops modified to carry high speed data to an internet access provider who must have a MegaCentral port in the same LATA as the MegaSubscriber customer because U S WEST cannot transport traffic across LATA boundaries. While almost all of these calls are local, some may involve intraLATA/intrastate toll calls. Calls to Internet Service Providers are completed by connecting with the ISP as no interstate access charges apply to ISPs since USWC does not provide any switching or local transport which routes the call beyond the dial-up number reached. Thus, MegaBit service does not have an interstate component.

V. U S WEST'S DEPLOYMENT OF MEGABIT DISCRIMINATES IN FAVOR OF ITS AFFILIATE.

17. On or about May 8, 1998, U S WEST began a MegaBit promotion in Minnesota providing customers who signed up with a free digital modem, U S WEST.NET internet access installation, and reduced rate set-up and training

18. At the time U S WEST offered this promotion, the only ISP whose MegaCentral was due to be installed was U S WEST.NET. Until an ISP's MegaCentral was in place, U S WEST did not permit its customers to take advantage of the promotion.

19. Under Minnesota law, U S WEST.NET is prohibited from engaging in discriminatory behavior in favor of its affiliated entities. Specifically, Minn. Stat. § 237.09, subd. 2 states:

¹ U S WEST did not file this promotion with the Commission in violation of Minn. Stat. § 237.626. This statutory violation by U S WEST is the subject of a separate Department complaint. See Docket No. P421/C-98-997.

Subd. 2. Particular services. (a) A telephone company that offers or provides a service or services, service elements, features, or functionalities on a separate, stand-alone basis to any customer shall provide that service, service element, feature, or functionality pursuant to tariff to all similarly situated persons, including all telecommunications carriers and competitors. To the extent prohibited by the Federal Communications Commission or public utilities commission, a telephone company shall not give preference or discriminate in providing services, products, or facilities to an affiliate or to its own or an affiliate's retail department that sells to consumers. (Emphasis added).

20. The Commission has authority under Minnesota law to prohibit U S WEST from giving preferential treatment to itself or its affiliate in the provision of services.

21. Minnesota Statutes, section 237.121(2) prohibits U S WEST from:

intentionally impair[ing] the speed, quality, or efficiency of services, products, or facilities offered to a consumer under a tariff, contract, or price list; . . .

22. U S WEST knew, or should have known, that there was not sufficient capacity and facilities in place to assure that ISPs would be able to begin offering Internet access through U S WEST's MegaBit Service. At an August 5, 1998 public meeting of the Commission, several ISP's complained of difficulties in obtaining and establishing fully operational MegaCentral connections with U S WEST. Specifically, these customers stated that they have experienced delays and difficulties in obtaining MegaCentral Links (i.e., DS1 and DS3 private line transport) and MegaCentral Ports from U S WEST. U S WEST knew how many ISP customers it had in Minnesota and that it would need to provide them with DS1 and DS3 lines to utilize MegaCentral service. Yet, it chose not to keep the necessary lines in inventory to serve its ISP customers.

23. U S WEST NET is an affiliate retail department that sells Internet access services to consumers. It has received more prompt installation of a MegaCentral and DS3 facilities than did competitive retail ISPs. At the same meeting, U S WEST acknowledged that U S WEST.NET, U S WEST's non-regulated ISP, had the first operational MegaCentral in the state of Minnesota, and that it was also the first to obtain a DS3 circuit connection.

24. Other ISPs claim to have made timely applications for MegaCentral service but did not become operational until after U S WEST.NET. U S WEST delayed the provisioning of

the facilities and equipment necessary for MegaCentral service for ISPs before and during the promotion. Some ISP customers had to wait throughout the promotion period to obtain DS-1 and DS-3 lines. This delay in service meant that many ISPs were unable to take advantage of U S WEST's promotion, since U S WEST would not permit a MegaSubscriber customer to obtain the benefits of the promotion if the customer's ISP's MegaCentral was pending. See Attachment A, Exhibits 3 and 7.

25. The overwhelming majority of customers who participated in U S WEST's promotion went to U S WEST.NET as their internet service provider. See Attachment A, Exhibits 12 and 13.

26. U S WEST has no written agreement with U S WEST.NET that sets forth the time-frames in which these services will be delivered. Because DS3 service is typically individually contracted, there is a greater potential for U S WEST to favor its own affiliate on installation issues.

VI. U S WEST'S BUSINESS OFFICE PRACTICES FURTHER THE PREFERENTIAL TREATMENT OF ITS AFFILIATES.

27. U S WEST's business office ordering process is biased in favor of U S WEST's own Internet service provided under the U S WEST NET name.

28. For example, U S WEST has established a toll-free 1-888 number for potential MegaSubscribers to call to order service (1-888-MEGA-USW). The voice response unit (VRU) that answers the call provides customers with several options to choose from with their touch tone phone. The message states:

Thank you for calling about MegaBit Services from U S WEST. For MegaBit Services with U S WEST.NET, press 1. For MegaBit Services with any other Internet Service Access Provider, Press 2.

This type of recording gives an unfair advantage to U S WEST.NET service over competitive ISPs, because the customer is calling U S WEST for MegaBit service, not U S WEST's Internet Service. The prompt directs them to press 1 and the reference to U S WEST.NET does not distinguish U S WEST.NET from U S WEST in any meaningful manner that would be likely to

prevent customers from pressing Option #1 as they are attempting to call U S WEST. Further, because the option to choose MegaBit Service with U S WEST.NET is the first option in the queue, customers who want U S WEST's MegaBit Service have no need to listen further.

29. This is further evidenced by the results of the initial promotion of MegaBit Service referenced in Paragraph 25 and the number of callers who chose to press 1 compared to the number of callers who pressed 2. See Attachment A, Exhibit 10.

30. U S WEST's web site markets MegaBit Service by promoting the 1-888-MEGA-USW telephone number. U S WEST markets the availability of U S WEST.NET on its MegaBit web site. The U S WEST regulated company's web site is simply another point of access for customers to order U S WEST's regulated products and services and thus like its business office should be competitively neutral.

31. On January 12, 1996, the Commission issued its ORDER ESTABLISHING U S WEST BUSINESS PRACTICES FOR INTRALATA PRESUBSCRIPTION, Docket No. P 999/CI-87-697. In that Order, the Commission established conditions on U S WEST related to its marketing of intraLATA long distance service.

32. As part of its investigation into U S WEST's business practices related to marketing intraLATA service, the Commission concluded that U S WEST had an unfair advantage over its competitor in signing up new customers who call to establish telephone service with U S WEST. In its Order, the Commission stated:

The Commission agrees with commenting parties that U S WEST must not use its position as the dominant carrier to achieve a superior competitive status in the opening intraLATA toll market. When a customer contacts U S WEST seeking new service, or for any other reason that relates to U S WEST's position as the customer's local service provider, U S WEST's customer service representatives should not influence the customer's choice of intraLATA toll carrier or persuade the customer to subscribe to U S WEST.

January 12, 1996 Order, Docket No. P-999/CI-87-697, p. 6.

33. As a result of the Commission's investigation and analysis, the Commission ordered U S WEST to do the following:

When U S WEST's customers contact the Company for new service, transfers of service, or stand-alone PIC changes, the Company's service representatives must respond in a competitively neutral fashion. When the customer contact relates to U S WEST's role as the customer's local service provider, the service representatives must not use the contact to influence the customer's choice of intraLATA toll provider. U S WEST will be required to submit for Commission or Staff approval a proposed script which its customer service representatives will follow when contacted by a customer seeking new service, transfers of service, or stand-alone PIC changes. The script should cover the Company's proposed method of informing the customer regarding intraLATA toll carrier choice. The script must not contain language which seeks to leverage U S WEST's dominant local carrier position into competitive advantage in the intraLATA toll arena.

Id., p. 15. Ordering Paragraph 4.

34. Like the intraLATA toll market, U S WEST is in a similar dominant monopoly position in the provision of its MegaBit Service. In the toll market, U S WEST is the dominant monopoly provider of 1+ equal access. As a result, many long distance customers contact U S WEST to choose a Primary Interexchange Carrier (long distance company). U S WEST controls the actual PIC change process from beginning to end. Only U S WEST can process PIC requests.

31. Like the toll market, many MegaSubscriber customers contact U S WEST to subscribe to MegaSubscriber Service and choose a MegaCentral Destination Channel. Because U S WEST has promoted a special number, 1-888-MEGA-USW to order MegaSubscriber service, this is normally the customer's first point of contact to order this regulated service. Only U S WEST provides MegaSubscriber Service. As with the toll market, only U S WEST can route customers to a MegaCentral customer, similar to routing subscribers to different long distance providers through the PIC change process. U S WEST controls the selection of a MegaCentral destination by MegaSubscribers. Only U S WEST can process MegaSubscriber change request orders. The MegaSubscriber change charge is \$45.00. Thus, every time a MegaSubscriber customer chooses a different ISP (i.e., a different Destination Channel), U S WEST will charge the customer \$45.00. In contrast, the tariffed PIC change charge is \$5.00.

35. The 1-888-MEGA-USW number is the number U S WEST, the regulated entity, has directed customers to call to order MegaSubscriber Service. Thus, this number serves as the U S WEST business office and should comply with the Commission's business office practices for competitive neutrality. The voice recording improperly directs customers to U S WEST's non-regulated Internet Service through U S WEST NET when customers call to purchase a regulated service.

36. U S WEST has indicated that it will create two toll-free numbers, one for U S WEST.NET and another number for all other ISP's. A two-number system is discriminatory as it takes U S WEST's business office and makes it the same location where U S WEST.NET is marketed. The business office should provide competitively neutral access to U S WEST's MegaBit Service. This could, for example, be accomplished by asking for the following information:

- a. if you currently have an Internet Service provider, press 1;
- b. if you do not have an Internet Service provider, press 2;
- c. customers pressing #1 will be informed of whether their current ISP has a MegaCentral;
- d. if the current ISP does not have a MegaCentral or the customer presses #2, the customer shall be informed of ISPs with MegaCentrals in a manner consistent with intraLATA toll restrictions.

37. The adoption of a two-number marketing scheme would create further blurring of business office practices in marketing U S WEST's regulated MegaBit service and U S WEST's unregulated affiliate, U S WEST.NET. The 1-800-MEGA-USW number is now known to consumers wishing to order MegaBit service. Thus, the Commission should assure that the 1-888 MEGA-USW number provides a competitively neutral response to customers regarding selection of Internet service providers.

VII. SERVICE QUALITY STANDARDS AND CUSTOMER REMEDIES REQUIRED.

38. Under Minnesota law, U S WEST is required to provide adequate service at fair and reasonable rates. Specifically, Minn. Stat. § 237.06 states, in pertinent part:

Reasonable rates and service. It shall be the duty of every telephone company to furnish reasonably adequate service and facilities for the accommodation of the public, and its rates, tolls, and charges shall be fair and reasonable for the intrastate use thereof. All unreasonable rates, tolls, and charges are hereby declared to be unlawful.

39. As stated above, MegaBit Service is a regulated telecommunications service being offered by U S WEST under the Advanced Communications Services Price List filed with the Commission. With respect to installation standards, the terms contained in the Price List state, in pertinent part:

The furnishing of MegaBit Services requires certain physical arrangements of facilities of the Company and is subject to the availability of such facilities, as set forth in Section 2.1.2. (MegaBit Tariff, Section 8.2.B, p. 6).

40. Section 2.1.2 of U S WEST's Price List relates to general limitations of installation and restoration of Advanced Communications services. This Section cross-references the Access Service Tariff, Section 13, concerning the Telecommunications Service Priority (TSP) system. The TSP system refers to restoration of existing services but not installation of new services. Thus, the MegaBit Service Price List does not provide any specificity regarding standards related to the timeliness of installing MegaSubscriber or MegaCentral Service.

41. In fact, no provision in Section 2 of the Advanced Communications Services Price List (General Regulations) or Section 8 of the Advanced Communications Services Price List (MegaBit services) service standards relate to the timeliness of installing MegaSubscriber or MegaCentral Service. In addition, there are no terms in the MegaBit Service Price List related to customer specific remedies for the Company's failure to install MegaBit services in a timely manner.

42. The fact that the MegaBit Price List does not contain specific service standards or customer remedies can lead to favoring of U S WEST's non-regulated Internet Service by

assuring that it receives preferential treatment in the ordering and provisioning process. There is no mechanism to assure that an ISP who places a timely order will receive service as promptly as U S WEST's affiliate.

43. The monopoly telephone company's ATM network is the transport vehicle for all high-speed service in U S WEST territory. As such, capacity on that backbone is essential to assure that the "last mile" speeds offered can be achieved.

44. Monitoring and reporting of capacity needs and potential constraints, whether they be on the port (switch side) or in the shared transport vehicle, is vital to all MegaCentral customers. U S WEST has not provided its ISP customers with information they need about the capacity in U S WEST's central offices to plan their marketing of MegaSubscriber service. ISPs need to know how many circuits, ports and DSLAMs are available in each central office so they can market effectively.

VIII. INTERNET SLAMMING.

45. ISPs have also complained that some MegaSubscriber customers have been "slammed" by U S WEST to U S WEST.NET service, in spite of the customers choosing another ISP and even when the ISP has placed the order for the customer. See Attachment B. Slamming is typically referred to as the unauthorized switching of a person's long distance service from one long distance provider to another provider. In this context, slamming occurs by the unauthorized switching of a MegaSubscriber's designated MegaCentral provider. In other words, the customer's Internet Service Provider is switched without the customer's authorization.

46. U S WEST has not disputed that certain unauthorized changes have occurred.

IX. RESALE.

47. U S WEST refuses to provide MegaBit services at a wholesale price for resellers.

48. The Telecommunications Act of 1996 requires U S WEST "to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers." 47 USC 251(c)(4). State law also requires U S WEST to resell its services. Minn. Stat. § 237.121(5).

X. REQUEST FOR RELIEF.

Based on the foregoing allegations, the Department of Public Service and the Office of Attorney General seek the following relief:

1. Business Office Practices.

a. U S WEST shall utilize a competitively neutral message in advertising and promoting DSL Service as described herein. If the Commission believes U S WEST can comply with this directive by establishing two toll-free numbers, the current toll-free number, 1-888-MEGA-USW, should be assigned to independent Internet Service providers, not U S WEST.NET.

b. U S WEST shall not engage in cross-selling its Internet Service to MegaSubscribers who are (1) already signed up with a DSL-compatible ISP, and/or (2) MegaSubscribers who move from one location to another.

2. Discrimination.

The Commission should either determine that U S WEST unlawfully favored its affiliate or alternatively order further investigation of the facts and circumstances surrounding installation of U S WEST.NET's and other ISP's MegaCentrals and take appropriate remedial action, and refer any violation of rule or statute to the Attorney General.

On a prospective basis, the Commission should require that U S WEST detail procedures that specify how time-frames for installations will be treated in a non-discriminatory manner; how service quality will be insured, how and to whom information on capacity will be reported; how deployment of technicians occurs; in what manner its orders are placed and filled; and other appropriate matters.

3. Monitoring and Reporting.

The Commission should require U S WEST to develop quality reports on capacity and availability of facilities related to MegaBit Service. Information on the capacity of the network should be provided to all ISPs on a regular basis and may include

- a. availability of MegaCentral/MegaSubscriber ports in various central offices;
- b. regular periodic reporting (e.g. daily, hourly or weekly) of transmission speeds on the ATM network; and
- c. facilities in place for DS1/DS3 connections to various MegaCentral locations.

4. Internet Slamming.

The Commission should require U S WEST to establish verification procedures to assure that there is no unauthorized change in a customer's Internet Service provider.

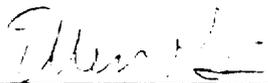
5. Resale.

The Commission should require U S WEST to file a tariff to provide MegaBit services at wholesale prices.

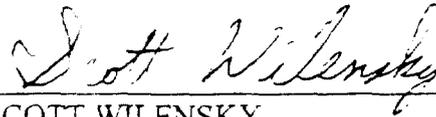
6. Promotion.

The Commission should prohibit U S WEST from conducting another promotion of MegaBit services until U S WEST changes its business office practices to assure competitive neutrality.

Dated: September 10, 1998.



ELLEN GAVIN
Assistant Attorney General
Attorney Reg. No. 158574



SCOTT WILENSKY
Assistant Attorney General
Attorney Reg. No. 165293

1200 NCL Tower, Suite 1200
445 Minnesota Street
St. Paul, MN 55101-2130
(651) 296-1483
(651) 296-1410 (TTY)
ATTORNEY FOR MINNESOTA
DEPARTMENT OF PUBLIC SERVICE

1200 NCL Tower, Suite 1200
445 Minnesota Street
St. Paul, MN 55101-2130
(651) 297-4609
(651) 196-1410 (TTY)
ATTORNEY FOR MINNESOTA
OFFICE OF THE ATTORNEY GENERAL-RUD



MINNESOTA
DEPARTMENT OF
PUBLIC SERVICE

AFFIDAVIT OF JOHN F. GRINAGER

I, John F. Grinager, being duly sworn and under oath, state as follows:

1. I am a Public Utility Rate Analyst for the Minnesota Department of Public Service. My business address is Metro Square Building, 121 South 7th Place East, Suite 200, St. Paul, Minnesota 55101.
2. I am submitting this affidavit in support of the Department's Complaint filed before the Minnesota Public Utilities Commission in Re: Complaint of the Department of Public Service and the Office of Attorney General vs. U S WEST Communications, Inc. (Docket No. P421/C-98-471) My affidavit specifically addresses U S WEST's violations of Minn. Stat § 237.081, § 237.09 and § 237.121 in its roll out of its MegaBit Services.
3. On April 3, 1998, U S WEST filed its MegaBit (DSL-Digital Subscriber Line) Services tariff with the Commission with an effective date of April 13, 1998. Among other uses, MegaBit Services provides for access to the internet at speeds more than 5 times that available via current 56 kbps modems. The Service consists of two parts, MegaSubscriber and MegaCentral. MegaSubscriber provides a connection from the end use customer's premises to the local U S WEST central office. MegaCentral provides a connection from the central office via U S WEST's ATM (Asynchronous Transfer Mode) network to the internet service provider (ISP). In order for an end use customer to achieve fast access to the internet, they would have to subscribe both to U S WEST's MegaSubscriber service and subscribe to an internet service provided by an internet service provider who in turn had subscribed to MegaCentral service.
4. In response to concerns of the Department regarding the ordering and installation process, U S WEST provided a statement that U S WEST had not accepted orders for U S WEST MegaCentral service until the effective date of the tariff. This statement made it clear that this applied specifically to U S WEST.net, as well as to other ISPs. (See Exhibit 1.)
5. At the time of receipt of this letter, I believed that U S WEST was acting in a manner that was consistent with the guidelines included in the letter. However, later I learned that U S WEST had accepted two orders prior to

NEW
AREA CODE
651
15 of July 1998



the effective date of the tariff. When I use the term "accept an order," I am interpreting this to be the acceptance of an order for processing by U S WEST staff. The ordering process for MegaCentrals is described in Exhibit 2.

The orders which were accepted for processing prior to the effective date of the tariff included those for U S WEST.net Minneapolis and U S WEST.net Rochester. The executive summaries for these two orders were completed on March 27 and April 6, 1998, respectively. (See Exhibit 3.) I also learned that even though another ISP, Sihope Communications, had tried to order the service before the effective tariff date, U S WEST delayed processing the order until after the service was tariffed (See Exhibits 4 and 5.)

6. Not only did U S WEST Communications accept orders prior to tariffing the service from its affiliate, it also provisioned its affiliate, U S WEST.net Minneapolis, with facilities much sooner than it did for independent providers. U S WEST Communications provided the necessary facilities for U S WEST.net in Minneapolis to provide MegaBit service on or about May 8 or May 11, 1998. (See Exhibit 3 and 6.) Sihope Communications, a company which had to wait for its order to be processed until after the service was tariffed, was not up and running until May 29, 1998. (See Attachment B.)
7. On or about May 8, 1998, and concurrent with its installation at U S WEST.net, U S WEST Communications initiated a promotion program which provided free customer CPE (customer premises equipment) to end use customers. (See Exhibit 6.) The customers of ISPs which had ordered MegaCentral service, but which did not yet have the service installed, were not eligible to participate in the promotion unless they switched to an ISP which had MegaCentral service. (See Exhibit 7.) Therefore, end use customers who desired to subscribe to MegaBit service in May, and who wanted to receive the free customer CPE offered by U S WEST Communications, were forced to switch to an internet provider with installed MegaCentral service. Until the end of May, this left U S WEST.net and possibly one independent ISP as the only options. (See Exhibit 3.)
8. In addition to delayed entry by other ISPs, U S WEST Communications provided its affiliate, U S WEST Interprise America (provider of U S WEST.net internet services), with yet another advantage to compete against independent ISPs. In direct mailings to end use customers, U S WEST Communications provided a toll free number to order MegaBit service. (See Exhibit 8.) Once customers reached this number, they were given two options to continue the ordering process. Option 1 was to order MegaBit service as provided in conjunction with U S WEST.net. Option 2 enabled customers to order MegaBit service as provide in conjunction with other

internet service providers. (See Exhibit 9.) Of ***PROPRIETARY*** customers who responded to the 888 number for the 14 state U S WEST region, ***PROPRIETARY*** chose option #1. (See Exhibit 10.) The overwhelming response to Option No. 1 suggests that the ordering system itself discriminates in favor of U S WEST.net to the detriment of other ISPs. U S WEST is now considering its proposal to provide separate 800 numbers for U S WEST.net and other ISPs, but has not yet provided the details of the proposal. (See Exhibit 11.)

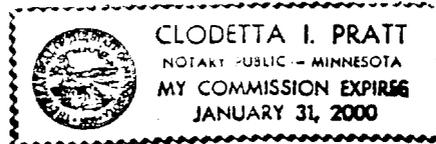
9. The delayed entry of competitors, described above, combined with U S WEST's biased ordering process made switching to U S WEST.net an attractive option for end users to switch their service to U S WEST.net. Of the ***PROPRIETARY*** customers who participated in the promotion, (***PROPRIETARY*** chose U S WEST.net as their ISP. (See Exhibits 12 and 13.)
10. U S WEST states in Information Request Response No. 15 that it will not provide MegaBit services for resale. (See Exhibit 14.)
11. A DSLAM is equipment used to separate analog and digital signals and must be placed at the central office in order to provide mega-subscriber service. Without sufficient capacity in place at a central office, an end user is not able to connect to their ISP with a DSL connection. ISPs have informed me that they need information regarding the placement of equipment such as DSLAMs to plan marketing and that U S WEST has not provided the information required.
12. U S WEST Communications has slammed ISP customers and directed them to its affiliate, U S WEST.net, as admitted by U S WEST representatives during a "Franklin Forum" with ISPs. (Also see Attachment B of Complaint.) It is my understanding that once a customer changes internet service providers that in most cases, they must change their e-mail address. Therefore, once a customer has changed ISPs, it may be very inconvenient to change back to his or her original provider.

[Handwritten signature]

Subscribed and sworn to before me

this 10th day of September, 1998

[Handwritten signature]



JUN - 8 1998

Mr. John Grinager
Minnesota Department of Public Service
Suite 200
121 Seventh Place East
St. Paul, Minnesota 55101-2145
June 8, 1998

Dear Mr. Grinager,

This letter is being written in order to comment on the concerns expressed in memorandums received by you from Carlos Gutierrez, Mike O'Connor, and Jeff Altum. For ease of understanding, I will follow the order of questions in each of the respective memos, starting with the ones from **Carlos Gutierrez**:

1. Non-recurring charges were reduced from the original filing in Minnesota. The non-recurring charge for the MegaSubscriber access link was reduced from \$145.00 to \$110.00. The MegaSubscriber change charge was reduced from \$75.00 to \$45.00.
2. In Minnesota, we will consider providing a one-time waiver of the MegaScriber change charge through 1998, but are not planning to do so at this time. We feel that lowering the non-recurring rates is sufficient.
3. Since the MegaBit tariff is already effective in Minnesota, we cannot introduce it in two phases. However, to address the concern of timing of the MegaCentral versus MegaSubscriber orders, USWC is not entering orders into the Service Order System for MegaSubscribers until the associated MegaCentral order is completed. This procedure is true for all ISPs. Also, any orders for MegaCentral were accepted on the effective date of the tariff for all ISPs, including USWEST.NET and no sooner.
4. The issue of providing a list of ISPs is under consideration. U S WEST will not take the responsibility of initiating or maintaining a list of all ISPs, since some would have no relationship to U S WEST. U S WEST is developing a Web site listing those ISPs who are subscribing to the MegaCentral service. I am uncertain at this time as to what provision there would be for those interested parties who would not have access to the Web site. The Web site is not planned to be permanent at this time.
5. As we discussed, U S WEST is taking precautions to not give undue advantage to the USWEST.NET service. Calls from parties interested in the MegaBit service are accepted by a third party who is contracted specifically to accept calls on the published 800 number for MegaBit Service. Calls are accepted if they come into the normal Business and Residence Business Offices and specific Marketing Account Teams. There is a specific script (see Attachment 1) which the contracted third party must follow.

Although there is not a specific script for the Business Office and Marketing Teams, their Methods and Procedures, as well as training information, clearly state that care must be given not to give undue advantage to USWEST.NET.

The intent of U S WEST is that calls regarding MegaBit Service will come into the 800 published number for MegaBit Service. A Voice Response Unit (VRU) is being set up so that when a customer calls in they can select two options from a menu. The options allow selection of MegaBit Services and USW.NET or MegaBit Services and another Internet Services Provider. If the latter is selected, the call is directed to a specially trained team of sales consultants. The ISP Sales and Service Center is working towards providing a Safe Harbor which will allow ISPs and their end-users to call into that Center directly.

In answer to your question as to which entities are regulated and which are not; the Business Offices are regulated; the Marketing Account Teams are primarily unregulated (a few members are regulated depending on job function), and the third party contracted solely to respond to MegaBit 800 calls is contracted through Enterprise America, which is an unregulated subsidiary of USWEST Communications Group, Inc. The ISP Sales and Service Center is regulated.

6. See answer to 4.

7. U S WEST will not attempt to sell our Internet service to existing MegaBit Service customers who subscribe to the Internet service of another Internet Service Provider when such customers call to place an order to move their service from one address to another. When someone different than the customer requests a change of providers, U S WEST must receive a letter of authorization before changing the customer's Internet Service Provider.

8. There is a loop-qualification tool in place, which provides a response as to whether or not a loop qualifies; if not, why not; and if so, at what rate. If a loop does not qualify solely due to the existence of load coils or bridge taps, under normal circumstances U S WEST will remove them.

9. See answer to 8.

10. In order to comply with FCC Rules, U S WEST is required to track and account for all costs and expenses for basic services (regulated) versus enhanced services, customer premises equipment, and inside wire (unregulated). No subsidization is allowed for unregulated services from basic service ratepayers.

Regarding the memo from Carlos Gutierrez discussing the Oregon PUC action, I have addressed all issues mentioned except the concern about the MegaBit modems only being available from U S WEST. These modems are also available from Cisco (who acquired NetSpeed). In addition, ISPs who have letters of authorization may purchase DSL modems from U S WEST on behalf of their end-users. U S WEST will ship the DSL modems to end-user subscribers.

Comments addressed to the **Mike O'Connor** memorandum:

1. See answers to above 3.,4., and 5.
2. U S WEST's handling of CPNI (Customary Proprietary Network Information) is mandated through the FCC. Customers ultimately have the choice as to which service providers can access U S WEST record information specific to their accounts. The state of Washington has specific CPNI rulemaking under way.
3. See answers to above 1. and 2.
4. See answer to above 3.
5. The ISP Sales and Service Center is specifically set up to handle orders and service requests from ISPs. I am attaching a policy statement regarding non-discriminatory treatment of customers on the part of U S WEST. (Per DPS request)
6. A part of the service offering of MegaBit Services includes installation at the customer premises by a third party. This packaging was arranged through Interprise America, which is unregulated. The intent is to provide one technician who can address all of the MegaBit issues at the customer premise.
7. The specifications required of an ISP who wishes to subscribe to MegaCentral Service are the same regardless of who they are. The requirement is that they purchase a DS1, DS3, or use an available channel on existing ATM-Cell Relay service from the ISP site to a DSL equipped Central Office. The equipment at the ISP site must be RFC 1483 compliant. The service level is dependent on which of the three transport options (DS1, DS3, or Cell Relay Optical Access Link) the ISP chooses.
8. The U S WEST ATM-Cell Relay is an approved service. A part of the tariff filing included a cost study, just as any other service does. The cost of the Cell Relay network is borne by those customers who choose to purchase the service.

Comments addressed to the **Jeff Altom** memo:

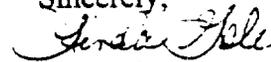
1. See answer to above .8 (Carlos memo).
An additional comment regarding the inability of MegaBit Service to work over digital loop carriers is that U S WEST plans to provide this capability as soon as it is feasibly available to offer.
2. See answer to above .5 (Carlos memo).

In response to your question regarding U S WEST involvement in Working Groups or Standards Bodies, U S WEST is participating in the UAWG (Universal ADSL Working Group) which is a consortium of interested vendors working toward standardization.

John, I believe that all of the concerns have been addressed. If you feel a concern has not been adequately addressed or have additional questions, please call me.

Thank you for your consideration.

Sincerely,



Linda Gale

Regulatory Manager