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September 24, 1998

Magalie R. Salas
Secretary
Federal Communications Commission
1919 M St. NW
Washington DC 20554

Re: CC Docket No. 98-147, Deployment of Wireline Services Offering Advanced Telecommunications Capability

Dear Secretary Salas:

I have enclosed an original and 9 copies of the Washington Association of Internet Service Providers (WAISP) comments on this matter.

Thank you for your assistance, please feel free to contact me if you have any questions.

Cordially,

Gary Robert Gardner
Executive Director, WAISP

cc: International Transcription Services
1231 20th St. NW
Washington DC 20036

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of		
Deployment of Wireline Services Offering Advanced Telecommunications Capability		CC Docket No. 98-147

COMMENTS OF THE
WASHINGTON ASSOCIATION OF INTERNET SERVICE PROVIDERS

The Washington Association of ISPs ("WAISP"), files these comments on the August 7, 1998 Memorandum Opinion and Order, and Notice of Proposed Rulemaking in this and other proceedings (the "NPRM"). WAISP is a trade association that represents 38 ISPs who provide service to more than 500,000 Internet service users throughout the State of Washington, including the Seattle, Spokane, Tacoma, Olympia, Bremerton, Bellingham and Vancouver metropolitan areas. A WAISP membership list is attached hereto as Exhibit 1.

I. SUMMARY

The Federal Communications Commission ("Commission") must adopt separate affiliate rules for the Incumbent Local Exchange Carriers' ("ILECs") unregulated advanced services operations. In the past six months, WAISP members have experienced a variety of discriminatory acts by the ILECs, with respect to the commercial introduction of advanced services and Internet access service. These experiences clearly prove that the ILECs have the incentive, ability, and in some cases, the intent to discriminate in favor of their own advanced services and Internet access service operations. These discriminatory and anticompetitive acts divert significant financial opportunities from the competitive marketplace, and it is too difficult, expensive and time consuming for WAISP and its small, entrepreneurial members to investigate

and challenge each wrongful act as it occurs. By adopting separate affiliate requirements for advanced services as well as Internet access services, the Commission will establish the most equitable competitive marketplace for these services.

II. DISCUSSION

A. WAISP members' recent experiences have shown that the Commission must adopt a "separate affiliate" requirement before ILECs should be allowed to offer advanced services on an unregulated basis.

WAISP members provide Internet access services primarily in the geographic areas served by U S WEST, Inc. and GTE Communications of the Northwest, Inc., and are large consumers of telecommunications services offered by U S WEST and GTE -- the two Incumbent Local Exchange Carriers in the state of Washington. U S WEST and GTE currently offer their own Internet access services through entities that appear to be fully integrated into their respective incumbent local exchange service provider organizations. U S WEST's Internet access service, "*uswest.net*" is, from all appearances, provided and marketed as a service that is integrated with U S WEST's incumbent local exchange carrier operations that also provides advanced telecommunications services. Likewise, GTE's Internet access service, "GTE Internetworking" appears to be provided by GTE's ILEC operations.

As an illustration of our case in point, on July 1998, U S WEST introduced its digital subscriber line ("DSL") service, "MegaBit" and "MegaCentral" services, in the Puget Sound area of Washington State. As part of the DSL service introduction, U S WEST filed proposed tariffs with the Washington Utilities and Transportation Commission ("WUTC"). WAISP actively participated in the hearings before the WUTC on the proposed tariff, and conducted several rounds of negotiations with U S WEST concerning how the DSL service would be introduced and sold in connection with U S WEST's *uswest.net* service. A summary of those

negotiations in the form of a letter to Washington Governor Gary Locke is attached hereto as Exhibit 2.

In the past six months, WAISP members have experienced the type of discriminatory conduct that will likely occur over and over again if the Commission does not adopt a separate affiliate rule for the ILECs' provision of advanced services on an unregulated basis. The following situations have occurred since U S WEST's DSL service tariffs were initially filed with the WUTC. Whether these situations are the result of U S WEST corporate policy or individual initiative for the benefit of U S WEST is irrelevant in this NPRM, and are used here as examples of what is likely to happen, and indeed escalate if ILECs are allowed into this market on an unregulated basis. Whenever monopoly telecommunications services are provided by the same entity which also provides competitive advanced services or Internet access services, the corporate enterprise has the incentive and the ability to treat itself more favorably than the independent providers. Due to the nature of the discriminatory acts, they are difficult and expensive to prove in a formal complaint proceeding, and they consume a tremendous amount of WAISP members' managerial time that should be spent on growing their entrepreneurial businesses. The Commission should put an end to the vast majority of these practices and the related waste of managerial time and expense by adopting a separate affiliate requirement.

1. <u>Cross Marketing</u>. U S WEST clearly has the intent to use its local service Customer Proprietary Network Information in the marketing and sale of its advanced services and its Internet access service.

a. *Inbound Telemarketing*. During the negotiations process between WAISP and U S WEST over the terms of the MegaBit service, there were extended negotiations concerning the terms and conditions under which U S WEST would accept orders for DSL service and how

information concerning Internet access service would be shared with the customer. Although U S WEST agreed to post on its web site a list of competing ISPs that are compatible with its DSL service, U S WEST steadfastly took the position in the negotiations that it has the right to aggressively market its own Internet service, *uswest.net*, to any person who calls to place an order for U S WEST's DSL service, even without getting the customer's consent, because the caller is not yet a customer until the order is completed

b. *Outbound Telemarketing*. The customer care representatives for U S WEST's local exchange service have the ability to automatically test a subscriber's telephone lines to determine whether it will support DSL service. There are several instances where a subscriber called U S WEST to determine whether their line qualified for DSL service, and in short order (within 72 hours in one instance) received a telephone call from a U S WEST sales representative asking if they were interested in subscribing to *uswest.net* and U S WEST's DSL service.

c. *Unhooking*. There have been numerous instances where a customer of an independent ISP called U S WEST to order advanced services, and the U S WEST representative attempted to sell the customer U S WEST's Internet access services In addition, a significant number of customers who subscribed to U S WEST's DSL service and requested that they be connected to an independent ISP, were actually connected to *uswest net*.

The Commission should not allow any ILEC to take unfair advantage of its decades-old monopoly position in the local exchange service marketplace by continuing the industry structure that allows ILECs to effortlessly cream-skim orders by for high end Internet access services and advanced services. The FCC must adopt new separate affiliate regulations that virtually eliminate the opportunity cross-sell advanced services and Internet access services with their monopoly services.

2. <u>Non-Discriminatory Release of Network Information</u>. Before the commercial

introduction of U S WEST's DSL service, U S WEST told WAISP members that it would not test telephone lines for compatibility with DSL service until the DSL service was commercially available. Then, before the commercial release of the DSL service, U S WEST called some of its customers and notified them that their lines were pre-qualified for DSL service and offered to send them additional information on the service. U S WEST's sales representatives obviously had access to the DSL testing system before the system's capabilities were made available to independent ISPs. Clearly, this advance notice of network information gave U S WEST an unfair advantage over other ISPs, and the proposed rules for a separate affiliate would make it easier to monitor compliance with the non-discriminatory release of network information provisions of the Telecommunications Act of 1996

3. **Discrimination by Telecommunications Service Installers.** When installing DSL lines which will connect to a non-U S WEST Internet service, U S WEST's installers have made some remarks which discourage customers from subscribing to an independent ISP's service. First, some customers have been told that it is unfortunate that the installer can't test the DSL service from the customer's end to the ISP end to make sure that the service is functioning properly. This obviously creates some doubt in the customer's mind whether the DSL service will work properly with the independent ISP's service In addition, U S WEST's installers have told customers that their ISP's service isn't activated yet, and the installer is capable of installing *uswest.net* immediately for them and they can convert to their chosen ISP once it is available.

If the regulated monopoly ILECs are required to treat all Internet access service providers equally, including their deregulated affiliates, ILECs would no longer be able to provide their affiliate with the superior "end to end" testing or "immediate activation" for advanced services and Internet access service.

4. **Lost Orders and Out of Capacity DSL Servers.** WAISP members had as many

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4. **Lost Orders and Out of Capacity DSL Servers.** WAISP members had as many as 50% of their orders for DSL service misplaced by U S WEST during the first two months after the service was available. WAISP members had to spend a considerable amount of time researching their records to determine which orders were missing and have them resubmitted. While the orders were lost, some of U S WEST's DSL server equipment ran out of capacity and the "lost and found" orders cannot be processed until new equipment is installed in December 1998 according to U S WEST's estimates. If the separate affiliate rules were in effect, U S WEST might have an incentive to create a higher quality process for accepting, tracking and processing orders for independent ISPs.

B. The Commission must adopt a separate affiliate requirement if the ILECs wish to provide advanced services on an unregulated basis, including several additional provisions to establish a non-discriminatory and competitively neutral advanced services marketplace.

Based upon WAISP members' experiences in Washington State, the rules for ILECs who wish to provide advanced services on an unregulated basis must include the following protections.

1. **Separate Affiliates.** WAISP supports the Commission's proposed advanced services affiliate rules with the modifications described below. In accordance with the theory of "What gets measured, gets done", the Commission's goals of non-discrimination, no competitive advantage to the ILECs' operations, and proper cost allocations can only be effectuated through a fully separate affiliate where the business relationships are easily measured through publicly available arm's length transactions, intercompany transfers and capital contributions. If the advanced services affiliate rules are not adopted, the incentives and opportunities to discriminate

in favor of the ILEC's operations will continue.

2. **Marketing Information**. The CPNI statutes and rules prohibit the telecommunications companies from using customers' information from one type of service (e.g., local exchange service) to sell to another type of service (e.g., Internet access service.) The intent of these laws is to keep a telecommunications carrier who provides service in one of these categories, from gaining an unfair competitive advantage in another service category. Since it would be unfair for the ILEC to share CPNI with the competitive advanced services affiliate, the CPNI rules should be amended to clearly state that the ILEC should not be able to share CPNI with the advanced services affiliate.

As discussed above, U S WEST has asserted that it may lawfully conduct an aggressive marketing campaign for its Internet access service when an inbound caller inquires about, but has not completed placing an order for its DSL service. Clearly, the ILECs and their advanced services affiliate would have an unfair competitive advantage if the ILEC may lawfully set up their interactive voice response unit to answer the phone with: "Thank you for contacting our company. If you're calling about our DSL service, press "1" now and I'll tell you about our Internet access service before you can place your order." Therefore, the CPNI rules should be clarified, if necessary, that a "customer" includes a person who calls to order or inquire about a service in one of the service categories.

3. **Transfer of Assets to Advanced Services Affiliates**. WAISP is concerned about the Commission's proposal to allow the intercompany transfer of existing DSL equipment in the central offices. If the equipment is transferred to the affiliate in place at any price less than the original price including installation costs, the ILECs will transfer a significant competitive advantage to their affiliate. First, the DSL equipment is likely installed in a location that is not available to competing companies. Interconnection agreements between the ILECs and

Competitive Local Exchange Carriers ("CLECs") generally require a minimum amount of floor space and a minimum rental amount. The existing ILEC DSL equipment is likely not installed in with the same minimum floor space requirement and corresponding rental amount. Second, some central offices may be out of space for additional DSL equipment by CLECs. In those cases, the ILEC's advanced services affiliate will be the only provider who is capable of offering DSL service in the geographic area covered by the DSL equipment. Finally, installed DSL equipment would have an existing, significant revenue stream that is not available to competing advanced service providers.

WAISP encourages the Commission to require the transfer to take place at the fair market value for the equipment at its installed location, taking into consideration the revenue stream that the equipment is producing. This may be accomplished by a sealed bid auction process by any CLEC who has an interconnection agreement with the ILEC (including the ILEC's advanced services affiliate), or through a business valuation process.

4. **Parent Company Employees**. The proposed rules require the ILEC and the advanced services affiliate to have separate officers, directors and employees. It is likely that the advanced services affiliate and the ILEC will want to jointly use employees that work with their parent company. In order to make sure that the costs of such services are properly allocated to each entity, the Commission should either require the advanced services affiliate to secure those services from employees who do not do any work for the ILEC, or require the parent company to adopt a cost allocation methodology which accurately reflects the costs incurred by each entity. A cost allocation methodology based upon time spent or the value of services actually provided to the advanced services affiliate would guarantee that there is no cross subsidy from the ILEC's operations to the advanced services affiliate through headquarters expense allocations.

C. Fully separate affiliate rules must also apply to the ILECs' Internet access service operations.

The use of the Internet has grown phenomenally in recent years, without the ILECs as significant providers in the ISP marketplace. Most of the successful ISPs are small, entrepreneurial companies like most of the WAISP members.

Competition for Internet access service customers has been robust, and not based upon one of the players unfairly leveraging monopoly power over telecommunications services. A significant operating expense for any ISP is the cost of securing local exchange service so its customers may connect to the ISP's Internet access server or call the ISP's customer care representatives. Finally, independent ISPs rely heavily upon the ILECs to provide telecommunications services in a non-discriminatory manner.

Now that the ILECs are starting to offer Internet access service, new competitive factors are being introduced to the ISP marketplace. For example, competition for customers is now based in part upon ILECs taking unfair advantage of their monopoly power over the local exchange service market. The ILECs' cost structure for Internet access service is in question because there may be no agreements on file with regulatory agencies which confirm that the ILECs are charging themselves for all of the services that they provide to their ISP operations, including those that independent ISPs pay to ILECs each month. Finally, telecommunications services aren't being provided in a non-discriminatory manner to all customers.

WAISP members' experience clearly proves that if the ILECs monopoly local exchange service operations are allowed to integrate their Internet access service offering into the same business entity, there will be discrimination in favor of their own Internet access service. If the ILECs will be allowed to integrate their ISP operations with their monopoly local exchange services, they will be given a license to:

- Leverage their monopoly power in the local exchange marketplace by cross-selling their Internet access services to their monopoly customer base;
- Sustain a price squeeze against competing ISPs by charging the regulated local exchange service ratepayers for their ISP's telecommunications, customer care and overhead expenses; and
- Discriminate against independent ISPs with regard to the disclosure of network information and the installation of services

For these reasons, the Commission must require that the ILECs' Internet access service operations be provided through a fully separated affiliate from the local exchange service operations. All services that are provided between the two entities must be on an arm's length basis, on file with state regulatory agencies, with all terms and conditions available to other ISPs in a non-discriminatory manner. CPNI must not be shared between the monopoly local exchange company and the ISP affiliate. Finally, all network information must be made available in a non-discriminatory manner.

III. CONCLUSION

For the foregoing reasons, WAISP believes that the Commission should implement the advanced services affiliate rules with the modifications specified above. These rules would provide an equitable marketplace for the continued success of the burgeoning Internet community. If ILECs continue to discriminate as they do now, and if the new ground rules of the future allow them free reign in an unregulated environment, small independent ISPs will be out of business and consumers will be subject to monopoly pricing and service in Internet access. The very future of the Internet is at stake in these proceedings. If ILECs are allowed to leverage their monopoly advantages in the physical plant, e.g. the wires and network to control access to

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the Internet, the long promised, much anticipated "Information Superhighway", will have but one road, with one on-ramp, one off ramp, and one speed limit -- all controlled by the ILECs.

DATED this 24th day of September, 1998.

Respectfully submitted,

Gary Robert Gardner
Executive Director, WAISP

EXHIBIT 1

LIST OF MEMBERS

WASHINGTON ASSOCIATION OF INTERNET SERVICE PROVIDERS

Alternate Access Inc.
2201 6th Ave. #1330
Seattle, WA 98121

Altopia Corp
10115 Greenwood Ave. N #294
Seattle, WA 98133

Bandwagon
Box 1754
Silverdale, WA 98383

Budster's Computers Inc.
9130 Washington Ave. NW #102
Silverdale, WA 98383

CompuServe Spry
3535 128th Ave. SE
Bellevue, WA 98006

Convergence Technologies
1202 Sheridan Rd.
Bremerton, WA 98310

Cutting Edge Communications Inc.
422 West Riverside #516
Spokane, WA 99201

Edcetera
1422 29th Ave SE
Mill Creek, WA 98012

Fox Communications Corp.
13400 NE 20th #2B
Bellevue, WA 98005

Hurricane Ridge LLC
851 6th St. #150
Bremerton, WA 98337

Interlink Services Inc.
16 East Mission
Spokane, WA 99202

Internet Access Corp.
Box 11818
Spokane, WA 99211

Internet Services of Washington
12015 115th Ave. NE #215
Kirkland, WA 98034

NetAmerica Inc.
616 1st Ave.
Seattle, WA 98104

NCF Communications Inc.
18005 NE 68th #A100
Redmond, WA 98052

Net-Venture Inc.
Box 6548
Kent, WA 98064

Next Dimension Internet
13817 E. Sprague #10
Spokane, WA 99216

Northwest Link
11040 Main St. #200
Bellevue, WA 98004

Northwest Nexus Inc.
10800 NE 8th St., #802
Bellevue, WA 98004

NW Info Net
1108 W. Tieton Dr.
Yakima, WA 98902

NWNexus—Spokane
422 West Riverside #808
Spokane, WA 99201

Olympia Networking Services
120 NE State Ave. #1021
Olympia, WA 98501

Pend Oreille Valley Network
357 W. 3rd St. #A
Newport, WA 99156

ReFlex Communications Inc.
830 4th Ave. S #310
Seattle, WA 98134-1301

Savvis Communications
2001 6th Ave. #2700
Seattle, WA 98121

Seanet Corp.
701 5th Ave. #6801
Seattle, WA 98104

Seattle Community Network
Box 85481
Seattle, WA 98145-1481

Silverlink Corp.
Box 945
Silverdale, WA 98383

Sinclair Communications
10390 E. Horizon Ln. SE
Port Orchard, WA 98367

Telebyte NW
Box 3162
Silverdale, WA 98383

Ten Forward Communications
Box 813
Port Angeles, WA 98362

TSCNet Inc.
10049 Kitsap Mall Blvd., Suite 104
Silverdale, WA 98383

!nterprise
3214 Bell Plaza
Seattle, WA 98191

Valley Internet Inc.
Box 1071
141 9th St. Suite 2D
Lewiston, ID 83501

Virtual Networking Services
21028 SE 240th St.
Maple Valley, WA 98038

Westsound Communications
Box 2378
Shelton, WA 98584

Wolfe Internet Access LLC
2001 6th Ave. #2328
Seattle, WA 98121

Worldlink Inc.
Box 77498
Seattle, WA 98177

Exhibit 2

Washington Association of Internet Service Providers
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RECEIVED
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June 23, 1998

The Honorable Gary Locke
Governor, State of Washington
Olympia, WA 98504

Dear Governor Locke:

There has been some discussion in the press and elsewhere about USWest's new DSL or high-speed Internet access product being delayed in Washington. Please allow me to provide the following timeline and thoughts on the issue for your consideration. The WAISP represents 38 Internet Service Providers (or ISPs) in Washington, who collectively serve over 500,000 Washington residents.

Lets begin with exactly what DSL is – or as USWest is naming it "MegaBit", and sold to Internet Service Providers as "MegaCentral" and individual customers as "MegaSubscriber". This technology uses existing phone wires into a business or residence, and allows both regular telephone voice communications and continuous data transmission over the same pair of wires. It uses a device called a DSLAM which is installed in telephone company switching offices to split the voice traffic from the data traffic. It allows data to be transmitted at a speed of roughly 256K per second or greater – far above the traditional "dial-up" modem which transmits data over a telephone call at much slower speeds. The beauty of this technology is that it uses existing infrastructure and does not increase the number of wires needed. as well as increasing data transmission and providing dedicated connections.

USWest first tried to get MegaBit introduced in this state as a non-regulated service by introducing legislation this last session that would have made it a non-regulated service by law. The Washington Association of ISPs opposed this on the grounds it was indeed a regulated service and if rolled-out unregulated the public would have no choice in Internet access, and the company could use it's monopoly position to dominate the market and eliminate customer choice. Fortunately the bill was not voted on by the legislature.

USWest then filed a tariff with the WUTC on March 13, 1998. The tariff was basically fair to both the customer and the ISP in the product pricing area, and through negotiations with USW, they reduced some of the customer charges to more appropriate levels. However, there were two major concerns for the Internet Service Providers that still needed to be addressed.

Our first concern was with the scheduled deployment of MegaBit. As initially filed in the tariff, USWest's own Internet access provider (known as uswest.net) would have naturally become the dominant provider because they would be the first and only Internet Access provider on the day the service went on sale. In other words, had the tariff gone in as filed, a customer could order MegaBit and only have USWest as the Internet service provider for an undetermined amount of time before USWest would or could connect other

ISPs to the network. This would have the effect of making USWest the dominant Internet access provider in Washington.

We negotiated with USWest a "two phase" roll-out, where ISPs who ordered MegaCentral service prior to a given date would be connected to the network before MegaSubscriber would go on sale to the general public. This would give all ISPs who wanted to offer the service a chance to come out of the starting gate at the same time as USWest's own Internet service, and would preserve competition in the Industry and choice for consumers.

Our second concern was in the area of "cross marketing". When a customer calls up USWest to order MegaSubscriber be connected to their phone system, they could have been given a "hard sell" on USWest's own Internet service, or led to believe that their ISP was not connected to MegaCentral, or be "slammed" much like long-distance customers are slammed into switching ISPs. In states where USWest is offering MegaBit this had been the practice. USWest has an inherent marketing advantage for their own Internet service because the customer MUST call USWest to order the MegaSubscriber service.

We negotiated an agreement with USWest that customers who called in with existing ISPs would not be pressured to move to USWest Internet service. Indeed the company has gone beyond our expectations in this by providing a web site that lists all ISPs who are connected to MegaCentral as well as providing a safe-harbor option on their ordering line for customers who have an existing Internet provider that sends those customers to a department that does not sell USWest Internet.

These two factors were our major concerns with the initial tariff filing. WUTC staff agreed with our concerns and recommended such changes in the tariff. USWest incorporated those changes and agreed to their becoming part of the tariff.

However, on the date of the Open Meeting before the WUTC, USWest at the last minute decided the agreement was not in their best interest and opposed its adoption. WAISP opposed that, and urged the Commission to reject the tariff or send it back for further negotiations. The WUTC sent the tariff back to the staff and WAISP to renegotiate. Two weeks later we had some minor modifications to the original agreement and USWest agreed to allow their incorporation into the tariff. The WUTC adopted the tariff with those modifications on April 22nd.

In the WUTC order adopting the tariff, which incorporates the staff recommendations and the agreement with WAISP, please note that the condition of the two phase roll-out reads: "Staff recommends that the Commission require USWC defer the date in which it will begin taking orders for MegaSubscriber if the company finds that it will not be able to reasonably satisfy <u>all initial Internet service provider orders for MegaCentral service.</u>" (Emphasis added).

USWest, in it's letter to the WUTC prior to the tariff says that "MegaCentral orders placed by May 29, 1998 will be completed prior to June 19, 1998 where interoffice DS1 and DS3 facilities, MegaBit local loop support and MegaBit switching infrastructure exist and do not require new construction. Should Company caused circumstances delay completion of MegaCentral orders by June 19, the date for commencement of orders for MegaSubscriber will be similarly delayed." However, the caveat of "new construction" was not part of the tariff adopted by WUTC. In our negotiations with USWest this issue was raised and we were assured that unless the company had to dig a trench to lay new cable, they would have no problem in completing orders placed by ISPs prior to May 29th.

We then advised our members to make their MegaCentral orders as quickly as possible so that USWest could have plenty of time to connect them by June 19th. By the first week of

June, members of WAISP began suspecting that they would not be connected with MegaCentral prior to June 19th because of delays from USWest in "funding" and "engineering". We asked USWest for a full accounting of orders and status, as did WUTC staff.

On Friday, June 12, 1998. USWest notified WAISP and WUTC of the MegaBit installation status as follows:

- USWest received thirty-two requests for MegaCentral service between April 23 and May 29, 1998.
- 28 orders require "new construction"
- Twelve orders will be completed before June 19th (the day MegaSubscriber goes on sale to the public, and the date the Commission had ordered if all ISPs were connected.)
- Ten orders would be completed prior to July 6, 1998.
- Seven orders would require "extensive construction" and would be at a later date.

In addition, USWest stated that as of June 12, 1998, only four of the switching offices had DSLAM units installed, and twenty would be on line as of June 19th, the day MegaSubscriber went on sale to the public. This is out of a total of 42 switching offices scheduled to get DSLAM units.

By USWest's own admission, less than half of the ISPs and less than half of the switching offices were upgraded to sell MegaBit services.

Because the two-phase roll out is so important in preserving customer choice and competition in the ISP industry, and by USWest's own admission approximately 90 percent of the ISPs would be connected and 75 percent of the switching offices upgraded by July 9th we felt it would be best that MegaBit not be offered to the public before that date.

Over the weekend of June 13-14 we asked USWest (via a faxed letter) to voluntarily delay rolling out MegaSubscriber service until July 9th in order to comply with the intention of the two-phase roll out and to provide customers with a more uniform availability of MegaSubscriber through upgraded switching offices. They did not respond.

On Monday June 15, we asked the WUTC to consider ordering USWest to delay the sale of MegaSubscriber until it could connect more ISPs and upgrade more central offices. At the regularly scheduled Open Meeting of the Commission the commissioners heard from USWest, WAISP, and its own staff. WAISP and WUTC staff recommended the delay. We focused on the need for more ISPs to be connected and that the delays were due to USWest underestimating the number of ISPs who ordered the service, as well as their own lack of infrastructure to support the service. WUTC staff argued that not enough DSLAM units were installed and that a more uniform roll-out to the public was required as well as noting that less than half of the ISPs who ordered would be connected.

USWest argued that they had complied with the tariff, and with the provision in their own letter to the Commission saying that where new construction was required they would be exempt from the tariff restrictions. The Attorney General's office disagreed, pointing out the language in the tariff memo from staff and the Commission order stated <u>all</u> ISPs be

connected prior to MegaSubscriber being offered, and that it was well within the Commission's jurisdiction to order the delay. The Commission agreed and ordered USWest to delay selling MegaSubscriber until July 9th.

USWest is now complaining that the Commission has gone "beyond the terms of the agreement we reached with them and imposed additional regulatory requirements that we cannot meet." Their spokesperson went on to say that the tariff meant that they "were required only to have two Internet providers hooked up and ready to go because those were the only Internet providers that did not require new construction."

We strongly disagree with USWest and are dismayed that this is the approach they are taking. The agreement that USWest made with WAISP and the Commission, as referenced in both the staff memo's and the Commission order clearly state that all ISPs who ordered the service be connected prior to selling MegaSubscriber to the public. In addition everyone was expecting that USWest would have the DSLAM units installed by June 19th in the switching offices. While a little latitude should certainly be afforded to USWest in such a major undertaking, having less than half of the ISPs connected, and less than half of the central offices upgraded prior to the date the service goes on sale to the public is not acceptable, and is clearly not in line with both the letter and the spirit of the agreement and the Commission's order.

For USWest to claim that the Commission has imposed additional regulatory requirements is indeed an erroneous statement, and a major leap in logic. And their own letter to the Commission states that where "company caused circumstances delay MegaCentral" they will voluntarily delay selling MegaSubscriber. In all cases except where "major construction" is required, the delay's are clearly "company caused". I fail to see an additional "regulatory burden".

In addition, the Washington model for the provisioning of MegaBit services – i.e. restrictions on marketing and a two-phase roll out is now the benchmark that other states are using as they decide how to handle the tariff requests from USWest. The only two states where such restrictions are not in place are Utah and Arizona, where the ISP industry is suffering and customers have virtually no choice in Internet Access except via the dominant monopoly.

Washington's ISPs are excited about the possibilities this technology offers and are anxiously awaiting its debut. Although some ISPs were connected and would be by the initial implementation date, they uniformly agreed that WAISP ask USWest and the Commission for the delay in order to make sure Washington residents would benefit from the competition that multiple providers of a service can bring to the marketplace.

I would be happy to provide you with additional details and documentation concerning the nature of this tariff filing and our negotiations with USWest and WUTC staff if you would like, including our letters to the Commission, USWest letters to us and to the Commission, staff memos and the Order implementing the tariff. Please let me know.

Cordially,

Gary Robert Gardner
Executive Director, WAISP