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USWEST

Charles Steese
Senior Attorney

June 17, 1999

EX PARTE

RECEIVED
JUN 17 1999
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Magalie Roman Salas, Secretary
Federal Communications Commission
The Portals, Room TW-A325
445 Twelfth Street, S.W.
Washington, D.C. 20554

RE: CC Docket No. 98-121

Dear Ms. Roman Salas:

On Wednesday, June 16, Jeff Owens, Teresa Million and I, of U S WEST, met with David Kirschner, Carol Matthey, Ron Kaufman, Tony Dale and Liz Nightingale of the Common Carrier Bureau staff to discuss U S WEST's Section 272 policies, procedures and website. Copies of the materials discussed in the meeting are attached.

In accordance with Section 1.1206(b)(2) of the Commission's rules, an original and one copy of this letter and the attachments are being filed with your office for inclusion in the record of this proceeding. Copies of this letter are also being simultaneously served today on the Common Carrier Bureau staff that were present at the June 16 meeting.

Sincerely,



Charles Steese

CS/jvv
Enc.

No. of Copies rec'd 012
List A B C D E

REQUIREMENTS OF SECTION 272

PRESENTED TO THE

FEDERAL COMMUNICATIONS COMMISSION

JUNE 16, 1999

BY

TERESA K. MILLION

U S WEST COMMUNICATIONS, INC.

REQUIREMENTS OF SECTION 272

Requirements of Section 272

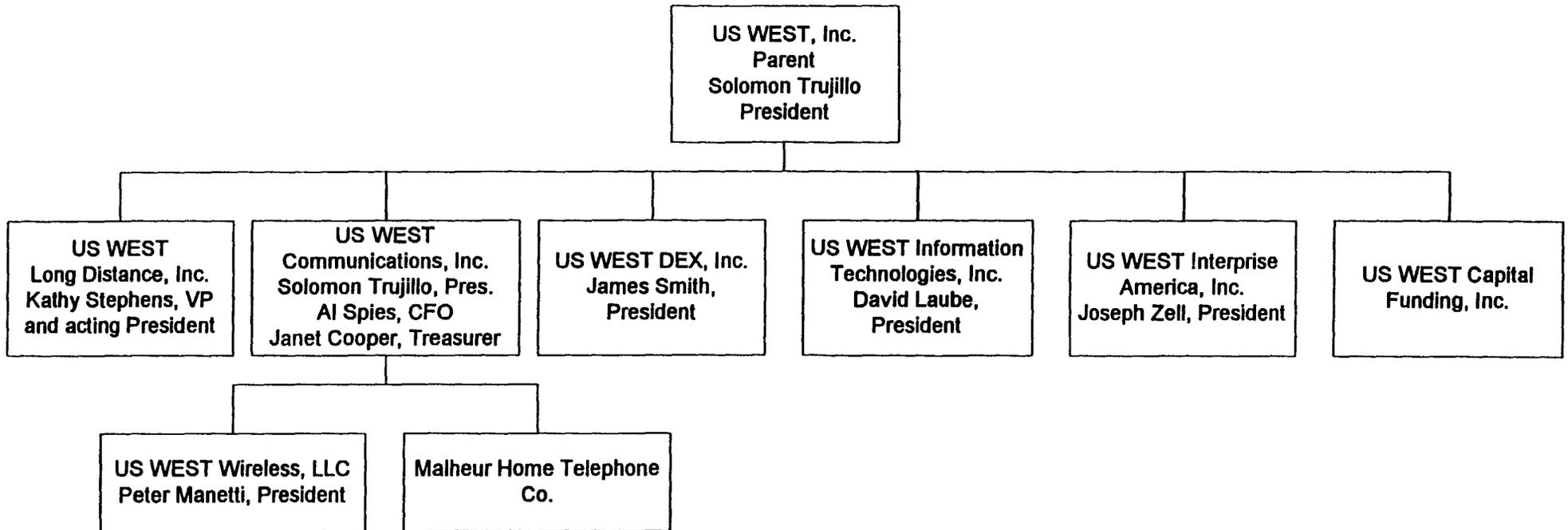
- **272(a) – Separate Affiliate**
- **272(b) – Structural & Transactional**
- **272(c) – Nondiscrimination**
- **272(g) – Joint Marketing**
- **Employee Education and Training**

REQUIREMENTS OF SECTION 272

272(a) - Separate Affiliate

- U S WEST has met this requirement by establishing the separate subsidiary U S WEST Long Distance, Inc. (U S WEST LD)

US WEST Organizational Chart



REQUIREMENTS OF SECTION 272

272(b) - Structural & Transactional

272(b)(1) - Operate Independently

- U S WEST Communications and U S WEST LD do not and will not jointly own telecommunications switching or transmission facilities, or the land or buildings where those facilities are located
- No facilities identified under this rule have been transferred to U S WEST LD
- U S WEST Communications does not perform operating, installation, or maintenance functions associated with facilities that U S WEST LD may own or lease from a provider other than U S WEST Communications
- U S WEST LD does not perform such functions associated with U S WEST Communications' facilities

REQUIREMENTS OF SECTION 272

272(b)(2) - Separate Books, Records and Accounts

- **U S WEST Communications' original books, records and accounts are maintained in accordance with Part 32, Uniform System of Accounts for Telecommunications Companies and Part 64.901, Allocation of Costs**
- **U S WEST LD has its own Chart of Accounts and does not follow Part 32 accounting, except as it applies to transactions between affiliates**
- **The systems used by U S WEST to process financial transactions are designed to recognize unique enterprise codes assigned to the separate legal entities of U S WEST Communications and U S WEST LD**
- **System partitioning, security and edits have also been established to ensure the separateness of U S WEST LD's books, records and accounts from the books, records and accounts of U S WEST Communications**
- **The U S WEST financial systems permit joint reporting at the U S WEST, Inc. consolidated level for Federal and State tax, and SEC reporting purposes**

REQUIREMENTS OF SECTION 272

Section 272(b)(3) – Separate Officers, Directors and Employees

- No officers, directors or employees are simultaneously employed at U S WEST Communications and U S WEST LD

- The following evidence shows that U S WEST Communications and U S WEST LD have separate employees:
 - U S WEST Communications and U S WEST LD have separate payrolls
 - Employees apply for jobs through a process that is similar to U S WEST's external hiring process when they want to move from one organization to another or from one company to another
 - Employees who "transfer" from one company to the other are terminated from one payroll and re-hired to the new payroll
 - Employees of each subsidiary obtain salary and benefits offered by that company
 - I.D. badges, corporate credit cards, calling cards, pagers or cellular phones must be returned and re-issued according to the hiring company's policies

REQUIREMENTS OF SECTION 272

Section 272(b)(4) - No Recourse to U S WEST Communications' Assets

- U S WEST Communications and U S WEST LD are capitalized separately
- U S WEST Communications issues its own commercial paper to obtain financing for telecommunications operations
- Debt financing for unregulated affiliates, including U S WEST LD, is obtained through a subsidiary of U S WEST, Inc. which guarantees the debt with the assets of the unregulated affiliates
- Neither U S WEST, Inc. nor U S WEST Communications has co-signed a contract or other instrument that permits U S WEST LD to obtain credit that grants the creditor recourse to U S WEST Communications' assets in the event of default by U S WEST LD

REQUIREMENTS OF SECTION 272

Section 272(b)(5) – Transactions at Arm's Length, In Writing and Publicly Available

- Transactions between U S WEST Communications and U S WEST LD are conducted according to FCC accounting rules and the Accounting Safeguards Order
- U S WEST LD requests products and services through its account representative in the Interexchange Carrier Service Center just as other interexchange carriers do
- Retail telephone services are provided and billed to U S WEST LD through the same processes, the same billing system, and at the same tariffed rates as for non-affiliated telecommunications customers
- Transactions between U S WEST Communications and U S WEST LD are reduced to writing in the form of tariffs, separate contracts or agreements
- Although transactions between U S WEST Communications and U S WEST LD have been documented in various ways in the past, U S WEST Communications has implemented processes to ensure consistent documentation in accordance with FCC requirements as refined by its recent 271 decisions

REQUIREMENTS OF SECTION 272

Section 272(b)(5) – Transactions at Arm's Length, In Writing and Publicly Available

- The Master Services Agreement (MSA) is an “umbrella” agreement that governs a variety of non-tariffed services that U S WEST Communications provides to U S WEST LD
- Work Orders represent the specific transactions provided under the MSA and contain rates, terms and conditions
- Task Orders represent the specific transactions provided to U S WEST Communications by U S WEST LD under an “umbrella” agreement known as the Services Agreement
- Current agreements, contract, Work Orders and Task Orders are available for public inspection and posted on the Internet at the U S WEST Internet Home Page at <http://www.uswest.com/about/policy/>
- Past transactions, including tariffs and asset transfers, have been summarized and posted in accordance with the FCC's recent 271 decisions so that parties can determine compliance with the FCC's accounting rules

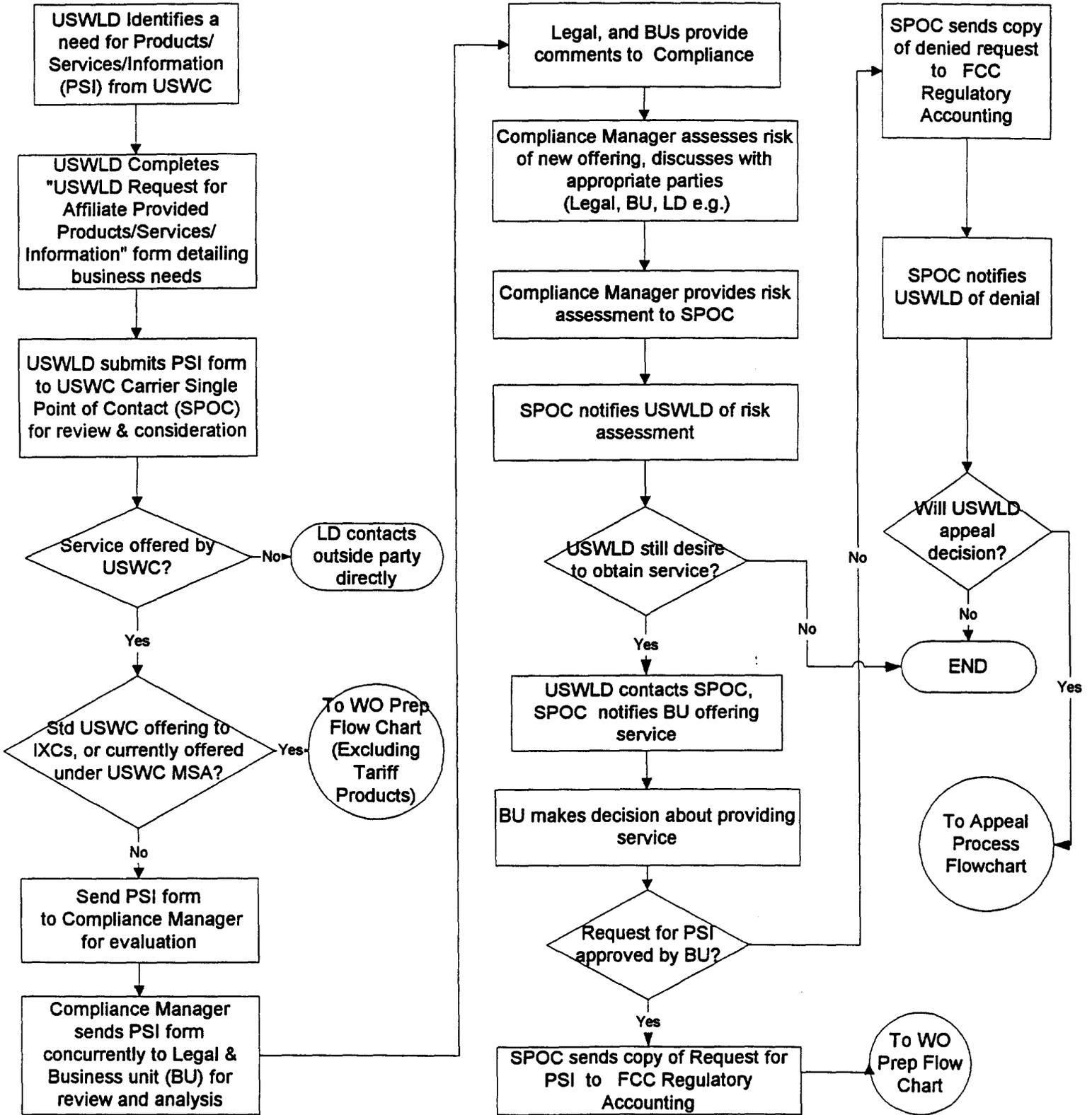
REQUIREMENTS OF SECTION 272

Section 272(c) - Nondiscrimination Safeguards

- **U S WEST Communications requires U S WEST LD to access goods, services, facilities and information through the same processes as other interexchange carriers**
- **U S WEST LD requests products and services through its account representative in the Interexchange Carrier Service Center just as other interexchange carriers do**
- **Standard offerings such as Billing and Collections are based on existing agreements with other interexchange carriers for whom U S WEST Communications has been providing services since long before U S WEST LD existed**
- **Retail telephone services are provided and billed to U S WEST LD through the same processes, the same billing system, and at the same tariffed rates as for non-affiliated telecommunications customers**
- **Non-standard services and services that have not previously been offered outside the corporate family undergo a review process before being offered to U S WEST LD on a nondiscriminatory basis**

USWC PROCESS FLOW FOR USWLD SERVICE REQUESTS

FINAL 5/25/99



REQUIREMENTS OF SECTION 272

Section 272(c) – Nondiscrimination Safeguards cont'd

- The only U S WEST Communications systems U S WEST LD accesses are the same systems accessible and available to all interexchange carriers
- U S WEST LD does not currently access U S WEST Communications' Operation Support Systems (OSS) which are used to support local exchange services
- In the future, if U S WEST LD were to gain access to any of the U S WEST Communications OSS, used to support local exchange service, it would be required to obtain access through Inter-mediated Access (IMA) in the same manner as any other non-affiliated carrier

REQUIREMENTS OF SECTION 272

Section 272(g) - Joint Marketing

- **U S WEST LD does not and will not market telephone exchange services unless and until U S WEST Communications permits other entities offering the same or similar services to market and sell its telephone exchange services**

- **U S WEST Communications does not currently market or sell interLATA services in-region, and will not until U S WEST LD is authorized to provide such services under Section 271**

- **U S WEST Communications and U S WEST LD may jointly market in-region interLATA services after Section 271 approval is obtained without being subject to the nondiscrimination requirements**

- **U S WEST Communications will provide to U S WEST LD on a nondiscriminatory basis any marketing services posted on the Internet that do not qualify for the joint marketing exception to nondiscrimination**

REQUIREMENTS OF SECTION 272

Employee Education and Training

- **U S WEST Communications continues to inform and educate its employees about the provisions of Section 272**
- **All employees undergo annual compliance training and testing to certify their understanding of and compliance with company policies including requirements under Section 272, the Accounting Safeguards Order, Part 64 and other affiliate policies**
- **Face to face meetings have been conducted throughout the business units**
- **Specific training conferences have been held for business unit affiliate managers and training manuals have been updated (i.e., Methods for Affiliate Transactions) related to Section 272 and CC Docket 96-150**

code of business
ethics and conduct

corporate POLICIES



Affiliate Relationships

CONTENTS

1. [Introduction](#)
2. [Requirements and Interpretations](#)
3. [Reference Sources](#)

Section 1: Introduction

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IT IS THE POLICY OF U S WEST to comply with all state and federal regulatory requirements governing the relationship and dealings between U S WEST Communications and other entities within U S WEST, including requirements related to the flow of information between entities.

Purpose

The purposes of this policy are to:

- help to ensure compliance with state and federal regulatory requirements applicable to U S WEST Communications (USWC) and its dealings with U S WEST affiliates, including the requirements for handling Customer Proprietary Network Information and the proprietary information of other telecommunications carriers;
- ensure that financial, legal and regulatory considerations are reviewed prior to entering into a business event that involves both regulated and nonregulated entities.

Scope

This policy applies to U S WEST, Inc., its business units, partnerships, or joint ventures where U S WEST has a majority ownership position or exercises management control, and to such entities' officers and employees.

Section 2: Requirements and Interpretations

[top \(to contents\)](#)

Because USWC is a regulated "incumbent" local exchange carrier (LEC), its relationships with its affiliates are subject to a variety of rules imposed by state and federal regulatory authorities. For the most part, these rules apply to transactions between USWC and its affiliates, but certain rules also govern the flow of information between USWC and its affiliates. In addition, the Telecommunications Act of 1996 (1996 Act) requires USWC to provide elements of its services and facilities on a "wholesale" basis and in a nondiscriminatory manner. Because of these requirements, what USWC provides its affiliates may impact what USWC is required to provide its wholesale customers.

1. Affiliate Interest Requirements:

The Federal Communications Commission's (FCC) Part 32 rules govern transactions between an incumbent LEC (USWC) and its affiliates. The rules are as follows:

Asset Transfers:

- When USWC transfers an asset to an affiliate, USWC must book the net book value of the asset or its fair market value, whichever is higher.
- When an affiliate transfers an asset to USWC, USWC must book the net book value of the asset or its fair market value, whichever is lower.

Provision of Products and Services:

- When USWC provides products or services to an affiliate, the transaction must be booked by USWC as follows:
 - A tariff rate must be used to the extent that one exists.
 - Absent a tariff rate, Prevailing Company Price (PCP) is established if sales by product or service are greater than 50% to external third parties. The 50% rule does not apply to 272 affiliates there is a rebuttable presumption that non-discrimination requirements produce rates that represent PCP.
 - Services that are neither Tariffed nor PCP must be valued at fully distributed cost (FDC) or fair market value (FMV) whichever is higher.
- When an affiliate provides products or services to USWC, the transaction must be booked by USWC as follows:
 - A Tariff rate must be used to the extent that one exists.
 - Absent a tariff rate, Prevailing Company Price (PCP) is established if sales by product or service are greater than 50% to external third parties. The 50% rule does not apply to 272 affiliates - there is a rebuttable presumption that non-discrimination requirements produce rates that represent PCP.
 - Services that are neither Tariffed nor PCP must be valued at fully distributed cost (FDC) or fair market value (FMV) whichever is lower. Fair market value rules do not apply to those U S WEST entities who solely provide services to other U S WEST entities, e.g., U S WEST, Inc.

The FCC has also adopted rules governing the allocation of costs between regulated and unregulated services; these rules can affect transactions between USWC and its affiliates.

A number of states have adopted rules similar to the FCC's. In addition, several states have adopted additional affiliate interest transaction rules. These rules may create record keeping obligations and, in some instances, require state regulatory approval.

Questions regarding the FCC's or state affiliate transaction accounting and reporting requirements, or their cost-allocation rules, should be directed to the [Technical Accounting web site](#), or to the Director - FCC Regulatory Accounting.

2. Technology Compensation:

U S WEST entities funding research and development of technology (whether within US WEST or not) shall receive fair compensation when a) U S WEST entities that did not fund the technology use it; or b) a non-funding U S WEST entity shares the technology with a non-U S WEST entity; or c) an entity's benefit is measurably disproportionate to its portion of the funding.

"Technology" means technical information such as software, inventions, technical practices, functional specifications as well as non-technical information such as market studies, market and business plans, market models and non-technical practices.

When technology is shared between the regulated and non-regulated portions of U S WEST, the funding and receiving entities conduct "arms length" negotiations to determine fair compensation for the shared technology. The entities may utilize numerous tools to assist in establishing fair compensation, including industry benchmarking, market analysis, cost studies, replacement or reproduction costs, etc. If the two entities cannot reach agreement on fair compensation, the Executive Director - Financial Accounting will facilitate arms length negotiations to reach an agreement.

After an agreement has been reached, the technology being shared, the compensation and a statement of rationale for the negotiated compensation are to be documented in a Fair Compensation Memorandum of Agreement. The memorandum must be signed by the negotiating subject matter experts and approved by their respective approval authorities.

U S WEST employees faced with a situation that raises fair compensation considerations should contact their business unit compliance manager or the Executive Director-Financial Accounting.

3. Affiliate Changes or Restructuring:

The FCC and state regulatory commissions also require reporting of information relating to affiliate changes or restructuring, typically before such changes are effected. Contemplated business events that may involve both regulated and nonregulated entities affiliated with U S WEST must be reviewed with the Executive Director-Financial Accounting who will obtain necessary Public Policy and Law Department input before a corporate decision is made.

4. Rules Applicable to Specific Entities:

Additional rules govern the relationship between USWC and specific affiliates.

- U S WEST Long Distance (USWLD). Under the 1996 Act USWC may provide interLATA services within its region only after obtaining FCC authorization and only through a "separate affiliate." Specifically:
 - USWLD must "operate independently" from USWC; the FCC has interpreted this to mean that USWC and USWLD may not jointly own any switching or transmission facilities, or the buildings in which such facilities reside, and neither entity may install, operate, or maintain switching or transmission facilities belonging to the other.
 - An officer, director, or employee of USWC may not also be an officer, director, or employee of USWLD.
 - USWLD may not obtain credit under any arrangement that would give a creditor recourse to USWC's assets in the event of default.
 - USWC must conduct all transactions with USWLD on an "arm's length" basis, and it must post a description of each such transaction on the Internet.
 - USWC may not discriminate in favor of USWLD in the provision (or procurement) of goods, services, facilities and information. When USWC provides any goods, services, facilities, or information to USWLD, it may be required to provide them to another entity on the same terms.

These requirements take effect when USWLD begins providing interLATA service in an in- region state, though USWC must show its compliance with the separation

requirements as a part of its application for interLATA authorization. Once the requirements take effect, they may apply to prior events. For example, the FCC has determined that USWC's transactions with a separate affiliate that take place before it becomes subject to the separation requirements must be posted on the Internet at the time the requirements take effect. The separate affiliate requirement expires three years from the date of authorization. Because interLATA authorization comes state by state, the separate affiliate requirement will expire at different times in USWC's various states.

- U S WEST Wireless. The FCC has adopted rules requiring USWC to provide commercial mobile radio (wireless) services only through a corporate affiliate, which is subject to certain separation requirements. That affiliate:
 - must maintain separate books of account;
 - may not jointly own transmission or switching facilities with its affiliated LEC, and
 - must acquire services from the affiliated LEC on a compensatory, arm's length basis pursuant to the affiliate transaction rules.

5. Flow of Information Among Affiliates:

Except as limited by its contracts with customers and suppliers, USWC is generally free to use information in its possession for its own purposes and to share that information with its affiliates.

The 1996 Act, however, limits the ability of all telecommunications carriers (including USWC, U S WEST Long Distance, and U S WEST Wireless) to use certain types of information in their possession, including proprietary carrier information, customer proprietary network information (CPNI), as well as customer information generally. The 1996 Act also imposes a nondiscrimination requirement on the flow of information between USWC and U S WEST Long Distance.

- Customer information. The 1996 Act generally obliges telecommunications carriers to protect the confidentiality of proprietary information of, or relating to, customers. Included in the class of customers to which this general confidentiality obligation runs are carriers (including resellers), end users (including enhanced service providers) and equipment manufacturers.
- Carrier information. The 1996 Act also requires a telecommunications carrier to protect the confidentiality of proprietary information it receives or obtains from a carrier. A carrier may not use such information "for its own marketing efforts". Determining whether particular information comes under this requirement will frequently involve the consideration of difficult legal issues.
- Customer Proprietary Network Information (CPNI). The 1996 Act restricts the uses telecommunications carriers may make of CPNI, which is defined generally as information relating to a customers' telecommunications services and their usage of those services including call detail.
 - The 1996 Act and FCC rules pursuant to that Act permit the sharing and use of CPNI between or among affiliates where the customer subscribes to discrete services offered by the sharing affiliates. For example, where a customer subscribes to both local service and Commercial Mobile Radio Services (CMRS), USWC is free to use the combined CPNI from these two offerings to fashion offers for other local or CMRS services.
 - Except with express customer approval, a telecommunications carrier may not

use CPNI among its internal affiliates where the customer subscribes to only one type of service except for purposes of marketing variations of that service. For example, if a customer subscribes only to the local service of the carrier (offered by any one of its affiliates), the carrier is not permitted to use local service CPNI to target that same customer for a CMRS offering or for an enhanced service. It may, however, use the local service CPNI to offer the customer new or modified local service offerings.

- At the written request of a customer, a telecommunications carrier must provide CPNI relating to that customer to any person the customer designates. Carriers with Section 251 obligations (incumbent local exchange carriers) might also need to provide CPNI to other carriers based on oral approvals from the end user.
- A telecommunications carrier may utilize "aggregate" CPNI for any purpose, but if a LEC aggregates information regarding one category of telecommunications service, i.e., local services, to be used in conjunction with a different telecommunications service, i.e., CMRS or non-telecommunications service (VMS), it must provide that information on nondiscriminatory terms to other carriers who request it. "Aggregate" CPNI is collective CPNI relating to a group of customers or services, from which individual customer identities and characteristics have been removed.

Determining the application of these rules involves difficult legal judgments. No employee should attempt to apply them without first contacting their business or market unit compliance person or the corporate CPNI Coordinator. These persons will assist in determining the need for specific legal advice.

- Sharing information with USWLD. When USWC shares any information with USWLD, other than information directly related to joint marketing activities between USWC and USWLD, it may thereby incur an obligation to share that information with others on the same terms and conditions. Thus, prior to providing information to USWLD, USWC should consider the possible risks associated with that action, and weigh those risks against the need of USWLD to have the information.

The above interpretations are illustrative and not intended to be all-inclusive.

Section 3: Reference Sources

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For related policy information, see the Federal Communications Commission and State Regulatory Commission Corporate Policy.

If you have any questions on Section 1, Affiliate Interest Requirements, contact the Director-FCC Regulatory Accounting or the [Technical Accounting Web site](#). If you have questions on Section 5, Flow of Information Among Affiliates, contact your traditional Compliance Manager, or visit the [Compliance Web site](#), click on Compliance Plans, then click on CPNI.

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 Latest Revision · 8/7/98 ·
 Affiliate Relationships
 U S WEST Corporate Policies
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 Content Owner for this page: [Eric Selberg](#) Phone 303-672-2792

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Last Update: September 17, 1998

URL: http://risk.uswc.uswest.com/policies/affiliated_relationships.html