ORIGINAL

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Denver, Colorado 80202
Facsimile 303 295-7049

Kathryn Marie Krause
Senior Attorney
Tel:303 672-2859

EX PARTE OR LATE FILED

USWEST

EX PARTE PRESENTATION

December 17, 1999

RECEIVED
DEC 17 1999
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

Re: In the Matter of Calling Party Pays Service Offering in the Commercial Mobile Radio Services, WT Docket No. 97-207;

In the Matter of MCI Telecommunications Corporation Billing and Collection Services Provided by Local Exchange Carriers for Non-Subscribed Interexchange Services, RM 9108, Petition for Rulemaking, filed May 19, 1997;

In the Matter of Incumbent Local Exchange Carriers Providing Interexchange Carriers with Access to Casual Calling Customer Billing Information, America's Carriers Telecommunications Association Petition for Declaratory Ruling, ENF 97-05, filed Jan. 17, 1997.

Dear Ms. Salas:

Please associate the attached ex parte presentations with the above-captioned proceedings. Please note that the attached ex parte dated December 6, 1999 was originally incorrectly associated with RM 9120. This ex parte presentation corrects that error associating the December 6, 1999 ex parte with the above-captioned rulemaking RM 9108.

Pursuant to the Commission's rules, an original and six copies are included herein, two for each captioned proceeding or rulemaking. In addition, an additional copy has been included to be receipt stamped and returned to the messenger who has been instructed to wait for it.

Respectfully,

Kathryn Marie Krause

Kathryn Marie Krause (RW)

Attachments

No. of Copies rec'd 0+6
List ABCDE

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USWEST

November 30, 1999

EX PARTE FILING

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OFFICE OF THE SECRETARY

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
Portals II, Room TW-A325
445 Twelfth Street, SW
Washington, DC 20554

Re: In the Matter of Qwest Communications International, Inc. and U S WEST, Inc., Applications for Consent to Transfer Control of Subsidiaries Holding Commission Authorizations – CC Docket No. 99-272

Ex Parte Communication of Coalition to Ensure Responsible Billing ("CERB")

Dear Ms. Salas:

Please arrange for this *ex parte* filing to be associated with the above-referenced docket (an extra copy is also provided pursuant to the FCC's ex parte rules).

By letter dated November 8, 1999, counsel for the CERB memorialized a meeting between CERB members, their legal counsel, and Commission personnel.[1] The letter repeats the position the CERB made in opposition to the Qwest/U S WEST Transfer Application. Essentially, the CERB argues that U S WEST's decision to cease providing billing in the U S WEST bill for certain products and services offered by the CERB's members amounts to a "significant threat to competition" and is an "anticompetitive policy."

As U S WEST stated in its formal reply to the oppositions filed in the merger proceeding, the issues raised by the CERB do not appropriately address the standards of Sections 214(a) and 310(d) of the Communications Act of 1934. The CERB would have the Commission attach some form of condition to granting the merger application, even absent "a specific anti-competitive risk or harm created by the merger itself."[2] Indeed, the fact that the CERB has been a participant in Commission

[1] Letter to Ms. Magalie Roman Salas, Secretary, Federal Communications Commission from Kristine DeBry, Esq., Counsel for CERB, dated Nov. 8, 1999.

[2] Response to Comments on Applications for Transfer of Control, filed by Qwest Communications International Inc. and U S WEST, Inc., filed Oct. 18, 1999 ("Qwest/U S WEST Response") at 5.

proceedings addressing the matter of local exchange carrier ("LEC") billing[3] forcefully demonstrates that its objections to the merger are based on "preexisting disagreements."[4] The well-settled nature of the existing law in the area of LEC billing,[5] as well as the existence of ongoing Commission proceedings where the issue is more appropriately raised, compels the conclusion that the issues raised by the CERB are not related to the merger and therefore, should not be considered in this proceeding. Because the CERB has failed to prove either a threat to competition or anticompetitive conduct, its request to inject these unrelated issues into this merger proceeding should be denied.

U S WEST is on record (in all of the proceedings referenced in note 3) with extensive comments on the nature of LEC billing for third parties. The Commission's Detariffing Order in 1986 determined that a LEC's billing for the services of others (i.e., third-party billing) need not be subject to regulation.[6] As a result, a LEC's billing for any third party is a discretionary act. LECs remain free to bill or not bill for services as their reasonable commercial assessments deem appropriate. As a general matter, no services of any service provider have a lawful claim to be included in a LEC's bill.

It follows, then, that if a LEC makes a decision to engage in billing for others, the terms and conditions of the arrangement are memorialized in contracts, which include provisions dealing with the termination of service and any required notice. In announcing its decision to cease billing for certain products and services in its bill – i.e., those products and services which are characterized as Specialized Products and Services ("SS&P") – U S WEST conformed its conduct to its contractual obligations.

On March 18, 1999, U S WEST provided notice to those CERB members for which U S WEST bills (as well as other affected entities) that U S WEST would cease providing such billing in the U S WEST bills as of November 1, 1999.[7] That letter also advised that U S WEST

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[3] The subject is being addressed or considered in at least three existing proceedings. For example, the subject is addressed in Public Notice, MCI Telecommunications Corporation Files Petition for Rulemaking Regarding Local Exchange Company Requirements for Billing and Collection of Non-Subscribed Services, Rulemaking No. 9108, 12 FCC Rcd. 8366 (1997); in In the Matter of Calling Party Pays Service Offering in the Commercial Mobile Radio Services, WT Docket No. 97-207; and in In the Matter of Truth-in-Billing and Billing Format, CC Docket No. 98-170.

[4] Qwest/U S WEST Response at 4.

[5] Id. at 28 (the "CERB does not remotely justify using this [merger] proceeding to reverse [the FCC's 1986 Detariffing Order], let alone only for the post-merger company.").

[6] Qwest/U S WEST Response at 28 n.61 citing to In the Matter of Detariffing of Billing and Collection Services, 102 FCC 2d 1150 (1986).

[7] Letter from U S WEST, dated Mar. 18, 1999. A copy of that letter is attached for the Commission's easy reference. U S WEST informed the Commission of its decision in a letter to Mr. Lawrence E. Strickling, Chief, Common Carrier Bureau from Kathryn Marie Krause, U S WEST, dated July 30, 1999.

would continue to provide a billing service for SS&P offerings through a product called "Your Bill," which would consist of a bill printing, addressing, mailing and monetary remittance service (with the customer payments going directly to a lock box for the appropriate billing aggregator or service provider). The "Your Bill" offering, then, is well suited for either billing aggregators or discrete service providers.

At the request of various purchasers of its billing services, U S WEST agreed to revisit the matter. Ultimately the Company's decision was unchanged and affected parties were advised again (in a letter dated October 25, 1999) that billing in the U S WEST envelope would cease. The date for final termination and possible transfer of billings was extended until December 1, 1999.

A few points need to be made about the continued demands by service providers to access LECs' bills. Those demands universally misrepresent the "law of competition" as well as fail to make a case that their position is supported by sound public policy.

First, entities demanding access to LECs' bills attempt to equate a LEC's billing for its own products and services (or those which complement the LEC's offerings) with a claimed "right" to have the services of third parties billed in the LEC bill.[8] Such is an illogical argument. Service providers, such as LECs, clearly have a right to bill for their own services without being obligated to bill for others. Other than alleged nondiscrimination requirements associated with Section 272(c)(1),[9] there has been no suggestion that a local carrier is generally required to bill for third parties. Stated differently, LECs do not "host" a "universal local bill" in which any interested party is free to bill their services. Thus, contrary to the CERB's assertions, a refusal to bill for a service provider or a type of service can hardly be shown as a "threat to competition" or "anticompetitive."

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[8] As U S WEST recently stated in response to a CERB argument, "CERB repeatedly uses the phrase 'the local bill' . . . as though such bill existed independent of any business relationship between the LEC service provider and its customers. Thus, it makes the somewhat absurd remark that 'As long as the LECs possess exclusive control over the local bill, they can use it to favor their own services and disadvantage competitors.' CERB at 7. Of course, the LEC does have exclusive control over the bill because it is the LEC's bill. It was developed with LEC monies and incorporates the expectations of LECs' customers, often discerned *via* LEC focus groups and LEC customer surveys." Reply Comments of U S WEST, Inc. in In the Matter of Calling Party Pays Service Offering in the Commercial Mobile Radio Services, WT Docket No. 97-207, filed Oct. 18, 1999 ("U S WEST CPP Reply Comments") at 18 n.51.

[9] 47 U.S.C. § 272(c)(1); In the Matter of Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd. 21905, 22007-8 ¶ 217 (1996), pet. for review pending sub nom. SBC Communications v. FCC, No. 97-1118 (filed D.C. Cir. Mar. 6, 1997) (held in abeyance May 7, 1997); on recon., 12 FCC Rcd. 2297; on further recon., 12 FCC Rcd. 8653 (1997) aff'd sub nom. Bell Atlantic Telephone Companies v. FCC, 131 F.3d 1044 (D.C. Cir. 1997); on further recon., Third Order on Reconsideration, CC Docket No. 96-149, FCC 99-242, rel. Oct. 1, 1999.

Second, commercial decisions about billing and billing relationships can reasonably change over time. Such changes and decisions do not make out a *prima facie* case of unlawful conduct. While a business decision made around the time of divestiture to continue to bill for interexchange carriers' ("IXC") message toll services (and related services such as third-party, collect, and later dial-a-round toll) may have made commercial sense to LECs because such billings were consistent with their customers' long-held expectations, the increased number of service providers and disparate service offerings now being billed requires a reassessment. The more entities and services a LEC bills for, the more complicated the bill becomes for the consumer. Furthermore, the higher the "amount due" on the bottom line of the bill,[10] the more U S WEST has to be concerned about "sticker shock." In addition, consumer complaints about the "new" types of services on their bills, and requests to U S WEST that such services not be billed in the U S WEST bill or envelope,[11] have created an entirely different billing and customer care dynamic and required support structure. It is well within the range of commercially-reasonable decision making for a LEC such as U S WEST to choose to dedicate its resources elsewhere.

Third, a service provider's bill is without question a speech-laden communicative activity. One need only read the comments from a range of service providers in the Truth-in-Billing proceeding, including IXCs and wireless providers, to appreciate the extent to which billing for services is integral to the marketing of such services, as well as to the overall image of the service provider. No carrier should be forced to associate with non-affiliates if it chooses not to, either because such association harms the image or reputation of the billing carrier[12] or because the association makes the marketing messages (i.e., speech) of the billing carrier less attractive to consumers due to the increasingly escalating "total amounts due" reflected on the bills. A contrary rule would certainly raise serious First Amendment issues.

Fourth, entities claiming that LECs declining to bill for others act in an anticompetitive

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[10] The relevancy of the "bottom line of the bill" to a consumer cannot seriously be questioned. See, Susan Ness Statement in Truth-in-Billing proceeding about "bottom line of the bill." In the Matter of Truth-in-Billing and Billing Format, Notice of Proposed Rulemaking, 13 FCC Rcd. 18176, 18203-204 (1998).

[11] Within U S WEST's territory, there have been legislative initiatives to stop U S WEST from billing for non-message toll type services offered by others. And, often in conjunction with complaints to its business offices, U S WEST has seen considerable demand from customers (around 3,000 requests per month) that non-message toll services of third parties not be included in their bill from U S WEST. Establishing such "do not bill" systems consumes both financial and human resources.

[12] For example, U S WEST has initiated six lawsuits for trademark slamming against companies for which it provides billing. Those companies continue to misrepresent to the public that they "are U S WEST," using as their "support" for their misrepresentations the fact that they are included in U S WEST's bill.

manner alters the meaning of the word beyond recognition and ignores available alternatives. These commentors ignore certain material facts including that scope and scale options either exist (i.e., the U S WEST "Your Bill") or can be created to provide billing services, including self-provisioning.[13] Further, the obligations to bill for third parties that CERB would have the Commission impose in the name of competition would be bad public policy. Such a policy would inhibit businesses from changing non-mandated commercial practices and likely make them reluctant to engage in privately beneficial conduct in the first instance thereby stifling innovation.[14] In sum, competitors may not claim a right to access their competition's commercial resources any more than they may claim a right to their capital support.[15] U S WEST has made an alternative billing option available and its decision to limit access to its own branded envelope and bill is a reasonable business decision and is not anticompetitive.

Clearly the issues pressed by the CERB are industry – not U S WEST – issues. Indeed, insofar as U S WEST has offered to bill for CERB members – albeit through a separate bill – those members are better off than had U S WEST simply terminated the billing contracts altogether. But

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[13] Some service providers may choose to create their own billing capabilities, which they then may offer to extend to others. And, in U S WEST's CPP Reply Comments, citations were made to commentors who affirmatively self-declared their willingness to bill; to observations about the robust and profitable nature of the "billing, collection and customer care industry" (which is "a thriving business in its own right, growing worldwide from roughly $10 billion in 1997 to an estimated $14 billion by 2000, generating a compound annual growth rate of 13 percent. The third-party service provider segment of the billing, collection and customer care industry is expected to grow even faster at a compound annual growth rate of 30 percent during the same period"); and to suggestions that a billing scheme along the lines of that associated with Broadcast Music Inc. ("BMI") and American Society of Composers, Authors and Publishers ("ASCAP") in the area of music copyright, would be particularly well suited to handle transactions that might not constitute more than minimal billings but that involve many transactions and require "account management" through the collections process. See U S WEST CPP Reply Comments at 10, 13-14, 15.

[14] See Olympia Equipment Leasing Co. v. Western Union, 797 F.2d 370, 375 (7th Cir. 1986), cert. denied, 480 U.S. 934 (1987) (Opinion by Circuit Judge Posner) ("Olympia Equipment") (noting that just because a business engages in business a certain way at one particular point in time (even where the business conduct is actively pro-competitive) does not compel a business to continue to behave that way); at 376 ("the law would be perverse if it made [a business entity's] encouraging gestures the fulcrum of an antitrust violation. Then no firm would dare to attempt a graceful exit from a market in which it was a major seller."), 378.

[15] Id. ("So if a firm went to a monopolist and said, 'Please -- for the sake of competition -- give me a loan so I can compete with you and make this a competitive market,' and it was turned down, it could not invoke the Sherman Act."); 379 ("Refusing to act as your competitor's sales agent is not an unnatural practice engaged in only by firms bent on monopolization."). See also Catlin v. Washington Energy Co., 791 F.2d 1343 (9th Cir. 1986) (holding that there was no obligation of a public utility to give access to others to mailings to the utility's customers).

in any event, the matter of LEC billing obligations is not appropriately considered within the context of the Qwest/U S WEST merger proceeding.

Sincerely,

Dan L. Poole by MEN

Dan L. Poole

Kathryn Marie Krause

cc: Henry Thaggert, FCC, Kristine DeBry, Counsel for the CERB

Attachment

U S WEST March 18, 1999 SS&P Termination Letter

1801 California Street
Room 2130
Denver, Colorado 80202
March 18, 1999

Customer

Dear ___:

As part of U S WEST's evaluation of its Billing and Collection product, it is necessary to inform you of changes to be implemented later this year. U S WEST has made the business decision to discontinue billing any Specialized Services and Products (SS&P) through its Billing and Collection Service offering. Effective November 1, 1999, U S WEST will no longer accept and process SS&P billing records for the USWC Shared Bill.

Your SS&P Addendum requires only 30 days written notification to terminate, but we feel it is essential to provide as much notification as possible to allow you an opportunity to obtain alternate billing arrangements.

To that end, I would like to remind you, again, of U S WEST *Your Bill*. Your SS&P messages can be easily transitioned to an end user bill through this new product, without the need of prior approval. U S WEST *Your Bill* utilizes our existing world class technology and electronic directory database to create and send a bill to any end user customer in the United States. You can also utilize U S WEST *Your Bill* as a vehicle to carry other LECs Return Code 50 records. You have control of the messages you wish to bill with U S WEST *Your Bill*.

U S WEST *Your Bill* is a national billing opportunity. We can attempt to locate the name and address information, or you can submit it. It is an unbundled service: you can purchase any combination of Bill Rendering, Remittance Processing, and/or Collections. It can be used to bill any telecommunications related products or services, including but not limited to SS&P, 900 Information Services, telecommunications equipment, international toll calls, and local service.

If you are interested in U S WEST *Your Bill* as your solution to bill SS&P messages on November 1, 1999, please contact me immediately. A Letter of Agreement must be executed prior to May 1, 1999 to ensure a timely transition in billing processes. U S WEST will not be able to implement new customers during the months of November and December 1999, so it is imperative we know of your intent to purchase the month of April to ensure your implementation no later than our October 1999 system release.

Please take some time to review the enclosed product bulletin. I will be happy to respond to any questions or concerns. We appreciate and value your business. While our business decision impacts your ability to place SS&P in the "Shared" bill, I'm certain you will find U S WEST *Your Bill* a strong alternative. I can be reached on _____.

Sincerely,

CERTIFICATE OF SERVICE

I, Kelseau Powe, Jr., do hereby certify that on this 30th day of November, 1999, I have caused a copy of the foregoing **EX PARTE** to be served, via hand delivery or first class United States Mail, postage prepaid, upon the persons listed on the attached service list.

Kelseau Powe, Jr.

*Served via hand delivery

*William E. Kennard
Federal Communications Commission
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Portals II
445 12th Street, S.W.
Washington, DC 20554

*Gloria Tristani
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Last Update: 11/30/99

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Tel:303 672-2859

Stamp & Return

USWEST

December 6, 1999

RECEIVED
DEC - 6 1999
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12Th Street, SW, TW-A325
Washington, DC 20554

Re: RM 9120

Dear Ms. Salas:

Please arrange for this *ex parte* filing to be associated with the above-referenced docket (an extra copy is also provided pursuant to the FCC's ex parte rules).

Recently there have been some allegations by members and representatives of the Coalition to Ensure Responsible billing ("CERB") that U S WEST did not provide appropriate notice to members regarding U S WEST's decision to cease billing for non-toll type services during the last quarter of 1999. U S WEST provides some facts and information to correct these erroneous assertions.

- U S WEST's contract with CERB members requires that they be given thirty days notice of changes regarding U S WEST's specialized services and products ("SS&P") billing practices/decisions. (Section 15. Miscellaneous. A copy of the relevant contractual provision is attached.) U S WEST complied with these notice requirements.

- On March 18, 1999, U S WEST provided notice to those CERB members for which U S WEST bills SS&P offerings (as well as other affected entities) that U S WEST would cease providing such billing in the U S WEST bills as of November 1, 1999. A copy of that letter is attached for the Commission's easy reference. That letter also advised that U S WEST would continue to provide a billing service for SS&P offerings through a product called "Your Bill," which would consist of a bill printing, addressing, mailing and monetary remittance service (with the customer payments going directly to a lock box for the appropriate billing aggregator or service provider).[1]

- Again on October 25, 1999, CERB members were advised of U S WEST's decision to proceed to cease billing for SS&P in its envelope. A copy of that letter is attached to this

[1] Please note that the letter **incorrectly** references "collections" as part of the Your Bill offering.

correspondence, as well. It should be noted that the October communication extended the date for final termination and possible transfer of SS&P billings from November 1, 1999 to December 1, 1999.[2]

The above demonstrates that the claims of the CERB that its members were not provided with sufficient notice of U S WEST's decision to cease SS&P billings are without foundation.

I also wish to bring to your attention the fact that not only did U S WEST's contracts reserve to it the right to cease SS&P billing but the marketplace dynamic strongly supported such decision. Unlike toll-type billings (where slamming is not an issue), SS&P billings generate significant customer complaints. U S WEST is realizing around 3,000 calls per month to our business offices in which customers ask that non-toll type charges not be included in their telephone bills. In some cases, legislative mandates require U S WEST to comply with such requests. But good business acumen also suggests that U S WEST's brand is being substantially compromised, that its costs of doing business are increasing as its strives to maintain burgeoning "do not bill" lists, and that quality customer relations counsel that it is time to stop SS&P billing.

If I can provide any further information, please do not hesitate to contact me.

Sincerely,

Kathryn Krause
by MEN

Kathryn Krause
Senior Attorney

Attachments: Contract Provision (Section 15); March 18 Letter of Termination; October 25 Letter; November 30 Ex Parte Filing

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[2] In addition to the correspondence directly to CERB members, U S WEST informed the Commission of its decision to cease billing for SS&P offerings in a letter to Mr. Lawrence E. Strickling, Chief, Common Carrier Bureau from Kathryn Marie Krause, U S WEST, dated July 30, 1999.

SPECIALIZED SERVICES AND PRODUCTS (SS&P)
BILLING SERVICES

This Addendum to the Agreement for the Provision of Billing and Collection Services ("BCS Agreement"), dated _____, 19__ by and between U S WEST Communications, Inc., a Colorado Corporation (hereinafter referred to as "USWC") and _____ (hereinafter referred to as "Customer"), acting through their authorized representatives, is effective the __ day of_____, 19__.

. . . . . .

15. Miscellaneous

A. This Addendum is effective on the date first mentioned above and shall continue on a month to month basis unless terminated by either party with thirty (30) days' written notice to the other. However, in no event shall this Addendum extend beyond termination or expiration of the BCS Agreement.

U S WEST March 18, 1999 SS&P Termination Letter

1801 California Street
Room 2130
Denver, Colorado 80202
March 18, 1999

Customer

Dear ___:

As part of U S WEST's evaluation of its Billing and Collection product, it is necessary to inform you of changes to be implemented later this year. U S WEST has made the business decision to discontinue billing any Specialized Services and Products (SS&P) through its Billing and Collection Service offering. Effective November 1, 1999, U S WEST will no longer accept and process SS&P billing records for the USWC Shared Bill.

Your SS&P Addendum requires only 30 days written notification to terminate, but we feel it is essential to provide as much notification as possible to allow you an opportunity to obtain alternate billing arrangements.

To that end, I would like to remind you, again, of U S WEST *Your Bill*. Your SS&P messages can be easily transitioned to an end user bill through this new product, without the need of prior approval. U S WEST *Your Bill* utilizes our existing world class technology and electronic directory database to create and send a bill to any end user customer in the United States. You can also utilize U S WEST *Your Bill* as a vehicle to carry other LECs Return Code 50 records. You have control of the messages you wish to bill with U S WEST *Your Bill*.

U S WEST *Your Bill* is a national billing opportunity. We can attempt to locate the name and address information, or you can submit it. It is an unbundled service: you can purchase any combination of Bill Rendering, Remittance Processing, and/or Collections. It can be used to bill any telecommunications related products or services, including but not limited to SS&P, 900 Information Services, telecommunications equipment, international toll calls, and local service.

If you are interested in U S WEST *Your Bill* as your solution to bill SS&P messages on November 1, 1999, please contact me immediately. A Letter of Agreement must be executed prior to May 1, 1999 to ensure a timely transition in billing processes. U S WEST will not be able to implement new customers during the months of November and December 1999, so it is imperative we know of your intent to purchase the month of April to ensure your implementation no later than our October 1999 system release.

Please take some time to review the enclosed product bulletin. I will be happy to respond to any questions or concerns. We appreciate and value your business. While our business decision impacts your ability to place SS&P in the "Shared" bill, I'm certain you will find U S WEST *Your Bill* a strong alternative. I can be reached on _____.

Sincerely,

U S WEST October 25, 1999 SS&P Letter

U S WEST Communications
1801 California Street
Rm 2360
Denver, Colorado 80202

(303) 896-9427

Aaron Smith
Director—Information and Billing Services

October 25, 1999

Customer
Address
City, State, zip

Dear Customer:

Since our meeting at the August 25, 1999, Billing Services Forum, U S WEST has evaluated the business feasibility of continuing to bill Specialized Services & Products (SS&P) within the U S WEST bill. Based upon this evaluation, it is necessary to advise you that U S WEST will not reverse its earlier decision to terminate this billing activity.

Through our evaluation, we have collected data around the number of cramming complaints received on a monthly basis from both our business offices and state regulatory agencies. While we believe the complaint levels have decreased due to activities implemented by both our customers and U S WEST, the amount of negative data is still overwhelming. Moreover, the damage to the U S WEST brand has been substantial. U S WEST is simply not willing to put its core business at risk by allowing SS&P billing to continue in the shared bill.

Therefore, effective December 1, 1999, U S WEST will discontinue processing SS&P billing records. We value the business you have brought to U S WEST and recognize it may take some time to transition your existing SS&P billing records to an alternate billing vehicle. As a result, we were successful in negotiating a 30-day extension of the previously communicated October 31, 1999 termination date. Your SS&P Addendum will remain in effect up to and including November 30, 1999. Any SS&P billing records received on or after December 1, 1999 will be rejected.

We appreciate the information you provided to assist us in advocating on your behalf. We regret any inconvenience this decision may cause.

Sincerely,

Aaron Smith

Aaron Smith
Director, Information and Billing Services

Cc: John Kelley, Jasmin Espy, Judy Tinkham, Patty Snider, Pam Jenkins, Jim Gallegos

U S WEST, Inc.
1801 California Street, Suite 5100
Denver, Colorado 80202
Facsimile 303 295-7049

Dan L. Poole
Associate General Counsel
Tel:303 672-2794

Kathryn Marie Krause
Senior Attorney
Tel:303 672-2859

November 30, 1999

EX PARTE FILING

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
Portals II, Room TW-A325
445 Twelfth Street, SW
Washington, DC 20554

Re: In the Matter of Qwest Communications International, Inc. and U S WEST, Inc., Applications for Consent to Transfer Control of Subsidiaries Holding Commission Authorizations – CC Docket No. 99-272

Ex Parte Communication of Coalition to Ensure Responsible Billing ("CERB")

Dear Ms. Salas:

Please arrange for this *ex parte* filing to be associated with the above-referenced docket (an extra copy is also provided pursuant to the FCC's ex parte rules).

By letter dated November 8, 1999, counsel for the CERB memorialized a meeting between CERB members, their legal counsel, and Commission personnel.[1] The letter repeats the position the CERB made in opposition to the Qwest/U S WEST Transfer Application. Essentially, the CERB argues that U S WEST's decision to cease providing billing in the U S WEST bill for certain products and services offered by the CERB's members amounts to a "significant threat to competition" and is an "anticompetitive policy."

As U S WEST stated in its formal reply to the oppositions filed in the merger proceeding, the issues raised by the CERB do not appropriately address the standards of Sections 214(a) and 310(d) of the Communications Act of 1934. The CERB would have the Commission attach some form of condition to granting the merger application, even absent "a specific anti-competitive risk or harm created by the merger itself."[2] Indeed, the fact that the CERB has been a participant in Commission

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[1] Letter to Ms. Magalie Roman Salas, Secretary, Federal Communications Commission from Kristine DeBry, Esq., Counsel for CERB, dated Nov. 8, 1999.

[2] Response to Comments on Applications for Transfer of Control, filed by Qwest Communications International Inc. and U S WEST, Inc., filed Oct. 18, 1999 ("Qwest/U S WEST Response") at 5.

proceedings addressing the matter of local exchange carrier ("LEC") billing[3] forcefully demonstrates that its objections to the merger are based on "preexisting disagreements."[4] The well-settled nature of the existing law in the area of LEC billing,[5] as well as the existence of ongoing Commission proceedings where the issue is more appropriately raised, compels the conclusion that the issues raised by the CERB are not related to the merger and therefore, should not be considered in this proceeding. Because the CERB has failed to prove either a threat to competition or anticompetitive conduct, its request to inject these unrelated issues into this merger proceeding should be denied.

U S WEST is on record (in all of the proceedings referenced in note 3) with extensive comments on the nature of LEC billing for third parties. The Commission's Detariffing Order in 1986 determined that a LEC's billing for the services of others (i.e., third-party billing) need not be subject to regulation.[6] As a result, a LEC's billing for any third party is a discretionary act. LECs remain free to bill or not bill for services as their reasonable commercial assessments deem appropriate. As a general matter, no services of any service provider have a lawful claim to be included in a LEC's bill.

It follows, then, that if a LEC makes a decision to engage in billing for others, the terms and conditions of the arrangement are memorialized in contracts, which include provisions dealing with the termination of service and any required notice. In announcing its decision to cease billing for certain products and services in its bill – i.e., those products and services which are characterized as Specialized Products and Services ("SS&P") – U S WEST conformed its conduct to its contractual obligations.

On March 18, 1999, U S WEST provided notice to those CERB members for which U S WEST bills (as well as other affected entities) that U S WEST would cease providing such billing in the U S WEST bills as of November 1, 1999.[7] That letter also advised that U S WEST

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[3] The subject is being addressed or considered in at least three existing proceedings. For example, the subject is addressed in Public Notice, MCI Telecommunications Corporation Files Petition for Rulemaking Regarding Local Exchange Company Requirements for Billing and Collection of Non-Subscribed Services, Rulemaking No. 9108, 12 FCC Rcd. 8366 (1997); in In the Matter of Calling Party Pays Service Offering in the Commercial Mobile Radio Services, WT Docket No. 97-207; and in In the Matter of Truth-in-Billing and Billing Format, CC Docket No. 98-170.

[4] Qwest/U S WEST Response at 4.

[5] Id. at 28 (the "CERB does not remotely justify using this [merger] proceeding to reverse [the FCC's 1986 Detariffing Order], let alone only for the post-merger company.").

[6] Qwest/U S WEST Response at 28 n.61 citing to In the Matter of Detariffing of Billing and Collection Services, 102 FCC 2d 1150 (1986).

[7] Letter from U S WEST, dated Mar. 18, 1999. A copy of that letter is attached for the Commission's easy reference. U S WEST informed the Commission of its decision in a letter to Mr. Lawrence E. Strickling, Chief, Common Carrier Bureau from Kathryn Marie Krause, U S WEST, dated July 30, 1999.

would continue to provide a billing service for SS&P offerings through a product called "Your Bill," which would consist of a bill printing, addressing, mailing and monetary remittance service (with the customer payments going directly to a lock box for the appropriate billing aggregator or service provider). The "Your Bill" offering, then, is well suited for either billing aggregators or discrete service providers.

At the request of various purchasers of its billing services, U S WEST agreed to revisit the matter. Ultimately the Company's decision was unchanged and affected parties were advised again (in a letter dated October 25, 1999) that billing in the U S WEST envelope would cease. The date for final termination and possible transfer of billings was extended until December 1, 1999.

A few points need to be made about the continued demands by service providers to access LECs' bills. Those demands universally misrepresent the "law of competition" as well as fail to make a case that their position is supported by sound public policy.

First, entities demanding access to LECs' bills attempt to equate a LEC's billing for its own products and services (or those which complement the LEC's offerings) with a claimed "right" to have the services of third parties billed in the LEC bill.[8] Such is an illogical argument. Service providers, such as LECs, clearly have a right to bill for their own services without being obligated to bill for others. Other than alleged nondiscrimination requirements associated with Section 272(c)(1),[9] there has been no suggestion that a local carrier is generally required to bill for third parties. Stated differently, LECs do not "host" a "universal local bill" in which any interested party is free to bill their services. Thus, contrary to the CERB's assertions, a refusal to bill for a service provider or a type of service can hardly be shown as a "threat to competition" or "anticompetitive."

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[8] As U S WEST recently stated in response to a CERB argument, "CERB repeatedly uses the phrase 'the local bill' . . . as though such bill existed independent of any business relationship between the LEC service provider and its customers. Thus, it makes the somewhat absurd remark that 'As long as the LECs possess exclusive control over the local bill, they can use it to favor their own services and disadvantage competitors.' CERB at 7. Of course, the LEC does have exclusive control over the bill because it is the LEC's bill. It was developed with LEC monies and incorporates the expectations of LECs' customers, often discerned *via* LEC focus groups and LEC customer surveys." Reply Comments of U S WEST, Inc. in In the Matter of Calling Party Pays Service Offering in the Commercial Mobile Radio Services, WT Docket No. 97-207, filed Oct. 18, 1999 ("U S WEST CPP Reply Comments") at 18 n.51.

[9] 47 U.S.C. § 272(c)(1); In the Matter of Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd. 21905, 22007-8 ¶ 217 (1996), pet. for review pending sub nom. SBC Communications v. FCC, No. 97-1118 (filed D.C. Cir. Mar. 6, 1997) (held in abeyance May 7, 1997); on recon., 12 FCC Rcd. 2297; on further recon., 12 FCC Rcd. 8653 (1997) aff'd sub nom. Bell Atlantic Telephone Companies v. FCC, 131 F.3d 1044 (D.C. Cir. 1997); on further recon., Third Order on Reconsideration, CC Docket No. 96-149, FCC 99-242, rel. Oct. 1, 1999.

Second, commercial decisions about billing and billing relationships can reasonably change over time. Such changes and decisions do not make out a *prima facie* case of unlawful conduct. While a business decision made around the time of divestiture to continue to bill for interexchange carriers' ("IXC") message toll services (and related services such as third-party, collect, and later dial-a-round toll) may have made commercial sense to LECs because such billings were consistent with their customers' long-held expectations, the increased number of service providers and disparate service offerings now being billed requires a reassessment. The more entities and services a LEC bills for, the more complicated the bill becomes for the consumer. Furthermore, the higher the "amount due" on the bottom line of the bill,[10] the more U S WEST has to be concerned about "sticker shock." In addition, consumer complaints about the "new" types of services on their bills, and requests to U S WEST that such services not be billed in the U S WEST bill or envelope,[11] have created an entirely different billing and customer care dynamic and required support structure. It is well within the range of commercially-reasonable decision making for a LEC such as U S WEST to choose to dedicate its resources elsewhere.

Third, a service provider's bill is without question a speech-laden communicative activity. One need only read the comments from a range of service providers in the Truth-in-Billing proceeding, including IXCs and wireless providers, to appreciate the extent to which billing for services is integral to the marketing of such services, as well as to the overall image of the service provider. No carrier should be forced to associate with non-affiliates if it chooses not to, either because such association harms the image or reputation of the billing carrier[12] or because the association makes the marketing messages (i.e., speech) of the billing carrier less attractive to consumers due to the increasingly escalating "total amounts due" reflected on the bills. A contrary rule would certainly raise serious First Amendment issues.

Fourth, entities claiming that LECs declining to bill for others act in an anticompetitive

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[10] The relevancy of the "bottom line of the bill" to a consumer cannot seriously be questioned. See, Susan Ness Statement in Truth-in-Billing proceeding about "bottom line of the bill." In the Matter of Truth-in-Billing and Billing Format, Notice of Proposed Rulemaking, 13 FCC Rcd. 18176, 18203-204 (1998).

[11] Within U S WEST's territory, there have been legislative initiatives to stop U S WEST from billing for non-message toll type services offered by others. And, often in conjunction with complaints to its business offices, U S WEST has seen considerable demand from customers (around 3,000 requests per month) that non-message toll services of third parties not be included in their bill from U S WEST. Establishing such "do not bill" systems consumes both financial and human resources.

[12] For example, U S WEST has initiated six lawsuits for trademark slamming against companies for which it provides billing. Those companies continue to misrepresent to the public that they "are U S WEST," using as their "support" for their misrepresentations the fact that they are included in U S WEST's bill.

manner alters the meaning of the word beyond recognition and ignores available alternatives. These commentors ignore certain material facts including that scope and scale options either exist (i.e., the U S WEST "Your Bill") or can be created to provide billing services, including self-provisioning.[13] Further, the obligations to bill for third parties that CERB would have the Commission impose in the name of competition would be bad public policy. Such a policy would inhibit businesses from changing non-mandated commercial practices and likely make them reluctant to engage in privately beneficial conduct in the first instance thereby stifling innovation.[14] In sum, competitors may not claim a right to access their competition's commercial resources any more than they may claim a right to their capital support.[15] U S WEST has made an alternative billing option available and its decision to limit access to its own branded envelope and bill is a reasonable business decision and is not anticompetitive.

Clearly the issues pressed by the CERB are industry – not U S WEST – issues. Indeed, insofar as U S WEST has offered to bill for CERB members – albeit through a separate bill – those members are better off than had U S WEST simply terminated the billing contracts altogether. But

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[13] Some service providers may choose to create their own billing capabilities, which they then may offer to extend to others. And, in U S WEST's CPP Reply Comments, citations were made to commentors who affirmatively self-declared their willingness to bill; to observations about the robust and profitable nature of the "billing, collection and customer care industry" (which is "a thriving business in its own right, growing worldwide from roughly $10 billion in 1997 to an estimated $14 billion by 2000, generating a compound annual growth rate of 13 percent. The third-party service provider segment of the billing, collection and customer care industry is expected to grow even faster at a compound annual growth rate of 30 percent during the same period"); and to suggestions that a billing scheme along the lines of that associated with Broadcast Music Inc. ("BMI") and American Society of Composers, Authors and Publishers ("ASCAP") in the area of music copyright, would be particularly well suited to handle transactions that might not constitute more than minimal billings but that involve many transactions and require "account management" through the collections process. See U S WEST CPP Reply Comments at 10, 13-14, 15.

[14] See Olympia Equipment Leasing Co. v. Western Union, 797 F.2d 370, 375 (7th Cir. 1986), cert. denied, 480 U.S. 934 (1987) (Opinion by Circuit Judge Posner) ("Olympia Equipment") (noting that just because a business engages in business a certain way at one particular point in time (even where the business conduct is actively pro-competitive) does not compel a business to continue to behave that way); at 376 ("the law would be perverse if it made [a business entity's] encouraging gestures the fulcrum of an antitrust violation. Then no firm would dare to attempt a graceful exit from a market in which it was a major seller."), 378.

[15] Id. ("So if a firm went to a monopolist and said, 'Please -- for the sake of competition -- give me a loan so I can compete with you and make this a competitive market,' and it was turned down, it could not invoke the Sherman Act."); 379 ("Refusing to act as your competitor's sales agent is not an unnatural practice engaged in only by firms bent on monopolization."). See also Catlin v. Washington Energy Co., 791 F.2d 1343 (9th Cir. 1986) (holding that there was no obligation of a public utility to give access to others to mailings to the utility's customers).

in any event, the matter of LEC billing obligations is not appropriately considered within the context of the Qwest/U S WEST merger proceeding.

Sincerely,

Dan L. Poole by MEN

Dan L. Poole

Kathryn Marie Krause

cc: Henry Thaggert, FCC, Kristine DeBry, Counsel for the CERB

Attachment

U S WEST March 18, 1999 SS&P Termination Letter

1801 California Street
Room 2130
Denver, Colorado 80202
March 18, 1999

Customer

Dear ___:

As part of U S WEST's evaluation of its Billing and Collection product, it is necessary to inform you of changes to be implemented later this year. U S WEST has made the business decision to discontinue billing any Specialized Services and Products (SS&P) through its Billing and Collection Service offering. Effective November 1, 1999, U S WEST will no longer accept and process SS&P billing records for the USWC Shared Bill.

Your SS&P Addendum requires only 30 days written notification to terminate, but we feel it is essential to provide as much notification as possible to allow you an opportunity to obtain alternate billing arrangements.

To that end, I would like to remind you, again, of U S WEST *Your Bill*. Your SS&P messages can be easily transitioned to an end user bill through this new product, without the need of prior approval. U S WEST *Your Bill* utilizes our existing world class technology and electronic directory database to create and send a bill to any end user customer in the United States. You can also utilize U S WEST *Your Bill* as a vehicle to carry other LECs Return Code 50 records. You have control of the messages you wish to bill with U S WEST *Your Bill*.

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If you are interested in U S WEST *Your Bill* as your solution to bill SS&P messages on November 1, 1999, please contact me immediately. A Letter of Agreement must be executed prior to May 1, 1999 to ensure a timely transition in billing processes. U S WEST will not be able to implement new customers during the months of November and December 1999, so it is imperative we know of your intent to purchase the month of April to ensure your implementation no later than our October 1999 system release.

Please take some time to review the enclosed product bulletin. I will be happy to respond to any questions or concerns. We appreciate and value your business. While our business decision impacts your ability to place SS&P in the "Shared" bill, I'm certain you will find U S WEST *Your Bill* a strong alternative. I can be reached on _____.

Sincerely,

CERTIFICATE OF SERVICE

I, Kelseau Powe, Jr., do hereby certify that on this 30th day of November, 1999, I have caused a copy of the foregoing **EX PARTE** to be served, via hand delivery or first class United States Mail, postage prepaid, upon the persons listed on the attached service list.

Kelseau Powe, Jr.

*Served via hand delivery

*William E. Kennard
Federal Communications Commission
8th Floor
Portals II
445 12th Street, S.W.
Washington, DC 20554

*Gloria Tristani
Federal Communications Commission
8th Floor
Portals II
445 12th Street, S.W.
Washington, DC 20554

*Michael K. Powell
Federal Communications Commission
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445 12th Street, S.W.
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*Harold Furchtgott-Roth
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*Lauren Kravetz
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*Henry Thaggert
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*Office of Public Affairs
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*Margaret Egler
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Ruth Milkman AT
Lawler, Metzger & Milkman
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(CC99-272a.doc)
Last Update: 11/30/99