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January 3, 2000

EX PARTE FILING

VIA HAND DELIVERY

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

Response to Ex Parte Filing of U S WEST

Dear Ms. Salas:

On November 30, 1999, counsel for U S WEST filed an ex parte letter[1] with the Federal Communications Commission ("Commission") regarding a November 5, 1999, *ex parte* meeting of the Coalition to Ensure Responsible Billing ("CERB")[2] and the Commission. CERB responds here to U S WEST's letter.

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[1] *See* Letter to Ms. Magalie Roman Salas, Secretary, Federal Communications Commission from Dan L. Poole, counsel for U S WEST, dated November 30, 1999.

[2] CERB is composed of seven billing clearinghouses (also called billing aggregators). The members of CERB are Billing Concepts, Federal TransTel, HBS Billing Services, ILD Teleservices, Integretel, OAN Services, and USP&C. These companies have established billing and collections contracts with all of the Regional Bell Operating Companies ("RBOCs"), GTE, and most independent incumbent local exchange carriers ("LECs") to bill for the telecommunications charges of third parties on the local telephone bill. CERB members primarily assist smaller competitive companies offering interexchange services, voicemail, paging, Internet access, and other services by aggregating these companies' charges under a single contract with each LEC.

I. U S WEST argues that any Commission condition to a merger must address a "specific anti-competitive risk or harm created by the merger itself."[3] According to U S WEST, CERB's arguments concerning U S WEST's discriminatory treatment of service providers address industry concerns that CERB has tackled before, and which are not specific to the merger. However, as CERB clearly stated in its filing in this proceeding, the merger between U S WEST and Qwest will cause an increase in the number of ancillary, and eventually interexchange, services the combined companies may offer, increasing U S WEST's incentive to act in an anti-competitive fashion toward other service providers who provide these same services.[4]

U S WEST's and Qwest's merger applications ("Applications") make clear that U S WEST and Qwest envision the expanded deployment of advanced services and Internet services as a major benefit that their merger would provide.[5] Furthermore, Qwest's website indicates that the Denver-based company already offers, among other things, paging services and Internet services to both residential and business customers.[6] In fact, the Applications state quite clearly that Qwest "offers Internet access and other Internet-based services in the U S WEST region."[7]

As U S WEST increases its stake in interexchange and ancillary services as a result of this planned merger, it will have greater incentives and opportunities to limit access to the local telephone bill to only those services provided by its affiliates. Given the opportunity, U S WEST and Qwest will therefore be inclined to monopolize interexchange and ancillary services by exercising their unfettered control over access to the local telephone bill in an anti-competitive manner. Indeed, U S WEST's lack of regard for the nondiscrimination safeguards that attach to the entry of Regional Bell Operating Companies ("RBOCs") into the long distance market should give rise to serious concerns about how a U S WEST/Qwest entity, once allowed

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[3] Response Comments of Qwest Communications International Inc. and U S WEST, Inc, *Response to Comments on Applications for Transfer of Control*, CC Docket No. 99-272 (filed October 18, 1999) at 5.

[4] *See* Comments of CERB, *Qwest Communications International Inc. and U S WEST, Inc. Seek FCC Consent for a Proposed Transfer of Control*, CC Docket No. 99-272 (filed October 1, 1999) at 1-2, 6-9.

[5] *See Qwest Communications International Inc. and U S WEST, Inc. Seek FCC Consent for a Proposed Transfer of Control ("Applications for Transfer of Control")*, CC Docket No. 99-272, DA 99-1775, Public Notice (rel. Sept. 1, 1999) at 15-16.

[6] *See* www.qhome.net (visited Sept. 30, 1999); www.qwest.com /business/business.html (visited Sept. 30, 1999).

[7] *See Applications for Transfer of Control* at 13.

to provide long distance service, will treat its long distance competitors.[8] A refusal of U S WEST/Qwest to provide billing and collections services for competing long distance carriers would be devastating to competition. The continuing lack of viable alternatives to the local telephone bill described below, and the increased competitive threat presented through this merger, now justify a formal commitment from Qwest and U S WEST to keep the local telephone bill open to competitive service providers on a nondiscriminatory basis.

II. U S WEST argues that, due to the Commission's *Detariffing Order* [9] deregulating billing and collections, LEC billing for a third party is a discretionary act. While it is true that the *Detariffing Order* deregulated billing and collections, in numerous situations since the *Detariffing Order* Congress and the Commission have asserted authority over billing and collections where doing so protects competition.

For example, in enacting the Telecommunications Act of 1996 ("Act"), Congress acknowledged the likelihood that the RBOCs, when permitted to enter the long distance market, would inappropriately favor their own interexchange carrier ("IXC") affiliates. Thus, Congress enacted Section 272 of the Act, which prevents the RBOCs from discriminating between their own IXC affiliates and unaffiliated IXCs in the provision of "goods, services, facilities, and information."[10] In its *Non-Accounting Safeguards Order* interpreting the Act, the Commission found that Section 272 was intended to protect competition in new markets "from the BOCs' ability to use their existing market power in local exchange services to obtain an anti-competitive advantage in those new markets the BOCs seek to enter."[11] The Commission recognized that the provision of billing and collections is a "service" that RBOC affiliates may use to their advantage, and thus specified that billing and collections is subject to a non-discrimination requirement.[12] Despite the Commission's findings, U S WEST's recent *ex parte* comments refer to the Section 272 non-discrimination requirement with regard to billing and collections an

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[8] *See* Section II infra discussion of U S WEST's views on the "alleged" nondiscrimination obligations flowing from Section 272 of the Telecommunications Act of 1996.

[9] *In the Matter of Detariffing of Billing and Collection Services*, 102 F.C.C.2d 1150, ¶ 37 (1986) ("Detariffing Order").

[10] 47 U.S.C. Section 272(c)(1).

[11] Implementation of the Non-Accounting Safeguards of Section 271 and 272 of the Communications Act of 1934, as amended, First Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 96-149, ¶ 6 (1996) ("Non-Accounting Safeguards Order").

[12] *Id.* at ¶ 217.

"alleged" requirement.[13] This obligation, however, is very real. In fact, the Commission's December 22, 1999, Order approving Bell Atlantic New York's Section 271 application reinforces the broad and binding nature of an RBOC's non-discrimination obligations under Section 272. In that Order, the Commission "agree[s] with AT&T, CERB and others regarding the broad nature of the nondiscrimination safeguards...."[14] Further, the Commission finds that "compliance with section 272 is 'of crucial importance.'"[15] Finally, the Commission reiterates its finding in the *Non-Accounting Safeguards Order* that "the nondiscrimination safeguards extend to any good, service, facility, or information that a BOC provides to its section 272 affiliate, including administrative services and other non-telecommunications goods and services."[16] Clearly, the Commission views the Section 272 nondiscrimination requirement as more than an "alleged" requirement. Notwithstanding the *Detariffing Order*, the Commission can extend its authority to protect competition when necessary, even when the service in question is billing and collections.

Further, the Commission exercised authority over billing and collections through its Truth in Billing Order.[17] In that proceeding, the Commission determined that a LEC telephone bill is an integral part of the relationship between a LEC and the customer and that, therefore, regulation of information on the bill falls within the Commission's authority under Section 201(b) of the Act.[18] Inherent in the Commission's reasoning is a recognition that LECs will impose the Truth in Billing requirements on the competitive providers for whom they bill. Thus, the Commission in essence is regulating the billing and collections arrangements between LECs and third party telecommunications providers.

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[13] *See* Ex Parte Filing of U S WEST, Inc. *In the Matter of Merger of Qwest Communications International Inc., and U S WEST, Inc.*, CC Docket No. 99-272, at 3 (Nov. 30, 1999).

[14] *See* Memorandum Opinion and Order, *In the Matter of Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region, interLATA Service in the State of New York*, CC Docket No. 99-295, ¶ 417 (rel. Dec. 22, 1999).

[15] *Id.* at ¶ 402.

[16] *Id.* at ¶ 417 fn. 1285 (citing *Non-Accounting Safeguards Order*, FCC Rcd at 22003-04).

[17] *See* First Report and Order and Further Notice of Proposed Rulemaking, *In the Matter of Truth in Billing and Billing Format,* CC Docket No. 98-170 (rel. May 11, 1999)("Truth in Billing Order").

[18] *Id.* at ¶ 13.

Finally, the Commission recognized in its Notice of Proposed Rulemaking in the Calling Party Pays ("CPP") proceeding[19] the role LEC billing and collections may play in fostering CPP development, and it requested comment on the extent of its jurisdiction to require LEC billing and collections for CPP.[20] Specifically, the Commission requested comment on "whether the statutory objectives of the Act support the assertion of ancillary jurisdiction here."[21] The Commission has recognized that it may exercise Title I ancillary jurisdiction over billing and collections if necessary to promote a statutory purpose. In the CPP rulemaking a variety of commenters, including CERB, argued that the Commission indeed possesses jurisdiction to require LEC billing and collections of CPP calls.[22] The ability of the Commission to exercise its authority in this way is not limited to the CPP context.

III. U S WEST claims it provided adequate notice to billing aggregators and service providers of the company's decision to cut service providers off of the U S WEST local bill. In reality, the original notice was nullified by a U S WEST representative during a meeting on August 24-25, 1999. At the meeting, the U S WEST representative told CERB members that U S WEST would *not* kick service providers off of the local bill, and that they could return "good news" to their service providers about the future of the local bill as a platform for competitive providers. The next day, another U S WEST representative told CERB members that U S WEST was focused on building partnerships and working on the parameters within which to support billing and collections on the local bill. CERB had no reason, at that time, not to believe the U S WEST representatives. It was not until October 25, 1999, just five weeks before U S WEST's decision was to go into effect, that U S WEST informed CERB that it, indeed, was planning to deny access to the local bill. Less than a month's notice for a decision with such monumental business impacts is hardly adequate.

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[19] Notice of Proposed Rulemaking, *In the Matter of Calling Party Pays Service Offering in the Commercial Mobile Radio Services*, WT Docket No. 97-207, FCC 99-137 (rel. July 7, 1999).

[20] *Id.* at ¶ 64.

[21] *Id.* at ¶ 65.

[22] *See, e.g.*, Comments of AirTouch Communications, *In the Matter of Calling Party Pays Service Offering in the Commercial Mobile Radio Services*, WT Docket No. 97-207, at 25-31 (Sept. 17, 1999); Comments of Pilgrim Telephone at 14-21; Comments of the Personal Communications Industry Association ("PCIA") at 44-51; Comments of America One Communications at 9-10; Comments of Nevadacom at 4-6; Comments of Voicestream Communications at 7-9. *See also* Comments of the Coalition to Ensure Responsible Billing at 11-16.

IV. U S WEST argues that viable billing alternatives to the local bill exist for service providers and billing aggregators, in particular U S WEST's own *Your Bill* service. As such, U S WEST contends that its decision to force service providers off of the local bill is not anti-competitive. In reality, no viable billing alternatives exist.

The local telephone bill plays a central role in ensuring that telecommunications service providers can bill and collect from customers for services rendered. Consumers clearly prefer to see all of their telecommunications charges on a single bill, as evidenced by a Yankee Group study that indicated that 80 percent of consumers prefer a single bill.[23] Credit card billing or direct billing – once thought to offer viable potential alternatives to billing through each customer's local telephone bill – have not turned out to be popular with consumers or feasible for providers.[24] Recognizing this, many smaller telecommunications providers contract with billing and collection clearinghouses to ensure that their charges are represented on the local telephone bill.

As to U S WEST's *Your Bill*, it suffers from several defects that make it a wholly inadequate substitute for the local bill. At the outset, it is such a poor offering that no CERB billing clearinghouse has used the service, and CERB is aware of only one other entity that has expressed interest in the *Your Bill*. It does not provide a collections component similar to the one provided through the local bill. There is no balance forward capability and no accounting for credits and adjustments. The *Your Bill* provides no pre-collect or collect treatment for non-pay accounts and no inquiry service for end-user disputes. Although U S WEST claims that it has ceased billing for competitive ancillary products to protect consumers, the *Your Bill* does not provide any of the consumer protections granted by the Commission's Truth in Billing Order. Furthermore, it does not provide consolidation; if consumers order products from several providers they will receive several small bills which will cause confusion and annoyance and fly squarely in the face of consumers' desire for a single bill. Perhaps the most telling sign that the local bill is so far preferable is that U S WEST continues to use the local bill for its own products and even allows some clearinghouses to have access to the local bill when, for technical or other

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[23] *See* Presentation of panelist E.E. Estey, Vice President, Government Affairs, AT&T Corporation, before the Federal Communications Commission Public Forum on Local Exchange Carrier Billing for Other Businesses (June 24, 1997).

[24] Credit card billing simply cannot reach all consumers who might wish to purchase services such as voicemail or paging from providers other than the local exchange carrier. The most recent Census Bureau statistics show that as of 1995, approximately one-third of American families did not have general purpose credit cards. The same data show that lower income consumers were much less likely to possess credit cards. U.S. Census Bureau, *Statistical Abstract of the United States* (Oct. 13, 1998), at 524. Direct billing is problematic as well. Most smaller carriers cannot afford to print and send direct bills themselves; hence, they contract with clearinghouses and ultimately the LECs to bill for them.

reasons, a billing clearinghouse is necessary to facilitate a charge for a U S WEST affiliate or business partner. U S WEST touts its exclusive ability to provide a single bill in its marketing materials. In describing its residential wireless services, for example, U S WEST's website boasts, "Think about the convenience of one bill from one company. Think about the simplest way to stay in touch from the only company that can bring you these exclusive features."[25] Similarly, on the merits of its Internet services, U S WEST states, "Billing is easy, too – your U S WEST.net charges simply appear on your monthly U S WEST bill."[26] By denying competing providers the ability to employ this same "easy" billing to serve their customers, U S WEST and Qwest can significantly impair competition for non-local services. Clearly the generic *Your Bill* is not a viable billing alternative, but rather a defense against charges that U S WEST has ceased billing in an effort to disadvantage its competitors.

V. U S WEST supports its decision to force service providers off of the local bill by arguing that U S WEST has an exclusive claim to the relationship with the end-user customer. At the same time, U S WEST refutes the argument that the bill is a public trust, paid for by ratepayers. In making this claim, U S WEST ignores the fact that during the reign of the monopolies, LECs received the benefit of an exclusive relationship with consumers. That relationship resulted in the ability of LECs to establish their current billing services. When leveraged into the market for non-local services, the billing service yields a competitive advantage against other providers. This advantage would be difficult, if not impossible, to overcome.

VI. U S WEST argues that its decision to force service providers off of the local bill is a valid business decision because (1) the addition of ancillary services makes the local bill too complicated to read for consumers, (2) a high bottom line causes "sticker shock," and (3) consumers complain about new services appearing on their local telephone bill. U S WEST's claims are misplaced for the following reasons.

- **Consumers want one bill**. Therefore, U S WEST's alleged consumer driven business decision actually goes against consumer preference.

- **The Commission's Truth in Billing Order specifically addressed consumer confusion with the local telephone bill, and implemented rules to reduce this confusion.** Further, the members of CERB are happy to work with U S WEST in order to enhance the Commission's work and further clarify the content of the local bill.

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[25] *See* www.uswest.com/advancedpcs/main.shtml (visited Sept. 30, 1999).

[26] *See* www.uswest.com/pcat/for_home/product/0,1084,41_1_3,00.html (visited Sept. 30, 1999).

- **U S WEST still offers its own ancillary services on its bill.** If it were, in fact, serious about consumer desires not to see new services reflected on the local bill, U S WEST would remove its own ancillary services as well.

- **U S WEST continues to market its own services, in conjunction with the cessation of billing and collections for many competitive services.** Thus, the Commission should be skeptical of claims that the action was aimed at reducing cramming. Furthermore, U S WEST's claims in the wake of its cessation of billing that it is receiving 3,000 cramming complaints a month[27] should be viewed in context with its June 30 letter to the Commission where it stated that it had reduced cramming so significantly that it only received "less than one [escalated complaint] a month."[28] U S WEST also told the Commission that cramming had been so seriously curtailed that "if U S WEST's experience is replicated by others, cramming is on the down curve and becoming a thing of the past."[29] Clearly U S WEST has tailored the information it provides to suit its instant needs.

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[27] *See* U S WEST Press Release, "U S WEST Moves to Eliminate 'Cramming' - Unauthorized Charges by Other Companies - From Customer Phone Bills," at http://www.uswest.com/news/120199c.html (Dec.1, 1999) (visited Dec. 15, 1999) ("U S WEST handles about 3,000 cramming-related complaints a month....").

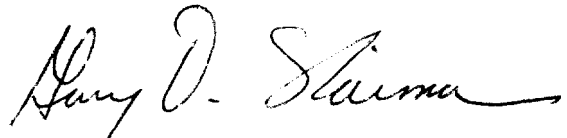
[28] Letter from U S WEST, Inc., to Lawrence E. Strickling, Chief, Common Carrier Bureau, FCC, Re: Industry Best Practices to Eliminate Cramming: Follow-up Requests, at 2 (July 30, 1999).

[29] *Id.* at 2.

CERB thanks the Commission for this opportunity to respond to U S WEST's ex parte letter. Pursuant to Section 1.1206 of the Commission's Rules, one original and one copy of this letter are being filed with your office.

If you have any questions regarding this filing, please contact me at (202) 424-7707.

Sincerely,



Gary D. Slaiman, Esq.
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cc: Henry Thaggert, FCC
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3rd day of January, 2000, a copy of the foregoing Comments of the Coalition to Ensure Responsible Billing was mailed via U.S. Mail, First-Class, postage prepaid, to:

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