

CARL J. KUNASEK
CHAIRMAN
JIM IRVIN
COMMISSIONER
LIAM A. MUNDELL
COMMISSIONER



0000000161

ARIZONA CORPORATION COMMISSION

DATE: April 26, 2000

DOCKET NO.: T-01051B-99-0113

TO ALL PARTIES:

Enclosed please find the recommendation of Hearing Officer Karen E. Nally. The recommendation has been filed in the form of an Opinion and Order on:

INTERNET ACCESS INC DBA GETNET VS. U S WEST COMMUNICATIONS, INC.
(COMPLAINT)

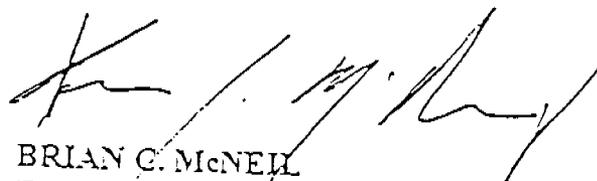
Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Hearing Officer by filing an original and ten (10) copies of the exceptions with the Commission's Docket Control at the address listed below by 4:00 p.m. on or before:

MAY 5, 2000

The enclosed is NOT an order of the Commission, but a recommendation of the Hearing Officer to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Working Session and Open Meeting to be held on:

MAY 9, 2000 AND MAY 10, 2000

For more information, you may contact Docket Control at (602) 542-3477 or the Hearing Division at (602) 542-4250.


BRIAN C. McNEIL
EXECUTIVE SECRETARY

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 CARL J. KUNASEK
CHAIRMAN
3 JIM IRVIN
COMMISSIONER
4 WILLIAM A. MUNDELL
COMMISSIONER
5

6 IN THE MATTER OF THE FORMAL
COMPLAINT OF INTERNET ACCESS INC. dba
7 GETNET AGAINST U S WEST
COMMUNICATIONS, INC.

DOCKET NO. T-01051B-99-0113

DECISION NO. _____

8 **OPINION AND ORDER**

9 DATE OF HEARING: May 6, 1999
10 PLACE OF HEARING: Phoenix, Arizona
11 PRESIDING OFFICER: Lyn Farmer¹
12 APPEARANCES: Mr. Jeffrey H. Gong, President, Internet Access, Inc., on
behalf of Complainant Internet Access; and
13 Mr. Alex M. Duarte, Senior Attorney, U S WEST
14 Communications, Inc., on behalf of U S WEST
Communications, Inc.

15 **BY THE COMMISSION:**

16 On March 2, 1999, Internet Access, Inc. dba Getnet ("Getnet") filed a Formal Complaint
17 against U S WEST Communications, Inc. ("U S WEST") with the Arizona Corporation Commission
18 ("Commission"). On March 24, 1999, U S WEST filed its Answer to the Complaint and Motion to
19 Dismiss. On April 7, 1999, Getnet filed its response to U S WEST's Motion to Dismiss, and on April
20 14, 1999, U S WEST filed its reply. By Procedural Order, the hearing was set to commence on May
21 6, 1999. The hearing was held as scheduled, with Mr. Jeffrey Gong, president of Getnet, and Mr.
22 Torry Campbell, testifying on behalf of Getnet, and Mr. Steven Schultz testifying on behalf of U S
23 WEST. The record was held open to receive late filed exhibits and reports.

24 Getnet then filed a Motion to Re-open the Record on September 24, 1999 with U S WEST
25 filing a response on October 12, 1999.

26 Our Procedural Order of April 26, 2000 denied Getnet's Motion as the hearing concluded

27 _____
28 ¹ Subsequent to the hearing, the Presiding Officer left the Hearing Division and the matter was reassigned to
Karen Nally.

1 almost five months prior to the filing of Getnet's Motion. Additionally, the Motion referenced VDSL
2 services which was not the subject of the Complaint. Getnet was advised that it had the option to file
3 a separate formal complaint to address its concerns relating to VDSL services.

4 Discussion

5 Getnet's Position

6 Getnet is an Internet Service Provider ("ISP") who uses U S WEST services to provide
7 Internet service from its offices to its customers' facilities. Most of Getnet's business is done through
8 traditional phone lines with dial-up modems. Getnet stated that a good portion of its business
9 clientele which take advantage of high-speed lines could benefit from Digital Subscriber Lines
10 ("DSL") lines. Getnet wants to use DSL as much as possible as it is faster and cheaper. According
11 to Getnet, it would save Getnet \$11,323 if it could connect all its customers to DSL services and stop
12 using point-to-point, T-1, and frame relay services.

13 Getnet testified that if Getnet cannot have access to newer and faster technologies, it runs the
14 risk of not maintaining its current customer base. Getnet testified that DSL is a technology that runs
15 on a twisted pair of copper wire which U S WEST markets under the name MegaBit services. Getnet
16 also stated that U S WEST is trying to use DSL in order to obtain customers for its unregulated ISP
17 business.

18 Getnet complained that certain clients are going to U S WEST directly and receiving DSL
19 services; however, Getnet stated that, when IT orders the same services for the same client, it is told
20 that the customer does not qualify for DSL services.

21 Getnet's President testified and also presented one Getnet customer as a witness. Torry
22 Campbell testified that in late 1998 or early 1999, he called U S WEST and was told by U S WEST
23 that his phone number qualified for DSL. He decided to wait because Getnet did not have the
24 facilities to support DSL. When Getnet obtained them, Mr. Campbell contacted U S WEST and was
25 then told that his phone number did not qualify for DSL. Mr. Campbell also testified that U S WEST
26 stated that other local ISPs might be able to support DSL service. As of the date of the hearing, Mr.
27 Campbell stated that he is not receiving DSL service from U S WEST.

28 Getnet testified that U S WEST told Getnet that Tad Somers, another Getnet customer, could

1 not receive DSL service. However, Getnet testified that Mr. Somers now receives DSL service from
2 U S WEST directly. Getnet also testified that if U S WEST cannot provide DSL to everyone, then it
3 should not provide the service at all.

4 Getnet alleges that the telephone number of another Getnet customer, Jean Francois, did not
5 qualify for DSL service; however, when he called U S WEST directly, U S WEST told him that his
6 number qualified. Getnet also stated that it gave U S WEST Getnet customer Brace Stout's telephone
7 number, and was told by U S WEST that the telephone number did not qualify for DSL. Getnet also
8 stated that Mr. Stout called U S WEST directly and was told that his number qualified for DSL.

9 According to Getnet, Mr. Campbell, Mr. Stout and Mr. Francois are not receiving DSL
10 service from U S WEST. Getnet also testified that it has tried to qualify other Getnet customers'
11 telephone numbers for DSL service with only approximately 3 out of 40 qualifying (Exhibit F).

12 Getnet's contention is that U S WEST can provision its network to provide DSL service to all
13 customers, but that U S WEST does not want to spend the money and dedicate the resources
14 necessary to deliver the service.

15 U S WEST's Position

16 U S WEST stated that there is no real dispute or controversy, but Getnet is frustrated by the
17 pace of technology and cannot accept that it is currently not feasible for everyone who may want
18 DSL service to qualify for DSL service. U S WEST stated that it is trying to increase the number and
19 percentage of Arizona households, businesses, and phone lines that qualify for DSL, but that 21
20 percent of all Arizona phone lines qualify for DSL now, with the national average between five and
21 ten percent. Additionally, U S WEST argued that its DSL tariff specifically states that DSL may not
22 be available for all lines.

23 Although Getnet stated that some of its customers receive DSL from U S WEST, U S WEST
24 stated that such customers are not getting DSL from U S WEST, except for Mr. Somers, who
25 receives DSL service from U S WEST on a different phone number than the one that Getnet provided
26 to U S WEST for qualification.

27 U S WEST presented Mr. Steven Schultz to testify regarding this complaint. Mr. Schultz
28 testified that U S WEST's Megabit DSL service begins in the U S WEST wire center which

1 physically houses the U S WEST switching equipment including the central office switch. U S
2 WEST commonly serves residential customers through a pair of copper wires that run from the
3 customer's location to U S WEST's wire center and then to U S WEST's central office switch.
4 According to U S WEST, DSL uses the same pair of copper wires to send voice and data and it is an
5 analog system.

6 U S WEST stated that the wire center then sends the voice conversation to the central office
7 switch and the data information is sent to the Asynchronous Transfer Mode ("ATM") network. In
8 order for DSL to work, there has to be termination at another location that the data is going to. ISPs
9 such as Getnet have a location and a link into this ATM network. The ISP would then send it to the
10 Internet.

11 U S WEST testified that a limitation to DSL is the length of the pair of copper wires between
12 the central office switch and the customer's location and the gauge of the wire, with thicker wire
13 better able to transmit the signal. Other limitations to receive DSL are bridge taps, which are pairs of
14 wires that are bridged into other wires that might serve another location, and load coils, which filter
15 out data, which makes them incompatible with DSL.

16 According to U S WEST, in order for a loop to qualify as compatible with DSL, the
17 application looks at the characteristics of a particular loop associated with a telephone number. U S
18 WEST also stated that insertion loss is the determining factor regarding whether a telephone number
19 qualifies for DSL. U S WEST defined insertion loss as the amount of signal that gets to the other
20 end. Per U S WEST, the loop qualification tool looks at the overall loop makeup, the loop length, the
21 gauge of wire associated with the loop, and calculates an insertion loss at 196 kilohertz. Per U S
22 WEST, in order to qualify for U S WEST's DSL Megabit services, the insertion loss can be no higher
23 than 41 decibels of insertion loss.

24 U S WEST's witness testified that a potential customer of U S WEST's MegaBit DSL
25 services can go to a U S WEST internet site and test the number along with the last four number of
26 that customer's social security number or a three digit customer code found on the customer's
27 telephone bill or call in to a sales representative and ask if the telephone number qualifies for DSL
28 services.

1 U S WEST also testified that it has technical trials going on to deal with the pair gain issue
2 and the potential to use wireless technology to provide DSL to customers who cannot connect with U
3 S WEST's land line network. U S WEST also testified that the standards to determine MegaBit
4 eligibility were determined by the American National Standards Institute with the cutoff point for the
5 provision of DSL at 41 decibels for 256 kilobit MegaBit service. U S WEST, however, determined
6 that 45 decibels is the maximum insertion loss without greatly impacting the percentage of false
7 positives. According to U S WEST, false positives occur when U S WEST states that a customer has
8 the capability of receiving DSL services and a technician later discovers that it cannot be installed
9 due to the loop characteristics. U S WEST states that by increasing the loss level, about 400,000
10 additional lines will qualify for DSL. U S WEST further stated that U S WEST works with all ISPs
11 that have ATM routing equipment located at the ISP location as the ATM routing equipment allows
12 the ISPs to interact with DSL.

13 U S WEST tested the four Getnet customers' telephone numbers to see if they qualified in its
14 loop qualification test. U S WEST's witness stated that he pulled the results of all loop qualification
15 tests from March of 1998 and the results were consistent: each number either qualified every time or
16 failed to qualify every time for DSL service. The telephone number that Getnet provided for Tad
17 Somers did not match with the name or address that U S WEST was given for Tad Somers and that
18 number did not qualify for DSL service. However, Tad Somers had four numbers in his name, and
19 all four numbers qualified for DSL with one receiving MegaBit service.

20 U S WEST's witness also testified that he looked at all log files for Getnet customer Torry
21 Campbell's telephone number and it failed all loop qualification tests since March 1998 due to a high
22 insertion loss from a long loop. U S WEST tested Getnet customer Brace Stout's telephone number
23 and it has never qualified for DSL due to the uniform distribution cable being a digital technology
24 that is incompatible with MegaBit service.

25 U S WEST's witness also stated that he pulled the log files for loop qualification tests for
26 Getnet customer Jean Francois since March 1998. U S WEST testified that due to pair gain which is
27 incompatible with DSL, Jean Francois' telephone number never qualified for MegaBit service and he
28 does not receive MegaBit service from U S WEST.

1 U S WEST alleges that although Mr. Stout did qualify for DSL service, it was on a different
2 number than the one mentioned in Getnet's complaint.

3 U S WEST testified that it is in U S WEST's best interest to provide MegaBit service to as
4 many people as possible because it makes U S WEST competitive with its competitors. U S WEST
5 also stated that it does not make a difference whether a potential customer contacts U S WEST
6 directly or goes through an ISP like Getnet because the ISPs have access to the loop qualification tool
7 through the ISP marketing organization within U S WEST or having the customer qualify the number
8 through the Internet. U S WEST further stated that it would not make any economic sense for U S
9 WEST to discriminate against Getnet's customers by not providing DSL service to them if it was
10 technically feasible. U S WEST stated that it considers all ISPs to be its partners to allow U S
11 WEST's customers and the ISPs' customers fast access to the Internet at a reasonable rate.

12 U S WEST also testified that a telephone number has to pass the loop qualification test in
13 order to receive MegaBit service. However, the U S WEST witness testified that there are some
14 exceptions that he has dealt with. He gave an example that there are some records that are "just bad"
15 within the system. The witness testified that he will receive calls from people and be asked to take a
16 look at a particular phone number and he may see something obviously wrong such as the system is
17 missing one of the cable segments. He continued that the number would fail due to such a problem
18 and he would do some investigation, and then update the records so that the telephone number would
19 pass the loop qualification test for DSL service. U S WEST's witness also determined that if it has
20 records that are wrong, U S WEST would address that and fix the records.

21 U S WEST's witness also testified that he would investigate telephone numbers from Getnet's
22 Exhibit F that Getnet attempted to loop qualify where the results came back as data base errors.

23 Resolution

24 There are two preliminary questions that should be answered: 1) Is U S WEST required to
25 provide DSL to all customers? and 2) Is Getnet being discriminated against in the provision of DSL
26 service?

27 According to the U S WEST approved Administrative Guidelines for Competitive Advanced
28 Communications Services, Section 8.2.B. states:

1
2
3 The furnishing of MegaBit Services requires certain physical arrangements of
4 facilities of the Company and is subject to the availability of such facilities, as set
5 forth in 2.1.2. In addition to the limitations set forth in 2.1.2, preceding, availability of
6 MegaBit Services is restricted by special plant configuration and material
7 specifications that will not permit deployment to all customers at all locations.

8
9 As noted above, the Commission approved tariff does not require U S WEST to provision
10 DSL service to all its customers.

11
12 Getnet also alleges that it is being discriminated against because U S WEST does not qualify
13 Getnet's customers' numbers when Getnet requests a loop qualification for DSL, but U S WEST is
14 providing DSL to Getnet's customers when contacted directly by the customer.

15
16 As the evidence is difficult to obtain, Getnet was unable to demonstrate that U S WEST was
17 providing MegaBit DSL services to telephone numbers that U S WEST stated did not loop qualify
18 and therefore could not receive DSL service. However, Getnet has raised important issues regarding
19 U S WEST and its unregulated ISP business, !nterprise.

20
21 U S WEST stated in the hearing that it does not make any economic sense to U S WEST to
22 discriminate against Getnet's customers by not providing MegaBit service to them if it was
23 technically feasible. However, as all consumers who order a MegaBit line must choose an ISP in
24 order to receive Internet service and can even bundle MegaBit service with U S WEST's ISP service,
25 there is a potential for abuse. Therefore, U S WEST's ISP business(es) should not have access to U S
26 WEST's MegaBit customer files. U S West's MegaBit Division is regulated by the Commission
27 while !nterprise is not. As a result, we must be sure that !nterprise is not gaining an unfair advantage
28 over its competitors by soliciting such customers to change ISPs and choose U S WEST's ISP
business.

As such, we believe that it is appropriate to prohibit U S WEST's regulated businesses from
disclosing to !nterprise, in any form, information regarding customers who subscribe to U S WEST's
MegaBit service.

Further, U S WEST's MegaBit division must submit copies of the script(s) U S WEST

1 customer service representatives use when people contact any division of U S WEST regarding
 2 MegaBit service, to the Director of the Utilities Division to review and determine whether such
 3 script(s) is neutral. If such script(s) is not neutral, at the direction of the Director of the Utilities
 4 Division, U S WEST shall revise such scripts. Additionally, U S WEST shall submit any changes
 5 that it proposes to such scripts at least 45 days before U S WEST plans to implement them to allow
 6 sufficient time for the Director of the Utilities Division to review the potential changes and make
 7 revisions.

8 We feel that it also important to make periodic quality checks of the customer service
 9 representatives that are assigned to handle MegaBit service. To that end, the Director of Utilities or a
 10 designee, shall, at least once a month, call the area(s) within U S WEST that handle MegaBit service
 11 and determine whether the script(s) are in compliance with the script approved by the Director of the
 12 Utilities Division. If U S WEST is not complying with such script(s) and a resolution is not reached
 13 with U S WEST, then the Director of the Utilities Division may bring such matters to the
 14 Commission for further review.

15 As U S WEST's MegaBit Tariff does not specify what equipment, facilities or limitations
 16 apply before a customer can receive DSL Service, Staff should review and determine whether U S
 17 WEST's MegaBit Tariff should be modified to include particular specifications.

18 U S WEST shall also take the necessary steps to run loop qualification tests on all of Getnet's
 19 requests for MegaBit service that appear in Exhibit F and any other telephone number that Getnet has
 20 or will submit to U S WEST for MegaBit service where the loop qualification result is indeterminate.

21 * * * * *

22 Having considered the entire record herein and being fully advised in the premises, the
 23 Commission finds, concludes, and orders that:

24 **FINDINGS OF FACT**

25 1. On March 2, 1999, Getnet filed a Formal Complaint against U S WEST with the
 26 Commission.

27 2. On March 24, 1999, U S WEST filed its Answer to the Complaint and Motion to
 28 Dismiss.

1 3. On April 7, 1999, U S WEST filed its response to U S WEST's Motion to Dismiss,
2 with U S WEST filing its reply on April 14, 1999.

3 4. The hearing commenced on May 6, 1999.

4 5. Getnet filed a Motion to Re-open the Record on September 24, 1999 with U S WEST
5 filing a Response on October 12, 1999.

6 6. Our Procedural Order of April 26, 2000 denied Getnet's Motion as untimely and on a
7 different matter than the original complaint.

8 7. Getnet is an ISP who uses U S WEST's services to provide Internet service from its
9 offices to customers' facilities.

10 8. A good portion of Getnet's business clientele could benefit from DSL service.

11 9. Getnet would save \$11,323 per month if it could connect all its customers to DSL
12 service and stop using other point-to-point, T-1, and frame relay services.

13 10. DSL is a technology that runs on a twisted set of copper wire which U S WEST
14 markets under the name MegaBit service.

15 11. Getnet complained that certain clients are going to U S WEST directly to buy DSL
16 service, but that if Getnet orders the same services for the same client, Getnet is told that the number
17 does not qualify for DSL.

18 12. Getnet believes that either U S WEST should offer DSL to all customers or not offer
19 the service at all.

20 13. U S WEST does not provide DSL service to the four telephone numbers that Getnet
21 supplied to U S WEST for DSL loop qualification.

22 14. There are limitations in the provisioning of DSL such as the length of the pair of
23 copper wires between the central office switch and the customer's location, the gauge of the wire,
24 incompatible bridge taps, and load coils.

25 15. Telephone numbers must be loop qualified either through a telephone call to U S
26 WEST or through U S WEST's web site.

27 16. U S WEST's loop qualification tool looks at the characteristics of a particular loop
28 associated with a telephone number

1 physical arrangements of facilities, is subject to the availability of such facilities, and is restricted by
2 special plant configuration and material specifications that will not permit deployment to all
3 customers at all locations.

4 4. The referenced safeguards in this order to prevent abuse between U S WEST's
5 regulated MegaBit service and U S WEST's unregulated ISP business are appropriate, reasonable,
6 and in the public interest.

7 **ORDER**

8 IT IS THEREFORE ORDERED that the complaint file by Internet Access, Inc. dba Getnet
9 against U S WEST Communications, Inc. is hereby dismissed.

10 IT IS FURTHER ORDERED that U S WEST Communications, Inc. shall not disclose any
11 information, in any form, regarding customers who subscribe to U S WEST Communications, Inc.
12 MegaBit service to U S WEST Communications, Inc.'s Internet Service Provider(s).

13 IT IS FURTHER ORDERED that U S WEST Communications, Inc. shall submit copies of
14 the script(s) U S WEST Communications, Inc.'s customer service representatives use when potential
15 or current customers contact any division of U S WEST Communications, Inc. regarding MegaBit
16 service to the Director of the Utilities Division to review and determine whether such script(s) is
17 neutral within 30 days of the effective date of this Decision.

18 IT IS FURTHER ORDERED that if the Director of the Utilities Division determines that such
19 script(s) is not neutral, U S WEST Communications, Inc. shall revise such script(s) to conform to the
20 Director of the Utilities Division's revisions within 30 days from the date of the Director of the
21 Utilities Division's determination.

22 IT IS FURTHER ORDERED that U S WEST Communications, Inc. shall submit any changes
23 in its script(s) for MegaBit service to the Director of the Utilities Division for review and revision at
24 least 30 days prior to U S WEST's implementation of such script(s).

25 IT IS FURTHER ORDERED that the Director of the Utilities Division or its designee shall
26 call the area(s) within U S WEST Communications, Inc. that handle MegaBit service and determine
27 whether the script(s) are in compliance with the script(s) approved by the Director of the Utilities
28 Division once every 30 days.

1 IT IS FURTHER ORDERED that if U S WEST is not complying with the above ordering
2 paragraphs, then the Director of the Utilities Division may bring such matters to the Commission for
3 further review.

4 IT IS FURTHER ORDERED that Staff shall review and determine whether U S WEST's
5 MegaBit Tariff should be modified to include particular specifications for the provisioning of
6 MegaBit service.

7 IT IS FURTHER ORDERED that U S WEST Communications, Inc. shall run loop
8 qualification tests on all Getnet's requests for MegaBit service that appear in Exhibit F in the Docket
9 and any other telephone number that Getnet has or will submit to U S WEST Communications, Inc.
10 for MegaBit service where the DSL loop qualification results are indeterminate.

11 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

12 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

13
14
15 CHAIRMAN COMMISSIONER COMMISSIONER

16
17 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
18 Secretary of the Arizona Corporation Commission, have
19 hereunto set my hand and caused the official seal of the
20 Commission to be affixed at the Capitol, in the City of Phoenix,
this ____ day of _____, 2000.

21 _____
22 BRIAN C. McNEIL
EXECUTIVE SECRETARY

23 DISSENT _____
24 KEN:dap

1 SERVICE LIST FOR:

INTERNET ACCESS, INC. DBA GETNET vs. U S
WEST COMMUNICATIONS, INC.

2
3 DOCKET NO.

T-01051B-99-0113

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