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AZ CORP COMMISSION
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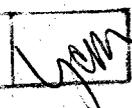
Via United States Mail

20 August 1999

Arizona Corporation Commission
Docket Control
Attn: Elida
1200 West Washington
Phoenix, AZ 85007-2996

Arizona Corporation Commission
DOCKETED

AUG 25 1999

DOCKETED BY 

RE: US West Communications, Inc.'s Compliance with Section 271 of the
Telecommunications Act of 1996, Docket No. U-0000-97-238, T00000A-
97-0238

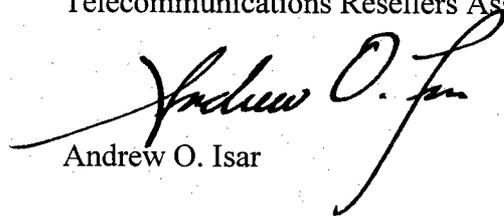
Dear Elida:

Enclosed is the original Cover Sheet which was inadvertently omitted from the August 19, 1999 filing of the Telecommunications Resellers Association. A copy of the Cover Sheet was faxed to your attention earlier today.

Thank you for your time and attention to this matter. We apologize for any inconvenience caused by this omission. Questions may be directed to me.

Sincerely,

Telecommunications Resellers Association


Andrew O. Isar

Enclosures



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AZ CORP COMMISSION
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Via Overnight Mail

19 August 1999

Jack Rose
Arizona Corporation Commission
1200 West Washington
Phoenix, AZ 85007-2996

RE: US West Communications, Inc.'s Compliance with Section 271 of the
Telecommunications Act of 1996, Docket No. U-0000-97-238, T00000A-
97-0238

Dear Mr. Rose:

Enclosed is an original and ten (10) copies of the Comments of the Telecommunications
Resellers Association, to be filed in the above referenced docket.

Questions may be directed to me.

Sincerely,

Andrew O. Isar

Enclosures

ORIGINAL

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BEFORE THE ARIZONA CORPORATION COMMISSION 1999 AUG 25 A 10: 55

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

AZ CORP COMMISSION
DOCUMENT CONTROL

IN THE MATTER OF U S WEST) DOCKET NO. T00000A-97-0238
COMMUNICATIONS, INC.'S COMPLIANCE)
WITH § 271 OF THE TELECOMMUNICATIONS)
ACT OF 1996) STATEMENT OF POSITION OF
) THE TELECOMMUNICATIONS
) RESELLERS ASSOCIATION

The Telecommunications Resellers Association ("TRA")¹, on behalf of its members and pursuant to the Arizona Corporation Commission's ("Commission") July 22, 1999 *Procedural Order* in the above-captioned proceeding, submits its Statement of Position regarding U S WEST Communications, Inc.'s ("U S West") compliance with Section 271 of the Telecommunications Act of 1996 (the "Act").

I. INTRODUCTION

The result of Commission's investigation into U S West's compliance with Section 271 of the Act and its Report to the Federal Communications Commission ("FCC"), will have a monumental effect on the development of meaningful competition in Arizona's telecommunications market, and on the development of local competition in

¹ A national industry association, TRA represents more than 700 entities and seven Arizona-based members engaged in, or providing products and services in support of, the provision of telecommunications services, primarily on a resold basis. TRA was created, and carries a continuing mandate, to foster and promote telecommunications resale, to support the telecommunications resale industry, and to protect and further the interests of entities engaged in the resale of telecommunications services. TRA is the largest association of competitive carriers in the United States, numbering among its members not only the large majority of providers of domestic interexchange and international services, but the majority of competitive local exchange carriers.

particular. While TRA welcomes U S West's entry into the interLATA market, its entry must not be premature. The Arizona local exchange market must be practically and *irreversibly* (the Department of Justice standard) open to competition before U S WEST may be relieved of the prohibition on its in-region interLATA market entry. Today, Arizona's local market is neither practically, and certainly not irreversibly, open to competition as a direct result of U S WEST's recalcitrance in meeting its obligations under the Act.

Under the Act, U S WEST is obligated to provide unrestricted access to network elements, interconnection, and services to Competitive Local Exchange Carriers ("CLECs") at parity and on a non-discriminatory basis. "Parity" should mean that CLECs have a right to expect U S WEST to provide a quality of service that is at least equivalent to that it provides to its own end users. Such parity and true compliance with the pro-competitive goals of the Act are particularly crucial to TRA members. TRA members are not global titans that will survive regardless of the extent that the local marketplace is made accessible to all competitors. Rather, they are generally smaller, emerging companies that are not just fighting for market share, but in many cases are fighting for survival. Ultimately, they will only survive and thrive if they are capable of receiving from U S WEST interconnection, network elements, and wholesale services on a true parity basis as required by the Act, in a manner that allows CLECs to reliably serve end-users (*e.g.*, provision, maintain, bill and provide customer service functions). Regrettably, Arizona's CLECs are currently subjected to a myriad of unlawful U S WEST restrictions, prohibitions, and operational deficiencies that undermine their ability to compete in, let alone enter, the local market, as the Act intended.

U S WEST *inter alia* fails to provide CLECs with non-discriminatory access to Operations Support Systems, fails to provide unrestricted access to unbundled network elements, and fails to provide unrestricted access to services, issues of most immediate relevance to TRA's members.² Until U S WEST can affirmatively demonstrate compliance with the Act's obligations through the results of independent third party Operations Support System ("OSS") testing and in meeting established performance measures over a reasonable test period, U S WEST's "compliance" will remain no more than wishful thinking.

II. COMMISSION REVIEW OF U S WEST'S SECTION 271 COMPLIANCE SHOULD BE GUIDED BY THE SECTION 271 REVIEW STANDARDS ESTABLISHED BY THE FCC.

Reflecting on statutory intent regarding regional Bell operating company ("BOC") entry into the interexchange market, the FCC noted in its analysis of BellSouth's Telecommunications, Inc.'s second Louisiana application for in-region interLATA market entry that:

[D]ue to the continued and extensive market dominance of the BOCs in their regions, Congress chose to maintain certain of the [Modified Final Judgement's] restrictions on the BOCs, until the BOCs open their local markets to competition as provided in section 271 of the Act.³ One such restriction is incorporated in section 271, which prohibits the BOCs from entering the in-region, interLATA market immediately.⁴ Congress recognized that, because it would not be in the BOCs' immediate self-interest to open their local markets, it would be highly unlikely that competition would develop expeditiously in the local exchange and

² TRA's focus on OSS, unbundled network elements, and resale in no way implies TRA's belief that U S WEST has met the remaining "competitive checklist" items.

³ See, e.g., 141 Cong. Rec. S8057 (1995) (statement of Sen. Dorgan):

The Bell operating companies are not now free to go out and compete with the long distance companies because they have a monopoly in most places in local service. It is not fair for the Bell operating companies to have a monopoly in local service, retain that monopoly and get involved in competitive circumstances in long distance service.

⁴ 47 U.S.C. §271

exchange access markets. Thus, Congress used the promise of long distance entry as an incentive to prompt the BOCs to open their local markets to competition. Congress further recognized that, until the BOCs open their local markets, there is an unacceptable danger that they will use their market power to compete unfairly in the long distance market. Accordingly, section 271 allows a BOC to enter the in-region, interLATA market, and thereby offer a comprehensive package of telecommunications services, only after it demonstrates, among other things, compliance with the interconnection, unbundling, and resale obligations that are **designed to facilitate competition in the local market** [emphasis added].⁵⁶

It had been Congress' intent that before granting BOC in-region interLATA authority, the BOC must clearly demonstrate that it fully meets the Section 271 "competitive checklist"⁷ so as to promote the development of *local* competition. In other words, a BOC can not simply give the appearance of compliance, but must substantially demonstrate that its compliance is consistent with Congressional intent to foster the development of meaningful local competition.

The FCC's Ameritech Order⁸ set forth a number of legal standards and principles that have particular application to U S WEST's compliance with Section 271 of the Act. Among these were the requirement that a new entrant must have the same access to the BOC OSS that the BOC and its affiliates enjoy; that an applicant not only prove it is in compliance with the "competitive checklist" for in-region interLATA market entry at the time of filing its application, but that it also demonstrate it can be relied upon to remain in compliance; and that where the FCC is required to make a "predictive judgment," such as

⁵ *Id.*

⁶ *In the Matter of Application of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services In Louisiana*, CC Docket No. 98-121 (October 18, 1998) ["Second Louisiana Decision"], at ¶3 .

⁷ 47 U.S.C. §271(c)(2)(B).

⁸ *In the matter of Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934 as amended, to Provide In-Region Inter-LATA Services in Michigan*, CC Dkt. 97-137, "Memorandum Opinion and Order, FCC 97-298, (August 19, 1997), ["Ameritech Order"].

how a RBOC will perform in the future, the FCC would look to the BOC's past and present behavior "as the best indicator of future performance."⁹

Of particular importance was the requirement that *all* "competitive checklist" elements must be satisfied at the time the filing is made. Applicants would not be able to mitigate deficiencies with a promise of future performance; indeed, the FCC specifically held that a promise of future performance to address particular concerns would have no probative value in demonstrating present compliance with the requirements of Section 271.¹⁰

Similarly the FCC held that the burden of proof is on the BOC for all issues¹¹ and that "paper promises" cannot satisfy a BOC's burden of proof. In order to gain entry, a BOC would be required to support its application with actual evidence demonstrating its present compliance with the requirements for entry, instead of prospective evidence that is contingent on future behavior.¹²

Actual parity was repeatedly cited as an indispensable element of a BOC's proof. That an applicant had been making progress in improving deficient service was inadequate. What had to be shown was that the applicant was providing interconnection to its competitors equivalent to the interconnection it provides to itself, regardless of any "improving situation."¹³

This Commission's role, under §271(d)(2)(B), is to consult with the FCC "in order to verify the compliance of the Bell Operating Company with the requirements" of the competitive checklist. As such, the evidentiary standards expressed in the

⁹ Ameritech Order, ¶22 and fn. 111

¹⁰ Ameritech Order, ¶55

¹¹ Ameritech Order, ¶43

¹² Ameritech Order, ¶55

Ameritech Order should govern this Commission's review of the record of the technical conference, and this Commission should make a finding of checklist compliance only if the evidence submitted by U S WEST complies with the stringent standards set forth in the Ameritech Order.

III. US WEST HAS NOT MET ITS OBLIGATIONS UNDER SECTION 271 OF THE ACT.

U S WEST does not meet the “competitive checklist” for in-region interLATA market entry, and has amply demonstrated a lack of commitment or ability to open the local exchange market to competition. While U S WEST makes many empty assertions that progress toward a competitive local market has occurred, it has far to go before it can credibly demonstrate that it has met its statutory obligations to open its local market to competition, and before it is unleashed to compete in the interLATA market. Nowhere is this more readily evident than in the day to day experiences of CLECs.

Moreover, U S WEST’s actions belie its claims. Its efforts to seek an abolishment of Arizona’s LATA boundaries, now under Commission consideration in Docket No. RT-00000J-99-0095, for example, demonstrate that U S WEST is seemingly more interested in sidestepping its statutory obligations to open its local markets to competition under Section 271 of the Act, than it is in working with competitors to provide non-discriminatory access to interconnection and services.¹⁴ In light of its

¹³ Ameritech Order, ¶55

¹⁴ *In the matter of Plan to Implement Toll Carrier Presubscription System Based on State Rather Than LATA Boundaries*, Docket No. RT-00000J-99-0095.

actions, U S WEST's claims of meeting its Section 271 obligations are astounding and preposterous.¹⁵

A. US WEST DOES NOT PROVIDE NONDISCRIMINATORY ACCESS TO OSS

The ultimate test of U S WEST's compliance with Section 271 of the Act is rooted in the ability of its competitors to obtain interconnection, network elements, and services in a manner which enables them to reliably serve end users rather than undermines their ability to do so. At the heart of a CLEC's ability to effectively serve subscribers is CLEC access to the BOC's OSS. In its Second Louisiana Decision the FCC stressed that,

... OSS functions used by competing carriers to access BellSouth's systems are analogous to those functions used by BellSouth itself in its retail operations. BellSouth is thus obligated to provide competing carriers with access "equivalent to the access [BellSouth] provides itself."¹⁶ Because BellSouth itself accesses repair and maintenance functions electronically, it is required to provide competitors with electronic access as well.¹⁷ The electronic access provided by BellSouth must allow competing carriers to perform repair and maintenance OSS functions in "substantially the same time and manner" as BellSouth performs such functions for its own customers.¹⁸

U S WEST has in no way demonstrated that its OSS provides competing carriers with access at parity. U S WEST has not demonstrated that CLEC OSS access is fully automated and does not require manual intervention. U S WEST has not demonstrated that it is capable of provisioning CLEC orders on time and at parity with U

¹⁵ Notwithstanding the questionable lawfulness of the Commission's LATA redefinition rulemaking, TRA believes that US WEST must still be required to demonstrate compliance with Section 271 of the Act before it is authorized to provide in-region intrastate service in Arizona.

¹⁶ *BellSouth South Carolina 271 Order*, 13 FCC Rcd at 593-94; *Ameritech Michigan 271 Order*, 12 FCC Rcd at 20618-19.

¹⁷ *BellSouth South Carolina 271 Order*, 13 FCC Rcd at 593-94.

¹⁸ Second Louisiana Decision at ¶146.

S WEST's own provisioning of end user orders. Further, there is no independently verifiable basis for determining that U S WEST's OSS are in compliance, in the absence of independent third party OSS testing.

Currently the Commission has only U S WEST's assurances of compliance. Such assurances are insufficient for meeting the non-discriminatory and parity standards of the Act, and unlikely to pass the FCC's standards for demonstration of compliance. Only through an exhaustive third party test of U S WEST's OSS, similar to testing conducted in New York, and Texas¹⁹, and currently underway in other states, including Pennsylvania, Georgia, Louisiana, and California, can there be any certainty of U S WEST's actual compliance. Until such independent third party OSS testing is accomplished, U S WEST is otherwise incapable of demonstrating actual compliance.

B. US WEST DOES NOT PROVIDE NONDISCRIMINATORY ACCESS TO UNBUNDLED NETWORK ELEMENTS PURSUANT SECTION TO 271(c)(2)(B)(ii)

U S WEST imposes unlawful limitations and restrictions on the unbundled network elements ("UNE"), in violation of the FCC's UNE rules, expressly reinstated by the United States Supreme Court in *AT&T Corp. v. Iowa Utilities Board*.²⁰ In affirming the FCC's rules, the Supreme Court found that incumbent local exchange carriers must provide UNEs to competitors in their combined form, and without limitation.²¹ To meet its Section 271 obligations, U S WEST must provide *all* network elements in the FCC's

¹⁹ See, e.g. Petition of New York Telephone for Approval of its Statement of Generally Available Terms and Conditions Pursuant to Section 252 of the Telecommunications Act of 1996; and Draft Filing of Petition for InterLATA Entry Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide InterLATA Services in the State of New York, New York Public Service Commission, Case No. 97-C-0271 and Investigation of Southwestern Bell Telephone Company Entry Into the Texas InterLATA Telecommunications Market, Texas Public Utility Commission, Project 16251.

²⁰ *AT&T Corp.*, 119 S.Ct. 721.

²¹ *Id.* at 736-738, upholding 47 C.F.R. §315(b).

original Rule 319²² list without restriction. The only instance where U S WEST may separate UNE combinations is upon the request of a CLEC. Any restriction or limitation imposed by U S WEST or exclusion of certain elements to competitors, is violative of the FCC rules and can not be deemed in compliance with Section 271 of the Act. US WEST has not demonstrated that it makes all UNE's available to competitors in combination or separately, much less demonstrated that it does not impose unlawful restrictions or limitations on the availability of UNEs to competitors. U S WEST has also refused to provide CLECs with Extended Expanded Loops. U S WEST has not demonstrated that its UNE pricing is cost-based. US WEST cannot be deemed to be in compliance with Section 271(c)(2)(B)(ii).

C. US WEST DOES NOT PROVIDE NONDISCRIMINATORY ACCESS TO RESOLD SERVICES PURSUANT TO SECTION 271(c)(2)(B)(xiv)

Section 271(c)(2)(B)(xiv) requires the incumbent to make telecommunications services available for resale pursuant to Sections 251(c)(4) and 252(d)(3) of the Act. Pursuant to Section 251(c)(4), U S WEST may not impose unreasonable or discriminatory conditions or limitations on the resale of its retail telecommunications services or otherwise impose resale prohibitions. The FCC found that before the incumbent attempts to impose resale restrictions, it must first demonstrate to a state commission that the restriction is reasonable and nondiscriminatory.²³ The fact that U S WEST may have entered into a limited number of resale agreements is not *prima facie* evidence that it complies with the resale provisions of the Act.

U S WEST imposes unreasonable, discriminatory, and unjustified restrictions on the resale of its services. U S WEST's opposition to resale of Digital

²² 47 C.F.R. §319.

Subscriber Line services (xDSL) is a prime example. Rather than make xDSL service available for resale, U S WEST argues that xDSL is not a service subject to the Act's resale obligations. By attempting to create a semantic distinction between xDSL and other retail services, U S WEST attempts to "lawfully" preclude resale of DSL services, contrary to the letter and intent of the Act.

U S WEST also refuses to make voice mail services available for resale in blatant disregard to Sections 251(c)(4) of the Act. Voice mail is a desirable service for local service end users. Its lack of availability in a seamless and cost effective manner will be a determining factor for many end users in whether to subscribe to a competing carrier. U S WEST's refusal to make voice mail services available for resale is but another example of the company's failure to meet its resale obligations under the Act.

In light of these and other restrictions and prohibitions, coupled with the dubious capabilities of its CLEC OSS access, U S WEST has not met its resale obligations pursuant to Section 271(c)(2)(B)(xiv).

D. US WEST HAS NOT DEMONSTRATED THAT ITS INTERLATA MARKET ENTRY IS IN THE PUBLIC INTEREST PURSUANT TO SECTION 271(d)(3)(C)

U S WEST relies heavily on statistics to convey a sense that the local market is effectively competitive, while suggesting that the interexchange market lacks sufficient meaningful competition as to warrant its entry. U S WEST's slanted view of local and interexchange market competition does not constitute sufficient basis for a public interest determination favoring its interLATA market entry. As argued *supra*, the number of competitors that exist in Arizona is not a unilateral indication of actual

²³ 47 CFR §51.613(b).

competition but merely an indicator of potential competition. One need only look at the number of access lines being served by U S WEST's CLEC competitors in relation to those served by U S WEST to quickly recognize that U S WEST today retains virtually 100 percent local market share in Arizona. Before considering U S WEST's arguments regarding the purported existence of an interexchange carrier oligopoly -- an assertion quickly dispelled by the presence of dozens of active, successful medium and small interexchange providers, such as many of TRA's members, currently serving subscribers -- one must first consider the virtual local market monopoly which U S WEST retains. Until the local market is demonstrably open to competition, there can be no public interest in unleashing a new competitor who continues to dominate and control local access to its ubiquitous network, and nearly all access to Arizona end users.

IV. CONSIDERATION OF ACTUAL EXPERIENCE BY CLECS MUST BE A MAJOR FOCUS OF THE COMMISSION'S INQUIRY.

The crucial point that the Commission must make clear as it undertakes this investigation is that compliance with the standard established in the Act requires actual, *achieved* parity, such that U S WEST allows competitors to provision, maintain, support and bill their services on a non-discriminatory basis. Citation of statistics of carriers that have begun the entry process by becoming certificated or entering interconnection agreements proves nothing but intent. Although such certifications and interconnection agreements are necessary prerequisites to the competitive local market that Congress envisioned in the Act, but the fact that a significant number of carriers is *seeking to enter* the local market does not equate with an open market in which U S WEST's competitors can enter the market and serve end-user customers on a parity basis, as intended by the Act.

The Commission must distinguish between U S WEST's promises of future performance and unsupported assurances of compliance, and U S WEST's actual performance in allowing competitors non-discriminatory access. The true determinant here must be *the experience of competitors* in areas such as account management, change management, discriminatory provisioning, maintenance and repair, billing accuracy and billing dispute resolution. That U S WEST may allege that it has processes to address these matters does not satisfy the applicable standard – those processes must work in practice.

The Commission must give great weight to the evidence that is developed through this inquiry regarding the actual experience in the field by competitors trying to provision their services and to carve out a small piece of the local market. A portion of the necessary review will be the independent OSS testing, but that will only be one piece. The Commission should seek to ensure that the serious problems that CLECs are encountering in provisioning, serving, and billing the end-user customers are fully heard and explored. Further, because of the importance of achieving processes that will allow non-discriminatory access at a commercial level and on an ongoing basis, the Commission should consider and implement a reasonable evaluation period to ensure that U S WEST's compliance claims are borne out in actual practice.

The most meaningful input to the Commission's inquiry concerns the experience of CLECs, such as TRA's members, as they have actually worked through US WEST's processes. CLEC experiences are in effect a report card on U S WEST's performance in serving wholesale customers and should serve as a determining factor in the Commission's evaluation of U S WEST's actual compliance. Only a test of U S

WEST's ability and willingness to effectively provision services and facilities, over a sustained period of time, can demonstrate that conditions exist for a successful opening of local exchange markets. In this vein, this Commission should not approve any U S WEST application until it successfully passes a three month "road test" proving that it has the expertise, resources, and corporate commitment to actually provision and maintain the services and facilities needed by its competitors on a day to day basis. That process would follow the requirement established by the Texas Public Utilities Commission that Southwestern Bell Telephone Company provide three months of validated data for all of the relevant performance measurements before §271 approval could be granted.²⁴

As in the case of OSS, any claims by U S WEST with respect to its consistent performance over this three month period must be verified by an independent third party. Absent a sustained and verified demonstration of performance and intent, through the type of test ordered by the Texas Commission, it cannot be concluded that markets in Arizona are open to competition.

V. CONCLUSION

No matter how seemingly extensive U S WEST's efforts to date nor how many potential competitors exist or processes have been implemented to comply with Section 271, the Commission must focus on U S WEST's actual performance. The ultimate determination of U S WEST's compliance with the fourteen point checklist is whether U S WEST's processes achieve parity and whether services are provided on a truly non-discriminatory basis. Such compliance can only be ascertained through a

²⁴ See, e.g., *Investigation of Bell Telephone Company's Entry Into the Texas InterLATA Telecommunications Market*, Texas Public Utilities Commission, Docket No. 16251, Order, (April 29, 1999).

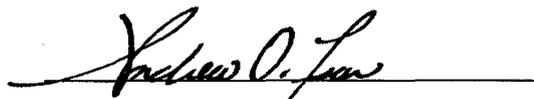
thorough evaluation of how U S WEST complies in under actually everyday conditions with the CLECs.

The Commission should follow the sound approaches used by the Texas commission in establishing rigorous performance metrics, then evaluate U S WEST's performance not just for a pseudo-CLEC, but for U S WEST's performance and service to actual CLECs over an extended period at commercial volumes. To the extent the Commission relies on U S WEST's own performance data, it must strictly verify that data by: (i) ascertaining the validity of the data; (ii) considering the input of CLECs as to their actual experience with U S WEST's performance; and (iii) rigorous third-party testing over some extended time period to ensure results are reflective of U S WEST's ongoing performance.

TRA urges the Commission to take this opportunity to ensure that U S WEST's local market is effectively and irreversibly open to competition in practice and not in promise. Only at that point does the law allow U S WEST to enter the long distance markets.

Respectfully submitted,

Telecommunications Resellers Association

A handwritten signature in black ink, appearing to read "Andrew O. Isar", is written over a horizontal line.

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August 19, 1999

BEFORE THE
ARIZONA CORPORATION COMMISSION

IN RE: US WEST COMMUNICATIONS) Docket No: U-0000-97-238
INC'S COMPLIANCE WITH SECTION) T00000A-97-0238
271 OF THE TELECOMMUNICATION ACT)
OF 1996)
_____)

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the attached Comments of the Telecommunications Resellers Association on all parties of record in this proceeding, via United States Mail, as noted on the following service list.

Dated this 19th Day of August, 1999 at Gig Harbor, Washington



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