

BEFORE THE Public Service Commission OF WYOMING

IN THE MATTER OF THE JOINT APPLICATION OF)
QWEST COMMUNICATIONS CORPORATION, WITH)
QWEST SUBSIDIARIES (PHOENIX NETWORK, INC.,) Docket No. 74142-TA-99-16
USLD COMMUNICATIONS, INC., AND LCI)
INTERNATIONAL TELECOM CORP., D/B/A QWEST) (Qwest - Corporation)
COMMUNICATIONS SERVICES) AND U S WEST)
COMMUNICATIONS, INC., (ALSO CONSIDERING U S) Docket No. 70000-TA-99-503
WEST LONG DISTANCE, INC.) FOR APPROVAL OF THE)
MERGER OF THEIR PARENT CORPORATIONS, U S) (U S WEST)
WEST, INC., AND QWEST, INC., TO FORM QWEST)
COMMUNICATIONS INTERNATIONAL, INC.) Docket No. 74037-TA-99-8
) (Phoenix)
) Docket No. 70034-TA-99-4
) (LCI)
) Docket No. 74089-TA-99-9
) (USLD)
) Docket No. 74029-TA-99-43
) (Qwest - Services)
) Docket No. 74337-TA-99-2
) (U S West Long Distance)
) (Record No. 5134)
)

APPEARANCES

For the Applicant, U S WEST Communications, Inc., and related entities:

PAUL J. HICKEY of Hickey, Mackey, Evans & Walker, Cheyenne, Wyoming; and KEVIN D. PERNELL and KATHRYN E. FORD of U S WEST, Denver, Colorado.

For the Applicant Qwest Communications, Inc., and related entities:

WILLIAM J. THOMSON of Dray, Thomson & Dyekman, Cheyenne, Wyoming; and F. WILLIAM LEBEAU, MARK LARSON and MACE J. ROSENSTEIN of Hogan and Hartson, Washington, D.C.

For Intervenor McLeodUSA Telecommunications Services, Inc. (McLeodUSA):

ELIZABETH ZERGA of Herschler, Freudenthal, Salzburg, Bonds & Zerga, Cheyenne, Wyoming.

For Intervenor, Consumer Advocate Staff of the Wyoming Public Service Commission (Consumer Advocate Staff):

David J. Lucero and EDNA YOUNG, Cheyenne, Wyoming.

For Intervenor AT&T Communications of the Mountain States, Inc. (AT&T):

ALAN B. MINIER of Rothgerber, Johnson & Lyons, Cheyenne, Wyoming; and LETTY S. D. FRIESEN, AT&T, Denver, Colorado.

For Intervenor, wyoming.com (wyoming.com):

ALEXANDER K. DAVISON of Patton & Davison, Cheyenne, Wyoming.

For Intervenors, Dubois Telephone Exchange, Inc., RT Communications, Inc., Range Telephone Cooperative, Inc. and Union Telephone Company (the Independent Telephone Companies):

BRUCE S. ASAY and KEITH S. BURRON of Associated Legal Group, Cheyenne, Wyoming.

For Intervenors, Tri County Telephone Association, Inc., TCT West, Inc. and Tri-Tel, Inc. (the Tri County Companies):

MICHAEL ROSENTHAL of Hathaway, Speight & Kunz, Cheyenne, Wyoming.

For Intervenor, the Wyoming Chapter of the Association of U S WEST Retirees of Colorado and Wyoming (the Retirees):

J. C. DeMERS of Cheyenne, Wyoming.

Members of the public appearing pro se:

ROY PAGE, Cheyenne, Wyoming.

PAUL GUYOT, communications consultant, Cheyenne, Wyoming.

JoAnn Cole, Cheyenne, Wyoming.

SENATOR JOHN HANES, Cheyenne, Wyoming.

JOSEPH Di ROCCO, Chief Financial Investment Officer, Wyoming Business Council, Cheyenne, Wyoming.

REV. JON K. LAUGHLIN, Cheyenne, Wyoming.

THE HONORABLE FRANK W. LATTA, Mayor, City of Gillette, Wyoming.

LEONARD W. MAY, Cheyenne, Wyoming.

REPRESENTATIVE CLARENE LAW, member of the Wyoming Business Council, Jackson, Wyoming.

BRETT GLASS, telecommunications consultant, Laramie, Wyoming.

HEARD BEFORE

CHAIRMAN STEVE ELLENBECKER

DEPUTY CHAIR STEVE FURTNEY

COMMISSIONER KRISTIN H. LEE

Chairman Ellenbecker, presiding

ORDER APPROVING PROPOSED MERGER TRANSACTION

(Issued June 9, 2000)

This matter is before the Wyoming Public Service Commission (Commission) upon the application of Qwest Communications Corporation, Phoenix Network, Inc., USLD Communications, Inc., and LCI International Telecom Corp. (collectively, Qwest) and U S WEST Communications, Inc., and U S WEST Long Distance, Inc. (collectively, U S WEST) (Qwest and U S WEST, collectively, the Applicants or Applicants) for approval of a reorganization, upon the interventions of the parties named above, and upon the evidence adduced in the public hearings held in this matter and otherwise made part of the record by the Commission. The Commission, having considered the evidence of record in this proceeding, its files concerning the Applicants, applicable Wyoming utility law and being otherwise fully advised in the premises, HEREBY FINDS AND CONCLUDES:

Findings on Parties and Procedure

1. On August 19, 1999, Qwest, on behalf of its parent corporation, Qwest Communications International, Inc. and U S WEST on behalf of its parent corporation, U S WEST, Inc., filed a Joint Application with the Commission for approval of the merger of their parent companies. With the Application, the Applicants filed the prepared direct testimony and exhibits of Paul F. Gallant, Michael A. Ceballos and Wayne G. Culp.
2. Qwest Communications International, Inc., is a Delaware corporation having its principal office and place of business at Denver, Colorado. It provides a wide range of voice, data, video and related telecommunications and information services, including Internet services. Four Qwest Inc. subsidiaries listed in the caption of this case are authorized by the Commission to provide telecommunications services in Wyoming.
3. U S WEST, Inc., a Delaware corporation, having its principal place of business at Denver, Colorado, provides integrated communications services to approximately 25 million customers nationally through wholly-owned subsidiaries. It provides primarily local exchange telecommunications services; long distance services within specified calling areas; high-speed data networking, including Internet access and digital subscriber line (DSL) services; broadband personal communications services (PCS); print and electronic directories; operator services, and video services in certain markets. In Wyoming, U S WEST, Inc., provides services primarily through its subsidiary, U S WEST Communications, Inc.
4. On September 10, 1999, wyoming.com filed its Petition for Leave to Intervene which was granted by the Commission on September 24, 1999. It thereby became a party to this proceeding. It filed a similar pleading on 22, 1999, to ensure intervention in all of the above-captioned dockets.
5. On September 17, 1999, the Commission issued its Notice of Application and Order Setting Prehearing Conference which generally described the proposed merger transaction as set forth in the Joint Application including the Applicants' assertions concerning the benefit of the merger to the public. The Notice also set a pre-hearing conference for October 28, 1999, at the Commission's hearing room in Cheyenne, Wyoming.
6. Notice of the application and the pre-hearing conference was broadcast five times a week for two consecutive weeks on KODI in Cody, KMKX-FM in Rock Springs, KLEN-FM in Cheyenne, KUWR-FM in Laramie, KTWO in Casper, and KMTN-FM in Jackson, Wyoming. Notice was published once a week for two consecutive weeks in the Daily Rocket-Miner in Rock Springs, the Wyoming Tribune-Eagle in Cheyenne, the Gillette News-Record, the Jackson Hole Guide, the Cody Enterprise, and the Casper Star Tribune.
7. On September 24, 1999, the Consumer Advocate Staff filed a Notice and Motion to Intervene which was granted by

the Commission on September 30, 1999. It thereby became a party to this proceeding.

8. On September 29, 1999, the Applicants filed a Joint Motion for Approval of Confidentiality Agreement and for Protective Order, seeking protection for confidential and proprietary information of a commercially sensitive nature.

9. On September 30, 1999, the Commission sent a letter to the parties advising them to reserve the dates of April 11 through 14, 2000, for the public hearing in this proceeding.

10. On October 11, 1999, McLeodUSA filed its Petition to Intervene as a Party which was granted by the Commission on October 19, 1999. It thereby became a party to this proceeding.

11. On October 14, 1999, AT&T filed its Petition for Leave to Intervene. On October 15, 1999, the Retirees filed their Petition to Intervene, the Independent Telephone Companies filed their Motion to Intervene, and the Tri County Companies filed Petitions to Intervene.

12. On October 20, 1999, the Applicants filed their Joint Opposition to Association of U S WEST Retirees' Petition to Intervene asking the Commission to deny the Retirees' Petition to Intervene arguing, inter alia, that they did not show themselves to be affected by the proposed merger and made no allegation regarding whether the proposed merger would ". . . adversely affect the utility's ability to serve the public" under W.S. § 37-1-104(a).

13. On October 21, 1999, the Applicants filed a Joint Opposition to AT&T, Tri County, Dubois Telephone Exchange, Inc., RT Communications, Inc., Range Telephone Cooperative, Inc., and Union Telephone Company's Petitions To Intervene, arguing that the proposed intervenors' desired to interject business concerns outside the Commission's regulatory authority into the proposed merger proceeding and asserted that allowing participation for the purpose of protecting business interests would not assist the Commission in its determination.

14. On October 21, 1999, the Tri County Companies filed a Response to the Applicants' Opposition to Intervention stating, inter alia, that as a potential customer, the Tri County Companies would require quality connection to the reorganized utility's network and might require services for resale or the use of unbundled network elements for successful competitive entry into the markets of the reorganized utility.

15. On October 22, 1999, AT&T filed a Response to Applicants' Opposition to AT&T Petition to Intervene, asserting that its intervention as an interested party was necessary to allow the Commission to examine the proposed merger thoroughly and that, without AT&T's intervention, it was not possible to ensure that AT&T's interests would be adequately represented in the proceeding. AT&T further argued that its intervention would not interfere with the prompt and orderly proceeding and that any facts and issues presented by AT&T would be relevant to the subject of the proceeding.

16. At its recessed regular open meeting of October 22, 1999, the Commission heard arguments on the contested petitions to intervene by AT&T, the Tri County Companies, the Retirees, and the Independent Telephone Companies. Attorneys for McLeodUSA, AT&T, U S WEST, the Tri County Companies, the Independent Telephone Companies, the Retirees, the Consumer Advocate Staff and Qwest appeared and argued the petitions to the extent they deemed necessary. The Commission denied the oppositions of the Applicants to the various petitions including that of McLeodUSA which had been previously granted.

17. On October 25, 1999, the Commission issued Orders Authorizing the Intervention of AT&T, the Tri County Companies, the Retirees, and the Independent Telephone Companies.

18. On October 28, 1999, the Commission held a pre-hearing conference in its hearing room in Cheyenne. U S WEST, Qwest, AT&T, the Tri County Companies, McLeodUSA, the Retirees, wyoming.com, and the Consumer Advocate Staff appeared through counsel and participated fully to the extent they wished to do so in the pre-hearing conference.

19. On October 29, 1999, the Commission issued its Notice and Order Setting Public Hearing and Procedure which, among other things, established the following procedural schedule:

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| Last day for Intervenor to serve discovery on the Applicants | January 7, 2000 |
| Last day for Applicants to respond to discovery | January 28, 2000 |
| Intervenor's prepared direct testimony and exhibits due, except for the Consumer Advocate Staff | February 22, 2000 |
| Applicants' last day to serve discovery on Intervenor | February 29, 2000 |
| Consumer Advocate Staff prepared direct testimony and exhibits due | March 10, 2000 |
| Last day for Intervenor to respond to discovery | March 29, 2000 |
| Parties file proposed order of witnesses | April 3, 2000 |
| Applicants' prepared rebuttal testimony and exhibits due | April 3, 2000 |
| Public Hearing | April 11-14, 2000 |

The Commission also tentatively agreed to observe the following suggested further deadline dates, mindful of the expressed needs of U S WEST and Qwest, other factors permitting:

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|---|---------------------------------|
| Post Hearing Briefs and Proposed Orders | April 28, 2000 (suggested date) |
| Commission Deliberations and Entry of Order | May 2000 (suggested date) |

The Commission also waived the written interrogatory limit set by Wyoming Rule of Civil Procedure 33(a), applicable to Commission proceedings under W.S. § 16-3-107(g). It accepted the Applicants' undertaking to provide discovery responses as soon as they are prepared and without waiting for a full thirty days to provide responses in large batches. The Commission also reminded the parties of the Commission's September 30, 1999, policy on not filing routine discovery requests or responses with the Commission, found in PSC Letter No. 99-70.

20. Notice of the public hearing was broadcast five times a week for two consecutive weeks on KODI in Cody, KMKX-FM in Rock Springs, KLEN-FM in Cheyenne, KUWR-FM in Laramie, KTWO in Casper, and KMTN-FM in Jackson, Wyoming. Notice was published once a week for two consecutive weeks in the Daily Rocket-Miner in Rock Springs, the Wyoming Tribune-Eagle in Cheyenne, the Gillette News-Record, the Jackson Hole Guide, the Cody Enterprise, and the Casper Star Tribune.

21. On November 3, 1999, the Commission issued a Special Order Authorizing One Commissioner and/or Hearing Examiner To Conduct Public Hearing for purposes of receiving evidence and testimony in this matter.

22. On November 5, 1999, the Applicants filed their Objections to AT&T's First Set of Data Requests; and on November 10, 1999, AT&T filed its Response to the Applicants' objections to AT&T's first set of data requests.

23. On November 17, 1999, the Commission issued its Order Granting in Part Joint Motion for Approval of Confidentiality Agreement and Protective Order, which approved a revised form of Confidentiality Agreement modified from that originally submitted for consideration by the Applicants on September 29, 1999, following consultations among the parties and counsel for the Commission in this case. The approved form of Confidentiality Agreement was attached to the November 17, 1999, Order and copies were distributed to the parties. In this Order, the Commission specifically did not approve the revised form of the Confidentiality Agreement as a substitute for the exhaustion of administrative remedies in discovery and related matters. Persons were directed to bring discovery problems to the Commission for a decision to expedite the consideration of the case.

24. On November 19, 1999, the Applicants filed their Objections to McLeodUSA's First Set of Data Requests.

25. On November 30, 1999, the Applicants filed a Joint Motion for Protective Order with supporting Brief seeking to prohibit the disclosure of the Applicants' competitively sensitive information that describe or may disclose their business plans for competing now or in the future. They alternatively proposed that the Commission limit disclosure of that information to the Commission and its staff and the Consumer Advocate Staff working on this case. Applicants also asked the Commission to provide that the information would be treated as confidential for purposes of its rules.

26. On December 7, 1999, AT&T filed its Opposition to Joint Motion for Protective Order with a supporting Memorandum and asserted, inter alia, that the Confidentiality Agreement approved by the Commission on November 17, 1999, already provided the appropriate relief. AT&T filed a Memorandum in support of its Opposition.
27. On December 16, 1999, McLeodUSA filed its Opposition to U S WEST and Qwest Communications Joint Motion for a Further Protective Order, arguing that the parties had already negotiated an appropriate confidentiality agreement and that any further protection was unjustified.
28. On December 30, 1999, and January 4, 2000, respectively, AT&T filed its First (with supporting Memorandum) and Second Motions to compel responses to certain data requests to the Applicants, seeking immediate responses, including the production of documents which Applicants termed confidential and highly commercially sensitive.
29. On January 6, 2000, the Applicants filed a Second Joint Motion for Protective Order proposing that the Commission issue a Limited Protective Order limiting disclosure of sensitive information concerning their competitive plans to the Commission, its staff, and the Consumer Advocate Staff, and, with respect to the other parties to the case, limiting disclosure to each of their outside counsel, outside experts and one designated in-house counsel, each of whom is active in this Wyoming proceeding and has executed an affidavit acknowledging the special limitations before receiving access to it, and asking the Commission to treat this highly sensitive information as confidential under the Commission's rules. In addition, on January 6, 2000, Applicants also filed a Joint Summary of Competitive Documents describing the nature of documents for which they sought this extra measure of protection from disclosure as set out in the Second Joint Motion.
30. On January 13, 2000, AT&T filed its Opposition to Applicants' Second Motion for Protective Order, and the Applicants' filed their Applicants' Consolidated Response to AT&T's Motion to Compel and AT&T's Second Motion to Compel, further sharpening the debate on discovery-related issues and providing supplemental responses to certain data requests.
31. On January 21, 2000, the Applicants, AT&T and McLeodUSA filed a Stipulation and Request For Entry of Interim Protective Order which was concurrently submitted with said Stipulation. On that day, and in response to motions by AT&T and the Applicants, the Commission issued an Interim Protective Order imposing specific limitations and conditions on the production and use of the confidential documents described in the Joint Summary of Competitive Documents filed by the Applicants on January 6, 2000, and any other similar documents which would be responsive to Intervenor's Data Requests, including the Consumer Advocate Staff, which, to mark their special status, were to be reproduced on pink paper.
32. On January 26, 2000, and to simplify consideration of the numerous pending discovery issues, the Commission sent a letter to all parties of record asking them, by February 3, 2000, to report in writing concerning the impact of the Interim Protective Order and what other discovery requests had been satisfied. The Commission asked the parties to ". . . specifically state which discovery problems remain, giving cites to the pleading in which they were raised."
33. On February 3, 2000, McLeodUSA filed a Motion to Compel Discovery Response from U S WEST/Qwest and Request for McLeod's Testimony Deadline to be Extended with a supporting Memorandum; and, on that date, McLeodUSA and AT&T filed letters describing the state of discovery in the case. On February 4, 2000, McLeodUSA filed confidential discovery responses from the Applicants in support of this Motion.
34. On February 7, 2000, the Commission issued its Order Setting Discovery Hearing, setting a public hearing on discovery-related matters for February 18, 2000, in its hearing room in Cheyenne. It directed the parties to address [i] all outstanding discovery requests and how to resolve them; [ii] the relationship of the merger proposed in this case to the plans of Qwest and U S WEST for compliance with Section 271 of the federal Telecommunications Act of 1996, including any effect that compliance or other actions might have on timing issues in this case; [iii] a report of the progress made by U S WEST and AT&T in negotiating a 14-state interconnection agreement; and [iv] any proposals for modifying the procedural schedule established for this case. Notice of the discovery hearing was broadcast for two weeks on KUWR-FM in Laramie, KTWO in Casper, and KMTN-FM in Jackson, Wyoming, and published once a week for two weeks in the Casper Star Tribune.

35. On February 11, 2000, AT&T filed a Revised and Consolidated Motion to Compel Responses to Data Requests, compiling all of its existing and unsatisfied discovery motions into one pleading. On February 11 and 16, 2000, Applicants filed formal responses to the latest McLeodUSA and AT&T motions to compel. On February 11, 2000, Qwest filed a letter describing the steps it intended to take in compliance with Section 271 of the federal Telecommunications Act of 1996.

36. On February 17, 2000, AT&T filed an affidavit of Dominick Sekich stating that the 14-state interconnection agreement negotiations between U S WEST and AT&T had broken down.

37. The public hearing on discovery matters came on regularly for hearing before the Commission on February 18, 2000, with U S WEST, Qwest, AT&T, McLeod, wyoming.com and the Consumer Advocate Staff appearing through counsel and participating to the extent they deemed necessary. Because the orderly consideration of all of the issues raised by the Commission and the parties could not be completed then, the hearing was continued by agreement of all participants to, and completed on, February 25, 2000. The Consumer Advocate Staff asked the Commission to change its testimony prefiling date from March 10 to March 17, 2000, arguing that it had received initial discovery responses from the Applicants as late as February 16, 2000. It stated that it had no need to see the testimony of other intervening parties before filing its own case. AT&T stated that it had also received some responses on that late date and, as described in its pleadings before the Commission, noted that some responses had not yet been received. McLeodUSA made a similar argument, having received late responses or no responses as noted in its pending discovery-related motion.

38. On March 2, 2000, the Commission issued its Order on Motions To Compel Discovery, Modifying Procedural Schedule and Requiring Additional Information which, inter alia, granted in part AT&T and McLeodUSA's motions to compel, directed the Applicants to respond to certain described discovery requests by March 3, 2000, and to furnish extensive additional information including merger stipulations entered into by the Applicants in other states together with a description of the pertinent laws governing mergers in those states, potential of additional sales of exchanges and consequences thereof to U S WEST's Wyoming customers, future investment in Wyoming, the status of the Applicants' compliance with Section 271 of the federal Telecommunications Act of 1996 and the status of the U S WEST/AT&T interconnection negotiations in Wyoming. The Order of March 2, 2000, declined to enlarge and made permanent the previously ordered limitations on "pink sheet" confidential information, denied AT&T's request that the case be dismissed, denied the Applicants' request for an earlier hearing, gave them until March 27, 2000, to provide the requested information, and gave all intervening parties an extension to file and serve their prefiled testimony and exhibits until March 17, 2000.

39. On March 10, 2000, the Consumer Advocate Staff filed a Motion for Extension of Time to Prefile Testimony and Exhibits until March 30, 2000, arguing that the existing procedural schedule would not give the parties adequate time review new information to be produced by the Applicants under the Commission's Order of March 2, 2000. The Commission granted this Motion in its Order Amending Modified Procedural Order issued on March 14, 2000. In this Order, the Commission also granted McLeodUSA's oral motion for an extension of time to March 21, 2000, in which to prefile testimony and exhibits.

40. On March 15, 2000, wyoming.com, AT&T, and McLeodUSA filed separate motions for extensions of time to prefile testimony and exhibits in the matter, arguing, among other things, that they had very recently received discovery responses and could not prepare their cases for filing in time to meet the existing deadline. The Commission granted these Motions in its Second Order Amending Modified Procedural Schedule issued on March 16, 2000, which gave movants a new deadline for the prefiling of testimony and exhibits of March 30, 2000, and granted the Applicants' oral motion for an extension of the deadline for filing their prepared rebuttal testimony to April 4, 2000.

41. On March 21, 2000, the Retirees and the Applicants filed a Stipulation providing for the withdrawal of the Retirees as an intervenor in this proceeding and stating that the instant proceeding would neither enhance nor prejudice the pension entitlements or benefits of the Retirees. With that Stipulation, the relevant parties filed a Motion to Grant Withdrawal of the Wyoming Chapter of AUSWR CO/WY, which was granted by the Commission in its Order Allowing Withdrawal of the Wyoming Chapter of the AUSWR CO/WY as a Party, issued on March 27, 2000.

42. On March 21, 2000, the Commission issued its additional Special Order Authorizing One Commissioner and/or Hearing Examiner to Conduct Public Hearing with respect to the public hearing in this matter.

43. On March 27, 2000, the Applicants filed a Compliance Filing in response to the Commission's Order of March 2, 2000, which directed them to provide additional information on certain specific issues. It included the supplemental prepared direct testimony of Wayne G. Culp. On April 17, 2000, the Applicants supplemented with an additional merger-related stipulation from Minnesota.
44. On March 27, 2000, Qwest and related companies filed the supplemental prepared direct testimony of Mark D. Pitchford.
45. On March 27, 2000, the Applicants and the Consumer Advocate Staff filed a Stipulation and Agreement (Stipulation) with the Commission which, inter alia, committed the Applicants to certain specific additional investment in Wyoming infrastructure, including construction of additional fiber facilities from Bondurant to Kemmerer within 36 months of the closing date of the merger as well as commitments on such matters as a price cap, treatment of merger transaction costs, affiliate transaction limitations and certain post-merger reporting.
46. Also, on March 27, 2000, the Consumer Advocate Staff filed its Second Motion for Extension of Time to Prefile Testimony and Exhibits from March 30, 2000 to April 3, 2000, arguing, inter alia, that settlement negotiations with the Applicants required the additional time. The Motion was granted by the Commission in its Third Order Amending Modified Procedural Schedule issued on March 30, 2000.
47. On March 28, 2000, the Applicants filed their Notice of Execution of Stipulation and Agreement by wyoming.com.
48. On March 30, 2000, McLeodUSA filed the prepared testimony and exhibits of Stacey Stewart, Dr. Bridger M. Mitchell and Dr. Sarah J. Goodfriend. On that day, AT&T filed the prepared direct testimony and exhibits of Thomas C. Pelto.
49. On April 3, 2000, the Consumer Advocate Staff, AT&T and McLeodUSA filed their proposed orders of witnesses. The Consumer Advocate Staff also filed the prepared direct testimony and exhibits of Lou Ann Westerfield, David L. Walker and Michael W. Korber.
50. On April 4, 2000, the Applicants filed their proposed order of witnesses and the prepared rebuttal testimony of Mark D. Pitchford, Wayne G. Culp, Dr. William E. Taylor and Michael A. Ceballos.
51. On April 10, 2000, U S WEST again filed rebuttal testimony of Michael A. Ceballos with a letter outlining certain necessary corrections thereto; and, on April 11, 2000, U S WEST filed the rebuttal testimony of Mr. Ceballos in corrected form.
52. The public hearing in this matter was heard regularly pursuant to public notice at the Commission's hearing room in Cheyenne, Wyoming, on April 11 through 14, and April 17 and 18, 2000. The Applicants, AT&T, McLeod, the Consumer Advocate Staff, and the Independent Telephone Companies, were present and participated in the proceedings to the extent they deemed necessary. The Applicants, AT&T, McLeod, and the Consumer Advocate Staff each presented witnesses in support of their respective positions on the issues. A number of interested members of the public also appeared and made statements during the course of the public hearing.
53. On April 26, 2000, McLeodUSA filed its Motion to Withdraw as a Party which cited a "confidential agreement entered into between McLeodUSA and U S WEST" as the reason for the motion. On April 27, 2000, the Commission considered the motion at its regular open meeting, took it under advisement, and issued a letter on that date directing U S WEST and McLeodUSA to provide copies of the agreement to the Commission in strict confidence for an of its relevance to the issues presented in the case. Applicants then stated that they did not oppose McLeodUSA's withdrawal. Thereafter, the Commission considered the motion in connection with its public deliberations on May 3, 2000. It determined that the agreement was not relevant to its decision in the case, that all copies of the agreement should be returned to McLeodUSA and that the motion should be granted. On May 4, 2000, the Commission issued its Order Allowing Withdrawal of McLeodUSA as a Party. In this Order, the Commission determined that nothing in it or in McLeodUSA's motion ". . . shall be construed as limiting the Commission in the consideration or disposition by order or otherwise of any issue in the above-captioned proceeding." Finally, counsel for McLeodUSA received all copies of the confidential settlement agreement by hand at the Commission's offices on May 8, 2000, and then

acknowledged this is writing.

54. On April 28, 2000, AT&T filed a Motion to Withdraw seeking to withdraw from further participation in the case and citing a "confidential settlement agreement with the merging parties" as the reason for the request. On May 2, 2000, the Commission considered this motion at its regular open meeting, took it under advisement, and issued a letter on that date directing AT&T and U S WEST to provide copies of the agreement to the Commission in the strictest confidence for an assessment of its relevance to the issues presented in this case. The Applicants then stated that they did not oppose AT&T's withdrawal. The Commission thereafter considered the motion in connection with its public deliberations on May 3, 2000. It determined that the described agreement was not relevant to the decision in the case, granted the motion and directed that all copies of the agreement should be returned to AT&T. On May 4, 2000, the Commission issued its Order Allowing Withdrawal of AT&T Communications of the Mountain States, Inc., as a Party. In this Order, the Commission determined that nothing in it or in AT&T's motion ". . . shall be construed as limiting the Commission in the consideration or disposition by order or otherwise of any issue in the above-captioned proceeding." Finally, counsel for AT&T received all copies of the confidential settlement agreement by hand at the Commission's offices on May 9, 2000, and then acknowledged this is writing.

55. On April 28, 2000, InTTec Inc., Visionary Communications Inc., and trib.com filed their Petition, seeking to appear in the case and be heard as interested persons to request certain specified relief, arguing that the withdrawal of AT&T and McLeodUSA as parties leave questions about the telecommunications service which they would receive if the proposed merger were granted. On May 1, 2000, the Applicants moved to strike or to deny the Petition of InTTec Inc., Visionary Communications Inc., and trib.com, arguing that the Petition was far out of time, that the Applicants were entitled to a fair and orderly proceeding, and that granting the Petition would in effect penalize the Applicants for attempting to settle the case with AT&T and McLeodUSA. The Commission considered the Petition at its open meeting on May 2, 2000, and heard the arguments of counsel for Petitioners and U S WEST, wyoming.com, the Consumer Advocate Staff, AT&T and McLeodUSA on the subject. The Commission decided to deny the Petition.

56. On April 28, 2000, the Consumer Advocate Staff filed its Post-Hearing Brief; and the Applicants filed their Post Hearing Brief. In view of their then-pending motions to withdraw, McLeodUSA and AT&T informed the Commission that they would not file briefs as allowed by the Commission. wyoming.com did not file a brief.

57. On May 3, 2000, the Commission, pursuant to public notice and personal notice to the parties hereto, began public deliberation of this case. During deliberations, a consensus developed that the merger transaction [i] would be beneficial to the merged company, [ii] would increase its viability in an increasingly competitive telecommunications industry, and [iii] would provide the opportunity for the deployment of more technologically advanced and sophisticated services. The Commission did not, however, approve the merger at that point and did not express a unified view on what additional information would be needed to allow for approval.

58. Consequently, on May 9, 2000, the Commission issued its Order Directing Presentation of Further Information, which approved a modification of paragraph 21 of the Stipulation in this case suggested by Commissioner Lee and directed the presentation of further information by the Applicants to address the separately stated concerns [i] of Commissioner Furtney concerning, generally, the ways in which the level of service of the merged company could be measured and tracked accurately to assure the Commission that the level of service to the entire state would not be adversely affected by the merger and [ii] of Chairman Ellenbecker regarding the intention of the merged entity to adequately deploy advanced services in Wyoming after the merger. The Applicants were directed to respond by May 19, 2000, by filing any further information they wished to have formally considered in this case and by suggesting further procedural steps in connection therewith.

59. On May 10, 2000, the Commission issued its Order Denying Further Relief on Petition for Leave to Appear by InTTec Inc., Visionary Communications Inc., and trib.com and for Relief as Requested. It did so in consideration of [i] the extremely late point in the case at which Petitioners sought to intervene (long after the publicly noticed October 15, 1999, intervention deadline had passed), [ii] after the public hearing was completed and on the eve of deliberations, and [iii] the other determinations made by the Commission, including the determination that the issues presented by AT&T and McLeodUSA after their withdrawal as parties would still be considered as part of the record.

60. On May 11, 2000, the Applicants filed their Motion to Reopen the Record for the Sole Purpose of Accepting Supplemental Exhibit and Affidavit, and the Supplemental Exhibit and Affidavit of Perry W. Hooks, Jr., of U S WEST,

concerning the Stipulation in this case, along with various attachments and appendices, some of which were confidential in nature. Pursuant to notice, the Commission considered these filings at its recessed regular open meeting of May 12, 2000. The Commission granted the Applicants' Motion to Reopen the Record, but beyond the Motion, also allowed testimony with respect to the issues discussed in the May 9, 2000, Order Directing Presentation of Further Information. (Transcript of May 12, 2000, supplemental open meeting proceedings, hereinafter Supp. Tr., p. 15.) U S WEST, Qwest, the Consumer Advocate Staff and wyoming.com appeared through counsel and participated to the extent they desired to do so, with the Applicants presenting the testimony of Perry W. Hooks, Jr., and the Consumer Advocate Staff presenting the further testimony of David L. Walker. The Commission also heard further arguments of counsel; and, finally, with the record open, the Commission deliberated the case further and made a bench decision on the record to approve the merger (Supp. Tr., p. 71), all as more fully discussed hereinbelow.

Positions of the Parties

The Case of the Applicants

61. Michael A. Ceballos, Vice President - Wyoming, of U S WEST, testified for the Applicants. Ceballos testified that U S WEST provides local exchange telecommunications services in Wyoming, serving approximately 250,000 access lines in Wyoming and providing a broad range of services to retail customers throughout the state. U S WEST also provides wholesale services to other telecommunications carriers pursuant to the Federal Telecommunications Act of 1996 and otherwise. U S WEST has over 500 employees in Wyoming. Ceballos explained that, under the terms of the Merger Agreement between U S WEST and Qwest, U S WEST would be merged into Qwest and the present subsidiaries of U S WEST, Inc., including U S WEST Communications, Inc., would become subsidiaries of the merged company which would continue to operate under their present names and with utilization of their present certificate authority. Overall, the merged company would have approximately 64,000 employees, serve more than 29 million customers and include among its assets some 2.6 million miles of domestic fiber optic cable. (Joint Applicants Exhibit 1, pp. 1-5.)

62. Ceballos explained that the two companies bring complementary strengths to the merger transaction. U S WEST provides local telecommunications service in Wyoming and thirteen other states as well as broadband and wireless services. Qwest, its merger partner, is the fourth largest long distance telecommunications service provider in the United States and has expertise in broadband applications and Internet services. Qwest has what has been termed one of the most advanced long-haul fiber optic networks in the industry. The proposed merger would allow U S WEST to grow faster in both data and Internet service and would enhance U S WEST's ability to innovate and deploy those services. (Transcript of public hearing held on April 11 through 18, 2000, hereinafter, because the transcript pages are numbered consecutively, Tr., pp. 52-53.)

63. Ceballos explained that current circumstances in the telecommunications industry are such that mergers have become a critical means to achieve the competitive advantages of being able to offer more consumers more services more quickly. Ceballos cited the acquisition of the TCI and Media One cable companies by AT&T as an example of U S WEST's competitors' efforts to increase their market power through acquisitions. Ceballos noted that the AT&T merger would create new competitive pressures in U S WEST's current 14 state territory. (Joint Applicants Exhibit 1, p. 9.) Ceballos expressed his opinion that, without the merger, U S WEST very likely could not survive in such a market place as a stand alone company. (Tr., pp. 53-54.)

64. Ceballos testified that U S WEST has, since 1994, undertaken a major modernization of its network in Wyoming and that improvements to network infrastructure are continuing and will continue following U S WEST's merger with Qwest. He stated that, by 1997, U S WEST had replaced all of its analog switches in Wyoming with digital switches. U S WEST has also, through the Wyoming Equality Network under contract with the State of Wyoming and the Wyoming Department of Education (WEN), deployed a large ATM network and has connected all 400 schools in Wyoming. With the Wyoming Equality Network, U S WEST deployed ATM switches or capability in Cheyenne, Laramie, Casper, Rock Springs and Riverton and deployed private switches in Powell, Sheridan, Gillette and Torrington. U S WEST was able to introduce DSL service in Cheyenne in 1999 and will soon be offering DSL service in Laramie. Regarding such services, Ceballos stated that: "My belief is we will continue to deploy those types of services as we move forward." (Tr., pp. 55-56 and 178.)

65. Ceballos provided information about the Stipulation which would take effect if and when the proposed merger were

approved and consummated. As noted in the Stipulation, U S WEST recently committed to undertake the largest single fiber optic construction project ever undertaken by a telecommunications company in Wyoming. That project will involve construction of new interoffice facilities (IOF) in the northern part of Wyoming consisting of fiber to the Gillette, Wright, Buffalo, Sheridan, Cody and Powell exchanges, together with the addition of new capacity for the Lander, Riverton, Jackson and Moran exchanges. As part of this project, fiber connections will be constructed between Lander and Riverton and between Cody and Powell. According to Ceballos, each of these projects was, although a part of the enlargement of the WEN and not caused by the merger, nevertheless expedited as a result of the merger proceedings. Ceballos also testified that, in addition to these interoffice facility projects, the Applicants also committed to build additional interoffice fiber optic facilities from Bondurant to Kemmerer within 36 months of the closing date the merger. This construction, which Ceballos noted would not have happened without the merger, would provide interoffice fiber to Jackson and Moran and would "close the loop" in U S WEST's Wyoming network, providing a measure of important interoffice redundancy in the state in the event of an interoffice fiber cable failure. The effect of these current merger-related and other commitments would be to provide fiber optic connectivity to 91% of U S WEST's Wyoming exchanges. (Tr., pp. 56-61; and Joint Applicants Exhibit 1, pp. 2-3.) Ceballos explained some of the impacts of the fiber deployment project:

"What this will do is not only provide now fiber capacity for Jackson and Moran, but it will also close the loop. So in the event of -- I believe Glendo is where the cut was before, instead of I-9 -- E911 going down, we will be able to run a second route and come back and make sure that stays up.

"We will also be able to provide the directory assistance that didn't work when that cut occurred. We will also be able to handle the long distance traffic to the extent the radio will support it. Will that mean there will never be a cut? No, because Evanston will get a cut here. It is not part of the loop. Obviously the benefit will be the greater part of the state." (Tr., p. 60.)

Ceballos noted, for example, that, when the fiber connection to Gillette is complete, the digital radio link to Gillette will no longer serve. Although this does not provide redundancy, it would nevertheless provide the enhanced digital capability of fiber, noting that the transmission capability of fiber cable was significantly expandable by changing the electronics which serve the fiber. U S WEST was also working with Gillette and other locations in the northern part of the state to ascertain whether there might be businesses sufficiently interested in the redundancy of digital radio to purchase it as a backup capability. Customers in other locations, such as Evanston, might arrange for service from two service providers if redundancy were desirable. (Tr., pp. 216-220.)

66. Ceballos testified that the ability of the merged entity to grow faster than either company could alone was one of the reasons for merging. He also testified that the merged company had no specific plans to enlarge its Wyoming work force or to "grow" its operations or U S WEST Communications in Wyoming after the merger. Ceballos also stated that, although the merger would enhance the merged entity's ability to deploy Internet-based broadband services, none of the targeted markets were cities located in Wyoming and there are no merger-related plans to deploy additional broadband services in Wyoming. Finally, although one reason for the merger concerned the deployment of a broader array of voice and data services, there were no plans for Wyoming deployment as part of the merger. (Tr., pp. 158-161.) Ceballos clarified his remarks:

"What I'm telling you is that the benefits that I talked about in here I do believe will be realized in Wyoming. They're just not specifically part of a plan, but that does not make those statements incorrect. * * * And my belief is that they will, and that's why I included it in my testimony." (Tr., p. 161.)

Ceballos also testified that Wyoming would be a beneficiary of the U S WEST service improvement plan in terms of new capital spending and new network and customer service employees. He stated that service quality could be maintained efficiently while operations and maintenance expenses were reduced and that a balance could be struck that allowed this without sacrificing customer service. (Tr., pp. 170 and 207-208.)

67. Ceballos described other provisions of the Stipulation, including the provision that U S WEST will not increase prices for basic residence or business service (or related zone changes) prior to January 1, 2002, unless required by law to do so. The Applicants state in the Stipulation that they have no current plans to sell Wyoming exchanges other than those five exchanges for which authority has already been requested from the Commission and that they will make appropriate required filings and showings in connection with any future sales. Any such sales will be handled

to existing Commission procedure and any concerns about such sales would, thus, exist separately from the merger in this case. The Stipulation provides that the Applicants will insure that merger transaction costs, including goodwill, will not affect the price of U S WEST's services in Wyoming. The Applicants also commit that such costs will not be included in the total service long run incremental costs of services. Under the Stipulation, U S WEST additionally commits that it and its successors will honor and be bound by all U S WEST interconnection agreements relating to Wyoming. U S WEST states in the Stipulation that the terms of the proposed interconnection agreement with AT&T recently filed with the Commission could serve as a template for other carriers who may wish to negotiate an agreement and that, in the longer term, U S WEST will expect to file a statement of generally available terms (SGAT) in Wyoming as contemplated by the federal Telecommunications Act of 1996. (Tr., pp. 64-66 and 222; and Joint Applicants/Consumer Advocate Staff Exhibit 1, pp. 4-5.)

68. Ceballos noted that, under the terms of the Stipulation, U S WEST will file, within 180 days after the closing date of the merger, a report to the Commission describing the status of the merger and the transition process including organizational changes anticipated within the company. Ceballos pointed out that the Stipulation contained a statement of U S WEST's recognition of Quality of Service issues and its commitment to preserve the quality and reliability of all regulated services following the merger. Ceballos testified that the commitment of U S WEST to construct new interoffice facilities will both serve to enhance the quality of services and to facilitate new services to Wyoming customers. (Tr., pp. 68-70; and Joint Applicants/Consumer Advocate Staff Exhibit 1, p. 6.)

69. Ceballos testified that the Stipulation contains provisions that will insure a continued process for handling customer complaints within U S WEST and with the Commission staff. He stated that U S WEST will report to the Commission at least once a year regarding plans for deployment of new services for four years after the merger, although this should not be taken as a commitment to roll out any new services in the state and deployment will continue to be done on a business case-justified basis. He testified that protections will be kept in place so that U S WEST's regulated telecommunications business in Wyoming will be insulated from the costs and risks associated with the business of any unregulated affiliate of U S WEST and that Qwest will move forward, in accordance with 47 U.S.C. § 271, with the divestiture of its interLATA services and customers within the U S WEST region. The merged company also agreed to honor ". . . all Wyoming originated and related contracts which are currently valid and in force between U S WEST and any party." This would include some 34 interconnection agreements with U S WEST and other telecommunications companies. (Tr., pp. 70-74, 80 and 224-225; and Joint Applicants/Consumer Advocate Staff Exhibit 1, pp. 6-8.)

70. Ceballos stated that the Powell City Council, the Cody Chamber of Commerce, and the Campbell County Economic Development Corporation all had supported U S WEST's efforts with regard to upgrading infrastructure in those parts of the state. The Cody Chamber of Commerce resolution includes a specific request that the Commission approve the merger. (Tr., pp. 77-80; and Joint Applicants Exhibits 4, 5 and 6.)

71. Ceballos took issue with certain merger conditions advocated by intervenors AT&T and McLeod. Concerning AT&T's proposal that the merger be conditioned upon requiring a fixed level of investment in Wyoming, Ceballos stated that U S WEST has already agreed to make significant investments through its currently planned interoffice facility upgrades for the WEN system and the Bondurant to Kemmerer fiber optic link to which it has committed in the Stipulation. Ceballos argued that, with respect to the AT&T proposal for a cap on access prices, the switched access prices in Wyoming are currently the lowest of any of U S WEST's 14 states and that AT&T has been charged those lower access prices since U S WEST's latest price plan went into effect on October 1, 1999. Ceballos noted that any change in those prices would have to receive prior approval from the Commission and that the proceeding on those prices would provide an opportunity for review of any increase. (Joint Applicants Exhibit 2, pp. 8-10.)

72. Ceballos testified that AT&T unfairly characterized its interconnection agreement negotiations and stated that the merger should not be conditioned with respect thereto to expedite the process of establishing an agreement with AT&T for Wyoming. He argued that a portion of the delay in reaching an agreement was due to both companies' desire to negotiate a 14-state agreement rather than a Wyoming specific agreement. Ceballos stated that, in his opinion, the proposed merger has had no adverse effect on the interconnection process. He noted that U S WEST filed with the Commission a proposed interconnection agreement and that the interconnection proceeding was the avenue for AT&T to obtain relief on the subject. (Joint Applicants Exhibit 2, pp. 10-11.)

73. Ceballos argued against AT&T's request that approval of the merger be conditioned on a promise by U S WEST that it would sell no additional Wyoming exchanges. He stated that such a condition would unfairly and improperly

interfere with U S WEST's fundamental ability to manage its own business. He found that if there were to be any future sales, Commission approval would be required and that this mechanism would provide a forum for the review of any such proposal, making a sale-related merger condition unnecessary. Ceballos also argued that wholesale quality of service issues need not be addressed in this proceeding because they would come before the Commission in its review of interconnection agreements. Ceballos found that wholesale service quality is a matter outside the proper scope of this case. (Joint Applicants Exhibit 2, pp. 8-13.)

74. Ceballos argued against the Merger conditions advocated by McLeodUSA, including the request for a guarantee that no additional Wyoming exchanges would be sold. He found the request speculative and argued that there was no basis in the record to show that McLeodUSA would be harmed by the future sale of any Wyoming exchange. He also argued against McLeodUSA's allegations of service quality problems and its request for guarantees of investment in Wyoming. He noted that, according to the Stipulation, 91% of Wyoming exchanges would be served by fiber following the merger. He stated that U S WEST's Wyoming switches are all digital and these factors will provide a network with which competitors will have a fair opportunity to serve and compete. Ceballos observed that McLeodUSA provides service in Wyoming through the resale of Centrex service which was as good or better than that received by other competitive local exchange companies in Wyoming and by U S WEST itself. (Joint Applicants Exhibit 2, pp. 16-19.)

75. Concerning McLeodUSA's argument that an arbitrated interconnection agreement in Wyoming was a necessity, Ceballos argued that this case was not the proper one in which to pursue interconnection issues, describing the agreement U S WEST filed in the AT&T arbitration case and arguing that McLeodUSA could opt into that agreement or pursue separate negotiations directly with U S WEST. (Joint Applicants Exhibit 2, pp. 19-23.)

76. Ceballos stated that it was "absolutely absurd" to argue that merger creates a disincentive for the merged company to comply with 47 U.S.C. § 271 in Wyoming. He said that Section 271 approval was a necessary precursor for U S WEST to offer a full range of telecommunication services including interLATA toll service which is important to U S WEST's competitive ability. He recalled the Applicants' public statements that they intend to seek Section 271 relief in Wyoming. (Tr., pp. 23-24 and 233.)

77. Mark D. Pitchford, Senior Vice President of the Consumer Markets Group, testified for Qwest as the person responsible for all of Qwest's consumer marketing and service functions. He stated that Qwest's national fiber optic network has expanded to more than 25,500 miles. He clarified that the shareholders of Qwest and U S WEST approved the proposed merger and that the Federal Communications Commission approved the merger as has the United States Department of Justice, following their review under the federal Hart-Scott-Rodino Act. With those updates, Pitchford adopted the prefiled testimony of Paul F. Gallant in this proceeding. (Joint Applicants Exhibit 8, pp. 2-3; and Tr., p. 260.)

78. Pitchford explained that the telecommunications industry is rapidly changing and becoming increasingly competitive. He argued that one of the most effective options for companies to meet emerging competition is to increase their size and ability to compete through mergers with other companies which have complementary assets and expertise, including applicable competitive experience. The merged company becomes stronger and more able to develop and sustain services that its customers need or want. Pitchford testified that the merger between Qwest and U S WEST is such a merger in that it would enable U S WEST to gain access to Qwest's long-haul fiber optic network and its experience with competition in interLATA services. It would ensure that U S WEST is not too small to survive and would, at the same time, allow U S WEST to maintain its focus on the telecommunications industry. He argued that the proposed merger would strengthen U S WEST and allow it to better serve its customers, including those in Wyoming. (Joint Applicants Exhibit 8, pp. 3-4.)

79. Pitchford testified that Qwest wanted to merge with U S WEST in part in order to obtain greater access to U S WEST's large customer base. He stated that Qwest has a number of incentives to provide high quality service to those customers and to retain them as customers of the merged company. First, the telecommunications industry is becoming more competitive and quality local service would allow the merged company to retain local customers in the face of competition. Second, the merged company intends to sell more advanced services and a wider of variety of services to U S WEST's existing customers. If those customers were displeased with the local service they receive from U S WEST, they would be far less likely to purchase long distance or other services from that company. Finally, the combined company would continue to be subject to regulation of its local services. He argued that any material loss of service quality would not only result in negative reactions from customers but also from regulators, including the

Commission. (Joint Applicants Exhibit 9, pp. 5-6.) He could not point to wholesale service standards that would be applicable outside of the context of an interconnection agreement and acknowledged that the Commission's retail quality of service rules were currently under appeal [by U S WEST]. He thought that the general references to quality of service standards in the Stipulation were sufficient (Tr., pp. 282-283 and 304; see, also, Joint Applicants/Consumer Advocate Staff Exhibit 1, page 6 of 10.) He stated his belief that ". . . through both the financial incentives we have in place and the stipulation that we have indeed committed to providing an ongoing high quality of service to Wyoming's customers." (Tr., p. 345.) Asked how Qwest measures the quality of its service, he responded with some examples of quantifiable measurements of such indicators as response times, accuracy of bills, speed of repair and the like. (Tr., p. 362.)

80. Pitchford argued that these business reasons for providing high quality local services are as relevant to Wyoming as they are to the rest of U S WEST's service territory. Prior to the proposed merger, Qwest, as a national provider of competitive services, provided services in Wyoming even though it was under no obligation to do so. He thought that there would be no basis for assuming that the strategy of the combined company would be to avoid providing service in Wyoming or to shortchange services in Wyoming. Qwest, he stated, has given its full support to and is bound by U S WEST's contractual agreement to upgrade WEN network facilities and install new fiber optic interoffice links in the Wyoming network. He noted that, in the Stipulation, Qwest, along with U S WEST, has made further commitments to Wyoming, including specifically a commitment to connect Jackson and Moran to Kemmerer with fiber optic cable to be placed between Bondurant and Kemmerer. He stated that Qwest has been a leader in developing new telecommunications systems and infrastructure and that the merged company would continue that role throughout U S WEST's fourteen state region, including Wyoming. (Joint Applicants Exhibit 9, p. 7-9.)

81. Pitchford testified that the new deployment of advanced services would only be done if a proper business case could be made for doing so but argued that the merger would make such cases easier to make from a cost perspective. Pitchford cautioned, however, that the problems of Wyoming's sparse population and long distances would continue with respect to the deployment of some advanced services and that the merger would not solve them. (Tr., pp. 290-291.) He noted that Wyoming contained less than 2% of U S WEST's customers and that it accounted for only about 1% of U S WEST's revenue. Although the merged company would be larger than either merger partner, he could not state with certainty the extent to which Wyoming could constitute an even smaller portion of the merged company but he did note that Wyoming would probably present a smaller business, although not a smaller residential, service growth opportunity. (Tr., pp. 293-294 and 296-297.)

82. Pitchford stated that the claims of AT&T and McLeodUSA that the combined companies' out-of-region activities would interfere with the provision of service in the U S WEST region by diverting financial and management resources is contradicted by the conduct of companies like AT&T and McLeodUSA which have undergone significant expansion in the last few years and have both indicated a desire to expand their services and to maintain high quality services. Pitchford also stated that the same will be true for the combined Qwest/U S WEST, stating that "[t]he combined company will pursue reasonable business investments in and out of region in order to strengthen the company, which will ensure that the company is able to bring improved services to all of its customers." (Joint Applicants Exhibit 9, pp. 9-10.) Pitchford couched his argument in regional and general terms rather than making Wyoming-specific observations, except to the extent that "all of its customers" may include Wyoming.

83. Pitchford argued that the fact that Qwest's fiber optic network does not traverse Wyoming does not ". . . preclude the network from providing long haul transport capabilities to Wyoming customers." (Joint Applicants Exhibit 9, p. 9.) Pitchford pointed out that Qwest's fiber optic network is national and that U S WEST will have access to that network after the merger. At the same time, Qwest, following the acquisition of U S WEST, will own the largest telecommunications network in Wyoming. It would to Pitchford be illogical to argue that Qwest might then have less interest in Wyoming than other telecommunications providers including AT&T and McLeod. Corporate neglect of Wyoming by the merged company would diminish overall return from the Wyoming network and would diminish longer term prospects of carrying more Wyoming traffic on Qwest's long-haul network. For both of these reasons, neglecting Wyoming would not be in the best interest of the merged company. (Joint Applicants Exhibit 9, p. 9-11.)

84. Pitchford testified that the merger will give Wyoming a "far better chance" to obtain access to broadband services than the status quo. He called U S WEST an industry leader in the deployment of DSL technology and said that, with Qwest's national fiber optic network, advanced services could be provided nationwide. A combination of Qwest's high-speed national network and U S WEST's customer base will allow the merged company to deploy advanced services, "

. . as they become practicable and as permitted by law, more rapidly and broadly than either company standing alone." (Joint Applicants Exhibit 9, p. 11.) Following the merger, the merged company will own the largest telecommunications network in Wyoming and also will own a state of the art national high speed fiber optic network. These strengths will benefit all customers of the new company by lowering the cost of providing advanced services ". . . which in turn increases the business incentives for their rapid and broad deployment." (Joint Applicants Exhibit 9, p. 12.) Pitchford again did not make an unequivocal favorable commitment concerning the deployment of services in Wyoming, but clarified that:

". . . as you look at business cases to deploy these new advanced services, that all of the drivers of that business case in our view improve as a result of this merger.

"So, therefore, you'll be able to deploy further than you would have otherwise, and therefore, you'll be able -- there is a chance you'll bring it to more customers." (Tr., pp. 343-344.)

85. Pitchford testified that U S WEST, Qwest and the merged company did not have ". . . any current plans to sell additional exchanges in Wyoming." (Joint Applicants Exhibit 9, p. 13.) He confirmed the Applicants' understanding to be that, in the event of such future sales, the company would have to apply to the Commission and that they would be required to show that the purchaser has sufficient resources to provide safe, adequate, and reliable local service. Pitchford argued that there is therefore no basis for any assumption that, even if a future sale of an exchange were to occur, such a sale would have an adverse effect. (Joint Applicants Exhibit 9, pp. 12-13.)

86. Pitchford reiterated that, after the merger, U S WEST would continue to be bound by the "binding contractual commitments" of U S WEST (Joint Applicants Exhibit 9, p. 13.)

87. Pitchford argued against the imposition of conditions by the Commission to ensure that the merger would not adversely affect the ability of the utility to serve the Wyoming public. First, he argued that the merger itself would create numerous pro-consumer and pro-competitive benefits and is founded on the conclusion by Qwest and U S WEST that combining the two companies would enable them to better serve our customers." (Joint Applicants Exhibit 9, p. 14.) Pitchford noted that the FCC has approved the merger, finding that the merger will serve the public interest and will increase local exchange competition in the U S WEST region while imposing a condition concerning further FCC review of Qwest's in-region interLATA services under 47 U.S.C. § 271. Pitchford argued that the merger would create significant incentives for the merged company to meet Section 271 requirements which will benefit competition "in the U S WEST region" and would "mean that all telephone service markets in Wyoming are open to competition." He also argued that the Stipulation eliminates the need for further conditions beyond those imposed in the Stipulation. (Joint Applicants Exhibit 9, p. 15.) He further clarified that Qwest, its parent and all subsidiaries consider themselves bound by the Stipulation in all respects, should it become effective. (Tr., pp. 266-267.)

88. Pitchford said that the merger would increase U S WEST's incentive to obtain Section 271 approval because, following the merger, U S WEST will obtain access to Qwest's network for interLATA traffic. The merged company would be able to enter the interLATA market rapidly and on a cost effective basis after obtaining Section 271 approval because the combined company already has an interLATA network in place. (Joint Applicants Exhibit 9, pp. 16-17.) To Pitchford, the fact that Qwest's network does not traverse Wyoming does not mean that Section 271 approval in Wyoming is not important to the Applicants. He argued that, because Qwest was providing long distance service in Wyoming before it proposed to acquire U S WEST, ". . . the merged company has far more incentive to provide interLATA services to Wyoming than Qwest did prior to the merger." (Joint Applicants Exhibit 9, p. 18.)

89. Qwest's Section 271 plan to divest itself of its interLATA services within the U S WEST region will be done by placing that business with a separate subsidiary and then selling that subsidiary to an independent buyer, Touch America, Inc., a Montana-based corporation already authorized to provide telecommunications services in Wyoming. The application to do this was filed with the Commission on March 16, 2000. Pitchford argued that, since the FCC is reviewing Qwest's plan for divestiture of its interLATA assets according to its jurisdiction, it would be "inefficient" for the Commission to engage in a prolonged review of a matter over which the FCC has primary jurisdiction." He urged the Commission not to make consideration of that matter a part of this merger proceeding. (Joint Applicants Exhibit 9, pp. 31-38.)

90. Pitchford additionally stated Qwest's belief that obtaining Section 271 approval in Wyoming is critical to Qwest's

ability ". . . to provide truly competitive long distance services throughout the nation . . ." (Joint Applicants Exhibit 9, p. 18.) He found McLeodUSA's suggestion untrue that there is no opportunity cost from delaying interLATA entry because it assumes that Qwest cannot carry both wholesale traffic and its own traffic, noting that Qwest's long-haul network is presently underutilized and that carrying its own traffic is therefore desirable. U S WEST has also taken steps to advance its efforts to obtain Section 271 approval. (Joint Applicants Exhibit 9, pp. 17-20.) He further stated that having Section 271 approval in Wyoming could help eventually to increase the redundancy of the merged company's fiber optic system in Wyoming as the system is enhanced and reinforced to provide additional interLATA service. (Tr., pp. 342-343.)

91. Pitchford argued that the Stipulation includes commitments for fiber optic infrastructure investment (e.g., fulfilling the WEN upgrade contract and building the Bondurant-Kemmerer fiber link), a commitment not to file for increased prices for basic residential or business services (or related zone charges) before January 1, 2002, unless required to do so to comply with the law or state or federal regulatory requirements, and a commitment to provision for ATM capability to Sheridan and Gillette. (Joint Applicants Exhibit 9, p. 16; and Joint Applicants/Consumer Advocate Staff Exhibit 1).

92. Pitchford addressed the concerns of AT&T and McLeodUSA that the merged company will shift services or assets to unregulated affiliates. Neither Qwest nor U S WEST has, except for Section 271-required asset and customer divestiture, asked for authority to move any services or assets "as part of this merger." He noted that the FCC has, beyond our jurisdiction, given companies certain rights regarding the placement of their assets, and that ". . . Wyoming law already provides this Commission with ample authority to regulate the movement of assets between utilities" and other matters. He testified that the Stipulation provides assurances against cross-subsidization or other practices prohibited by the Wyoming Telecommunications Act of 1995. He found the charges of other parties that U S WEST will discriminate in favor of Qwest affiliates after the merger to be "utter speculation." (Joint Applicants Exhibit 9, pp. 20-21.)

93. Pitchford dismissed the suggestion that the merged company should be separated into retail and wholesale entities as unreasonable. Such a separation would be costly and would eliminate efficiencies from the integration of retail and wholesale functions. The merger, he stated, would create no new basis for separating wholesale and retail functions, arguing that the reasons for structural separation existed long before the proposed merger (i.e., the concerns are not merger-related). He noted that the FCC has said that there are appropriate safeguards in place to ensure that there is no cost misallocation or other improper cost shifting. (Joint Applicants Exhibit 9, pp. 22-23.)

94. In Pitchford's opinion, the merged company will be able to manage the regulated and non-regulated aspects of its business well, noting that management will include U S WEST executives and that many Qwest managers have prior experience in regulated telecommunications utilities. He stated that Qwest has not participated heavily in particular U S WEST matters to this point because the merger has yet to occur and that the companies must continue to operate separately until the merger. He found negative speculation on this point to be "baseless." Pitchford countered that charges that Qwest may be distancing itself from U S WEST service problems and that it has a cavalier attitude toward service, stating that after the merger, some of the \$5.3 billion in retained dividends of the merged company for the years 2000 through 2005 will be invested in service development and that Wyoming customers will benefit from these investments just as will other U S WEST customers in the U S WEST region and elsewhere. He stated that ". . . the company has not determined precisely where or how it will spend the funds available as a result of the dividend reduction." (Joint Applicants Exhibit 9, pp. 27-29.)

95. Pitchford testified that on September 2, 1999, the merger passed certain regulatory hurdles at the United States Department of Justice and the Federal Trade Commission. On March 10, 2000, the FCC approved the merger conditioned upon a determination that Qwest's divestiture of its long distance customers in U S WEST's region complies with Section 271 of the federal Telecommunications Act of 1996. He testified that two states, Colorado and Iowa, had approved the merger and that no regulatory approval is required in Idaho, Nebraska, New Mexico, North Dakota, Oregon or South Dakota, leaving regulatory approvals pending in Wyoming, Montana, Utah, Washington, Minnesota and Arizona. Pitchford asked for prompt approval of the merger and found the conditions suggested by AT&T and McLeodUSA would inject into the merger various non-merger related issues to delay the merger and therefore the entry into the market of the merged company. (Joint Applicants Exhibit 9, pp. 30-31.) He noted the difficulty in comparing the results of the regulatory scrutiny of the merger under the standards which apply in the various states:

"I believe they are different in each state. Some of the states have, I think, a requirement to show public benefit versus others where it is a no-harm case, such as Wyoming.

"So there are certainly different statutes under each state, and obviously there are a number of the states, I think six, that decided they didn't have jurisdiction over the merger at all." (Tr., p. 356.)

96. Pitchford summed up Qwest's motivations in this case:

"The whole point of the merger for Qwest is growth. We have an underutilized network. I think we've stated publicly that we could handle all of the calls that AT&T and MCI combined handle on 2 of our fibers, and we have a 48-fiber network.

"So we have a very powerful network which is very underutilized. So the goal for us is to bring customers to that network. One of the great benefits of the merger is our ability to reach out to the U S WEST customers and bring them onto that network post-271 approval.

"Now, if I were a U S WEST customer, I wouldn't be choosing to add my long distance and add other services if I felt like I was getting bad service or that I was being ignored in any way by the company. So clearly we have a strong financial incentive to make sure that we are keeping the customers in the 14 states and in Wyoming very happy." (Tr., pp. 270-271.)

97. Wayne G. Culp, U S WEST's Director of State Finance, presented testimony concerning the structure of the proposed merger between U S WEST Inc. and Qwest Communications International, Inc. Following the merger U S WEST Communications, Inc. a subsidiary of U S WEST Inc., will become a subsidiary of Qwest Communications International, Inc., continuing to exist as it is today and continuing to provide services under the same tariffs and at the same prices. It will continue to operate its public switched telecommunications network in Wyoming as it does today. (Tr., pp. 532-533.)

98. According to Culp, the merger is planned as a stock-for-stock exchange which would qualify as a tax-free reorganization under federal income tax law. In certain cases, Qwest may also choose to pay a portion of the merger consideration in cash rather than common stock. U S WEST, Inc. and Qwest will account for the merger as a purchase with U S WEST, Inc. being the acquiring entity for accounting purposes. The assets and liabilities of U S WEST Inc. will be brought forward at net book value but a new basis will be established for Qwest's assets and liabilities. Any excess consideration over the fair value of Qwest's assets and liabilities will be accounted for as goodwill. Culp stated that the proposed merger will have no effect on the books and records of U S WEST, the regulated utility, because only the assets of Qwest will receive a new basis following the merger. (Joint Applicants Exhibit 12, pp. 1-6.) The merger will have no federal or state income tax consequences for U S WEST Communications, Inc., or for U S WEST Inc. In Culp's opinion the closing of the merger transaction itself would have no direct financial effect on U S WEST Communications, Inc. (Joint Applicants Exhibit 12, pp. 6-7.)

99. Culp stated that, generally, the direct expenses incurred in connection with the merger will be paid by the party incurring them. U S WEST's portion of any direct merger expense would be charged to non-operating or "below the line" accounts. This means that they would be disregarded in Wyoming for rate making and total service long run incremental cost study purposes under the Wyoming Telecommunications Act of 1995. Culp further stated that the termination of the proposed merger of U S WEST, Inc. and Global Crossing Ltd. was done by payment from U S WEST to Global Crossing of \$140 million in cash and 2,231,076 shares of Global common stock. To facilitate the termination, Qwest Inc. loaned \$140 million in cash to U S WEST and also agreed to buy \$140 million in services from Global Crossing. Culp assured the Commission that none of the costs paid to Global Crossing are or will be born by U S WEST Communications, Inc. (Joint Applicants Exhibit 12, pp. 8-9.)

100. Culp shared his opinion that the merger would create a financially sound company with combined earnings for 1998 of \$1.7 billion on combined revenues of \$14.6 billion, all on a pro forma basis. The merged company would continue U S WEST's past practice of providing access to books and records to enable the Commission to carry out its regulatory obligations. This would include access to records of affiliate agreements and transactions. (Joint Applicants Exhibit 12, pp. 11-12.)

101. Culp argued against imposing requirements for any new action regarding monitoring and disclosure of affiliate transactions because the Commission has monitored such U S WEST transactions for many years and the same monitoring would be possible after the merger. He observed that the Stipulation addresses this issue (Joint Applicants/Consumer Advocate Staff Exhibit 1, paragraph 17) wherein the Applicants agreed to provide books and records necessary to track affiliate transactions which would comply with the Uniform System of Accounts for Telecommunications Companies and all applicable FCC accounting requirements. U S WEST intends to fully comply with all applicable FCC rules and regulations and with the rules and regulations of the Commission applicable to affiliate transactions. Culp placed special emphasis on the FCC rules under Section 272 of the federal Telecommunications Act of 1996 which govern the independent and nondiscriminatory operation of affiliates when in-region interLATA operations are permitted to U S WEST. (Joint Applicants Exhibit 14 p. 2-4.)

102. Culp noted that no specific plans exist for the reduction of U S WEST employee levels in Wyoming, noting that "specific job titles and lay-offs by state have not yet been determined." He also noted that the merged company had no plans to spend any merger-related savings, if any, in Wyoming or any other state. (Joint Applicants Exhibit 14, pp. 4-5.) Culp also stated that, in 1999, the number of access lines in Wyoming grew at a percentage rate higher than U S WEST's fourteen state average; and local exchange service revenue also grew at a faster rate in Wyoming in 1999 than for the total company. From this, he concluded that U S WEST and Qwest ". . . are committed to the local exchange marketplace in Wyoming and the 14 state operating area." (Joint Applicants Exhibit 14, pp. 4-6.) Asked to explain this commitment, Culp stated:

"The commitment from my perspective is that the local exchange marketplace is our core business along with our public switched network in Wyoming. The two go hand in hand. That is -- that's an investment we have in place that the investors -- the U S WEST investors have put in place. We have this commitment. It would be foolish for us not to utilize this investment. It's very necessary for us to accomplish our other objectives." (Tr., p. 663.)

103. However, Culp argued that the merged company did not intend to track merger-related savings, stating that:

"When you're making a business decision should you have a merger or not have a merger and what will the fit look like, it's not how will we look as compared to last year and the year before. It's how will we look in the years 2000 through 2005.

"So to go and track how much will you actually save is an academic exercise because what you're pairing [sic] to is something that will never happen. So you're just performing an economic exercise saying we would be up here but because of the merger and as the merger happens we're spending down here.

"So we won't be able to track and say the merger caused this difference in 2003. There will be a lot of things that will have caused that difference. One of them will be the merger. There is no intention on the part of the company to keep track, well, this is merger or this was some other efficiency that the company -- expense efficiency the company is trying to bring about. It just gets to be an academic exercise." (Tr., pp. 638-639.)

104. Culp explained the lack of firm commitments to particular levels of investment after the merger, stating that companies require flexibility to make capital investment decisions on an ongoing basis and that it would, in his opinion, be unwise for a company to make binding commitments for investment into future years. Investment should rationally be targeted on a "business case" basis to meet known or anticipated demands which are necessarily changing criteria. Binding investment commitments would deprive companies of the ability to react to priorities and to target investment to specific areas of growth. (Tr., pp. 626-628.)

105. When asked for assurances that Wyoming customers, wholesale and retail, would not be harmed by the merger, Culp could not give hard and fast assurances, stating that there are no post-merger management plans or budgets that could furnish such assurance. He stated his belief that the commitments made by policy level witnesses provided those assurances but that beyond a year 2000 plan which would come into play upon closing the merger, he could give no further assurance from his financial perspective. (Tr., pp. 661-662.) In his Supplemental Testimony, Joint Applicants Exhibit 13, p. 2, Culp stated that we may expect the Applicants to continue to make capital investments in Wyoming as long as regulatory and economic conditions remain reasonable. He stated that this described the functioning of business case analyses which, when made in Wyoming in the past showed the company's commitment to Wyoming. Culp did

not expect to see a change in this business case approach, noting U S WEST's substantial investment in Wyoming. He could come no closer to providing concrete assurances of the company's post merger behavior in Wyoming. (Tr., pp. 671-672.) Culp did however argue, without extending any assurances, that he anticipated that U S WEST would provide better service after the merger than before given that enhanced services such as DSL demand a better quality local network than does basic exchange telephone service, again based on the making of a business case for service deployment. (Tr. Vol. III, p. 666-667.) Culp placed this lack of positive assurances into context, stating that, even if no merger were planned, U S WEST could still not give assurances about the number of employees it would have in Wyoming in the future, about a particular level of capital expenditures in Wyoming for the future, or about particular levels of maintenance budget for Wyoming for the future. (Tr., p. 673.)

106. Dr. William E. Taylor, of National Economic Research Associates, Inc., testified for U S WEST on a number of issues raised by AT&T and McLeodUSA in this case, including the assertion by McLeodUSA that incumbent local exchange carriers may have the ability and the predisposition to circumvent regulatory oversight by providing misinformation about their costs or about the quality of regulated services and that the information "asymmetry" (disadvantage) experienced by regulators will be exacerbated by the merger which increases the size and complexity of the regulated entity. Taylor argued that there is nothing in the nature of the proposed merger that will increase or exacerbate information problems, arguing that the Commission has coped effectively with such information problems in the past through rules, regulations and procedures to minimize the effect of the problem. He stated that this could continue after the merger because the problem would not be "so much greater." He also argued that the size of the overall company's market capitalization and scope of services provided is irrelevant, drawing on examples of other vertically integrated telecommunications companies which are successfully regulated by state commissions. (Joint Applicants Exhibit 15, pp. 6-7.)

107. Taylor argued against the idea that the merger would increase U S WEST's incentive to divert resources in an effort to misinform regulators about its cost structure. He found the proposed merger to be consistent with the pro-competitive intent of the federal Telecommunications Act of 1996 and that it is similar to a number of other recent mergers in the telecommunications industry, which would, in his opinion, tend to foster market entry, innovation and diversification consistent with the purposes of the federal Act. Taylor pointed out that Wyoming statutes and the Commission's rules provide specific protection against subsidizing competitive or unregulated services and that they practically eliminate the ability of U S WEST to change prices through the strategic misallocation of costs. Finally, Taylor argued that it would be "a poor long-run strategy" for the merged company to divert resources away from U S WEST's regulated services. Access to U S WEST's base of 25 million customers is a major benefit of the merger to Qwest, and one not to be squandered. (Joint Applicants Exhibit 15, p. 7-9.)

108. Taylor defended the wisdom of the sharp reduction in U S WEST dividends planned for after the merger, saying that the payment of significant dividends is becoming less common in the industry and that those funds will be reinvested by the company. To him, this should not be alarming because it is necessary for companies in the competitive telecommunications industry to invest in new services. Taylor testified that the dividend policy of a regulated telecommunications company is not a proper concern for regulators since dividends are earnings which belong to shareholders and over which regulators do not historically exercise authority or control. Taylor also stated that it is "very likely" that the merged company will be driven by its interests to invest to provide telecommunications customers with a broad array of both basic and advanced services ". . . and the consequent convenience of one-stop shopping." The merged company will have a "strong incentive to allocate its combined resources judiciously" -- including paying "due attention" to the underlying network and basic services. (Joint Applicants Exhibit 15, pp. 10-12.) Taylor explained the dividend strategy in some detail, stating that:

". . . the cold fact is that the dividend change that's now available because the merger with Qwest, the growth rates that the merger are going to bring about is a positive thing in the sense that more funds are going to become available.

"The Qwest merger is going to be lowering costs and increasing revenues from what U S WEST and its competitors would be doing anyway because that's what customers want, that is, integrated services from a single provider, and whoever ends up serving Wyoming is going to have to compete with integrated firms who already do that.

"The merger is an efficient way for U S WEST and Qwest to do that." (Tr., p. 900.)

109. Taylor argued against McLeodUSA's assertions that U S WEST had service quality problems, noting the generally

good U S WEST service record and its commitment to improvement. He also contended that service quality, although a legitimate concern of regulators, was "simply not an issue" in this proceeding. (Joint Applicants Exhibit 15, p. 12-13.)

110. Taylor contended that future sales of U S WEST exchanges should be considered a normal business practice in a competitive industry and that any such future sales would be appropriately considered for approval at the time by the Commission. There is thus no reason to believe that a future sale would harm the public interest as the assets would remain in service despite a change in ownership. Taylor also argued that sales of exchanges would lead to a diversity of providers in Wyoming and should encourage competition. (Joint Applicants Exhibit 15, pp. 14-17.)

111. Taylor did not believe that arguments could be made in this case based on the SBC/Ameritech merger case because it was an horizontal merger unlike the instant case in which the proposed merger is vertical in nature. Horizontal mergers eliminate competitors but; since U S WEST and Qwest are unlikely to become competitors, the proposed merger does not reduce competition. (Joint Applicants Exhibit 15, pp. 19-21.)

112. Taylor testified that the United States Department of Justice reviewed the merger under the Hart-Scott-Rodino Act to consider the question of whether the merger would lessen competition or tend to create a monopoly. The Department of Justice found that the merger will not lessen competition or tend to create a monopoly. (Joint Applicants Exhibit 15, pp. 20-23.)

113. Taylor noted that McLeodUSA witnesses provided no specific support for the assertion that a vertical merger might create an incentive and the ability for the merged company to discriminate against its competitors. Taylor pointed out that federal and state legal safeguards are in place to prevent such discriminatory conduct. (Joint Applicants Exhibit 15, pp. 24-26.)

114. Taylor testified against claims that the merged company could degrade the quality of access service to competing carriers because such degradation could not escape detection by competitors, regulators or the courts, thus neutralizing any potential market advantage. Interexchange carrier are important customers who, Taylor argued, have alternatives for switched access. He thought that any company which would intentionally degrade the service it offers would risk losing these large customers. Discrimination against rivals in the quality of service would also stimulate market entry and the continuing opportunity to participate in that market because revocation of the merged company's authority under Section 271 of the federal Telecommunications Act of 1996 is a potential penalty for discrimination. (Joint Applicants Exhibit 15, pp. 28-30.) Taylor shared his negative opinion on the possibility that discrimination against other carriers could be so subtle that the target of the discrimination and the regulators and the public might not even know it is going on. He stated that he had

". . . trouble with the idea of indiscernibility simply because the parties that have the biggest incentive and the greatest ability, both technical and everything else, to determine when they're somehow being [victimized] by some process undeservedly to bring it to your attention -- that is, if McLeod finds it difficult to serve to -- to get local residential customers because they can't keep -- U S WEST can't keep appointments or creates some other perhaps more subtle ways of discriminating against them, McLeod is very aware of that, and McLeod has every incentive on earth to bring it first to U S WEST's attention, because that's the first place where these problems get resolved, but failing that, to your attention and to a court's attention if none of that works." (Tr., pp. 928-929; editorial change added.)

115. Taylor testified that the merger would not harm local exchange competition in Wyoming, noting that the FCC rejected the idea that the merger would harm horizontal competition in local exchange markets. The FCC also rejected the idea that potential competition would be harmed by the merger since there is now no significant competition between U S WEST and Qwest in the local exchange, long distance or high speed data markets in Wyoming, so a combination of these firms would not significantly change actual markets in Wyoming. (Joint Applicants Exhibit 15, pp. 35-38.)

116. Taylor argued that placing significant conditions on the merger was unnecessary and stated that the Stipulation provided assurance of the concern and commitment of the merged company ". . . to further develop and upgrade the telecommunications network." He thought that U S WEST should be allowed to use merger savings in whatever ways its customers demand and that customer demand should determine how the combined company invests if it is to succeed. He warned against micromanagement of the merged company. (Joint Applicants Exhibit 15, pp. 44-45.) Regarding the imposition of a service-related penalty structure on the merged company proposed by AT&T, he testified

against them, saying that:

". . . they were to be a significant amount in order to get U S WEST's attention; and then he also made reference to liquidated damages, but I can't swear I would say that's what he [AT&T] thinks they are.

"But whatever they are, as an economist they make me very nervous. The numbers are arbitrary in the sense that they are not the numbers that you would set if you wanted U S WEST to have incentive to provide the same level of service quality to competitors as it provides to itself.

"As an economist, I think that's what you should be looking for when you set penalties, so that behaving in their own naive self-interests they will happily go ahead and their self-interests will coincide with the public interest because they'll have the same incentive net of the penalties they face to provide the same service level to competitors that they provide to themselves."

* * *

"Getting those numbers wrong is an important problem because it's been my experience that telephone companies respond very well to financial incentives. So if you put in penalties that are too small or too large, you're going to have them doing the wrong thing as far as their priorities for investment, for repair, for installation between their wholesale and retail customers.

"By putting penalties in, you're changing how they see from a financial perspective where priorities should lie." (Tr., pp. 905-907; bracketed material added.)

117. Taylor argued that the merged company should not have to make commitments to any certain level of investment in Wyoming, stating that:

"Commitments by their nature are things which may make sense today and may not make sense tomorrow. They're asymmetric in that only one firm in this competitive market would be asked to make such a commitment.

"Committing to investment levels has always scared me because investment is an input. It's not an output. It's not good in and of itself. If U S WEST can provide DS3s to Gillette at less cost than a T1 to Gillette, they shouldn't go ahead and put in the T1 because they have a dollar investment commitment that they have to make." (Tr., p. 932.)

118. Taylor argued against the suggestion by McLeodUSA for a complete structural separation between the wholesale and retail businesses of the merged company, noting that physical structural separation would cause higher costs to provide service because of lost efficiencies and the duplication of functions and resources. He thought that a separation would not prevent price discrimination by the merged company and would not avoid any adverse effects on competition associated with the merger. He argued that structural separation would not be competitively neutral because facilities-based local exchange competitors of the company would not be bound by similar requirements. In his experience, such a requirement would be unique to U S WEST and Qwest in the telecommunications industry. (Joint Applicants Exhibit 15, pp. 46-48 and following pages, generally.)

119. Taylor observed that the FCC concluded, on balance, that the likely public benefits of the merger exceed the likely public costs and that it would be unnecessary and inappropriate to impose the conditions on the merger requested by McLeodUSA. He urged the Commission likewise not to impose conditions on the merger, arguing that the Commission will have the same regulatory oversight and authority over U S WEST's rates and practices after the merger as it does today. (Tr., pp. 62-63.) He did not discuss the FCC's merger approval "condition" of compliance with Section 271 of the federal Telecommunications Act of 1996.

120. At the May 12, 2000, supplemental open meeting proceedings, the Applicants presented the testimony and exhibits of Perry W. Hooks, Jr., U S WEST's director of legal and regulatory affairs relating to wholesale interconnection operations, on the subject of retail and wholesale quality of service. He addressed the Commission's directive that the Applicants provide pertinent, quantifiable service quality measurements and show the adequacy of those measurements of service quality to make it possible to identify the level of service being provided before the merger and illustrate the level afterward to address with particularity the Wyoming merger standard set out in W.S. §

121. Hooks began with a discussion of Applicants commitment to furnish relevant reports that allow comparison of the level of service quality before and after the merger ("reliable identifiers of service quality"), primarily in response to paragraph 5 of the May 9, 2000, order. (See, generally, Supp. Tr., pp. 18-31.) For two years following the closing of the merger, U S WEST will supply, on a confidential basis, quarterly retail service reports including:

a. regarding service provisioning:

i. Percentage Commitments Met, and

ii. Percentage Standard Interval Offered;

b. regarding repairs:

i. Percentage Commitments Missed; and

ii. Percentage Standard Interval Offered;

c. regarding access to U S WEST offices:

i. Business Office Access -- Percentage Not Answered in 20 Seconds; and

ii. Repair Bureau Access -- Percentage Not Answered in 20 Seconds;

d. regarding held orders, excluding "high cost" orders: Total Primary Residential and Business Lines Greater Than 30 Days.

Similarly, for the two years following the merger, U S WEST committed to supply, on a confidential basis, quarterly wholesale service reports primarily addressing the relationship of competitive local exchange carriers to the incumbent U S WEST, subject to the development of certain new data and to changes in reporting requirements during the reporting period, including:

a. regarding Local Interconnection (LIS) trunking -- forecasted (data expected to be available in the quarter following the merger closing):

i. Percentage of Firm Order Confirmations Given on Time;

ii. Percentage Installation Commitments Met;

iii. Average Installation Intervals; and

iv. Mean Time to Restore;

b. regarding the provisioning of unbundled loops:

i. Percentage of Firm Order Confirmations Given on Time (available in July 2000);

ii. Percentage of Installation Commitments Met;

iii. Average Installation Intervals; and

iv. Mean Time to Restore;

c. regarding the resale of residence, business and "Centrex" services -- separately reported:

i. Percentage of Firm Order Confirmations Given on Time (available in July 2000);

ii. Percentage of Installation Commitments Met;

iii. Average Installation Intervals; and

iv. Percentage of Repair Appointments Met;

d. Regarding resale held orders, excluding "high cost" orders: Primary Lines Greater Than 30 Days, separated by Residence, Business and "Centrex" service, where facilities are available (available in August 2000).

Hooks noted that U S WEST intends to provide the various business services when asked for and that the deadlines shown in reports are reporting parameters rather than service goals. (Supp. Tr., p. 29.)

122. Hooks further stated that U S WEST also committed to file with the Commission certain detailed ARMIS (Automated Reporting and Management Information System) data as required to be filed with the FCC and a quarterly Abnormal Conditions Report giving the details of large-scale network outages. The information provided with the Motion to Reopen and the Affidavit of Perry Hooks provides a basis of premerger data and will present quantifiable data for comparison in the future. Hooks stated that the information package should satisfy the Commission's need for relevant information in that:

"It does address the subject of adequacy of service, which is really the experience that the customer has when they do business with a telephone company, and it is addressed in a way that we believe is meaningful to the Commission because it is provided to the Commission in the manner that the Commission has received it previously. We have not tried to change anything particularly." (Supp. Tr., p. 25; see also, Supp. Tr., p. 29.)

Concerning unbundled loop reporting, Hooks cautioned that the amount of activity in Wyoming at this time is limited and that the data reported might not be substantial enough to be statistically significant. (Supp. Tr., p. 31.) He said that the reports, measurements and data, taken together, show an existing level of service to which:

"The Company is committed, if that's the ultimate question you're asking, we are committed to providing the service. We've been here. We will continue to provide the services." (Supp. Tr., p. 43.)

He cautioned that, among the approximately twenty reported measurements, we should expect to see some natural variability, and the degree to which the merged company keeps its Stipulation commitment (Joint Applicants/Consumer Advocate Staff Exhibit 1, paragraph 14) ". . . that the quality and reliability of all such regulated services shall, in all respects, following consummation of the merger be preserved" still requires judgment on the part of the Commission. However, if a report should show a great variation in any service measurement, the company would address the matter with the Commission either through reports or through meetings and explanations. (Supp. Tr., p. 45-47.)

123. Hooks testified that there is some variation among the states in service quality reporting parameters required by regulatory commissions and with further variability driven by such factors as climate, terrain and the local economy. He also assured the Commission that the investment prioritization engaged in by U S WEST deals with capital investment rather than with the deployment of field forces and the service and repair parameters he discussed. (Supp. Tr., pp. 32-34.)

124. Hooks stated that the "high cost" held orders proposed to be excluded from the reports to be furnished by U S WEST after the merger were those which, in Wyoming, would cost more than \$10,000. U S WEST would not normally report on such orders because of their somewhat individualistic character and because the level of customer interaction required was beyond the more routine automated data proposed to be captured and included in reports to the Commission. He stated that most of such high cost orders are simply for service to be provided on long and therefore high cost loops but also noted that other things, such as design services, could account for high costs. (Supp. Tr., pp. 38-40.)

125. On a related subject, at the end of Mr. Hooks' testimony, counsel clarified for U S WEST that, beyond the

additional information in section II.A of the Supplemental Exhibit to the Stipulation that DSL service would be deployed in the Casper exchange "in the near future", the Applicants could offer no other assurances beyond those already presented in the public hearing about the deployment of advanced services in Wyoming. This was offered in response to the request at paragraph 6 of the Commission's order of May 9, 2000, herein. (Supp. Tr., p. 48.)

The Case of McLeodUSA

126. Dr. Bridger M. Mitchell of Charles River Associates, Inc., an economics, finance and business consulting firm, testified for McLeodUSA. Mitchell shared his opinion that the proposed merger would be detrimental to the public interest in that it would increase U S WEST's incentive and ability to circumvent regulation and would also increase U S WEST's incentive and ability to degrade the quality of service provided to consumers and to other telecommunications service providers in Wyoming. Mitchell stated that incumbent local exchange companies have an opportunity to misinform regulators about their cost structure to influence prices for regulated services and also to misinform regulators about the quality of regulated services so as to save on the expense and investment necessary to provide service. (McLeodUSA Exhibit 1, pp. 1-3.)

127. Mitchell stated that both AT&T and McLeodUSA measure the service they receive from various regional Bell operating companies (RBOCs). McLeodUSA found U S WEST's service to be inferior to Ameritech's in duration of out-of-service situations, service restoral and confirmation of firm orders. AT&T found, for 1999, that U S WEST was last or second to last in performance in each of the direct measures of quality (DMOQs) it tracks. It found that the percentage of DS1 services provisioned by the customer-desired due date in 1999 was "less than 60%" compared to "best in class RBOC performance of 98% -100%. Regarding service discrimination, Mitchell stated that McLeodUSA reports that U S WEST has attempted to withdraw Centrex services, imposed discriminatory charges for it and limited changes in Centrex service. According to Mitchell, AT&T complains that U S WEST provides its affiliates with access to blocking information, network locations where facilities are at or near capacity and which central offices are selected for expansion but refuses to give this information to AT&T. He also found that FCC data shows that, in 1998, U S WEST exceeded the other RBOCs, GTE and Sprint in the frequency of complaints to state and federal regulatory agencies per million lines. Mitchell acknowledged that U S WEST announced a substantial service improvement plan in 1999. (McLeodUSA Exhibit 1, pp. 4-6.)

128. Mitchell argued that the merger would increase the incumbent local exchange company's ability to circumvent regulation because it would increase the scope and size of its operations in unregulated areas. He further argued that the merger would increase U S WEST's incentive to divert resources because after the merger it will have an opportunity which did not exist before the merger to invest in Qwest projects. (McLeodUSA Exhibit 1, pp. 7, 9.)

129. Mitchell argued that U S WEST would have an increased incentive to degrade service quality because the merger would increase its incentive to divert resources from quality-enhancing investments in U S WEST's regulated business to Qwest's unregulated business projects and services such as high speed data service. Mitchell also argues that, concurrent with the diversion of resources from in-region regulated business, U S WEST has an increasing incentive to redirect funds to Qwest's mainly out-of-region network and to provide only the minimal level of service quality, including service to competitive local exchange carriers, needed to retain its customers. Mitchell stated that, in his view, Qwest and U S WEST have not provided sufficient information to properly evaluate their claims of operational efficiencies arising as a result of the merger. (McLeodUSA Exhibit 1, pp. 10-15.)

130. Mitchell urged the Commission not to rely on the judgment of federal agencies in examining the merger because our examination would be done "according to a different and more comprehensive standard." He further argued that the FCC's Section 271 "merger "condition" was insufficient for Wyoming purposes because compliance would not remove the above-described incentives to divert resources and act in an anti-competitive manner. (Tr., pp. 15-16.)

131. Mitchell disputed the Applicants' assertions that the merger would result in increased incentives for the merged company to obtain Section 271 approval in the U S WEST region, stating that he believed U S WEST would have some incentives for Section 271 compliance regardless of the merger. He also stated, however, that, to the extent that incentives to seek Section 271 relief are present, they are valuable only in those states where Qwest's network is present, not including Wyoming; and the merged entity would still be likely to divert resources away from Wyoming. (McLeodUSA Exhibit 1, pp. 18-20.)

132. Mitchell recommended several remedies for the potentially adverse effects of the proposed merger, including [i] separation of the ILEC into two operating entities (at least to the level of separating wholesale from retail operations), and [ii] monitoring of service quality for end-users and other carriers with penalties for failure to meet quality standards. (McLeodUSA Exhibit 1, p. 20; and Tr., p. 555.) He did, however, acknowledge that he was not familiar with the particulars of the telecommunications industry in Wyoming and was not familiar with the Wyoming standard of review for utility mergers. Mitchell had also proposed substantially the same conditions on the merger at the FCC which did not adopt them. He acknowledged that the FCC had considered the idea of creating a separate subsidiary for advanced services which could ameliorate the possibility of discrimination regarding terminating access for competing interexchange carriers. However, in the final analysis, the FCC determined that the merger benefits were sufficient to outweigh any need to order the creation of such a subsidiary to address this "potential" discrimination issue. (Tr., pp. 553-560 and 609-610.)

133. Mitchell agreed that the FCC determined that the merger would neither create nor exacerbate issues regarding U S WEST's qualification and performance and found no basis to conclude that the merged company would permit deterioration of its facilities or would use its resources to cross-subsidize unregulated services. (Tr., pp. 560-564.)

134. Mitchell advocated regulatory measures to eliminate the possibility of subtly indiscernible discrimination. He argued that:

"Now, the remedies, if they, for example, are effective penalties may be sufficient incentives that the incumbent firm would not engage in such discrimination. Then you would have a situation in which there would be an effectively equal treatment of competitors and one's own customers acting under a situation with incentives to behave in a neutral way.

"So then we wouldn't observe discrimination, but that would at least in part be because good, effective mechanisms to avert it would have been in place." (Tr., p. 589.)

135. Mitchell argued that the merged company would have some incentive to provide misinformation about costs and quality to the regulators. (McLeodUSA Exhibit 1, p. 3.) He could, however, point to no instances of deliberate misinformation by Qwest or U S WEST but argued that:

". . . in a number of proceedings in the filing of total service long-run incremental cost estimates there has been protracted debate and discussion between regulators, intervenors and U S WEST regarding the accurate and appropriate measures of costs, for example, of unbundled network elements or transport and termination access services." (Tr., p. 590.)

Mitchell acknowledged that total service long run incremental costing combines elements of art with science and that legitimate disagreement was possible. Told that making a false report to the Commission constituted a felony under Wyoming law, he testified that he had no basis to assert that any felonious conduct had occurred. (Tr., pp. 590-591.)

136. When Mitchell testified that he believed the merger could lead to the inefficient allocation of resources, he clarified that the concept he stressed was one of social and not economic efficiency, i.e., the public interest. (Tr., p. 595.) He argued, at McLeodUSA Exhibit 1, p. 14, that:

". . . even if some efficiencies could be realized by joining the two kinds of assets under the same ownership, any beneficial effect would be felt only in the (out-of-region) states covered by Qwest's network -- not in Wyoming."

He admitted upon further examination that, if this were true, it would still not be a basis for denying the merger under the Wyoming statutory standard. (Tr., pp. 596-597.) Finally, he acknowledged that it was fair to state that:

". . . the primary foundation for your testimony is theoretical principles, economic principles rather than your observations of factual circumstances in Wyoming." (Tr., p. 601.)

137. Dr. Sarah J. Goodfriend testified for McLeodUSA, stating that the Commission should reject the merger until Applicants agree to commit to network investments to assure adequate wholesale and retail service quality in the local exchange telecommunications markets in Wyoming. She also advised the Commission to reject the Stipulation because it was, in her opinion, insufficient in scope, specificity and evidentiary basis to assure adequacy of ILEC service after

the merger. She advocated instead the establishment of incentives to assure improvement in service quality and the adequacy of the flow of information to regulators and market participants. (McLeodUSA Exhibit 4, pp. 1-4.) She described the nature of her testimony and the state of the evidence generally presented by the other parties in light of the Commission's task in this case and argued for obtaining more clear cut assurance of what would happen after the merger:

"What I hope to illustrate is that both the Applicants and the Intervenors' testimony, they do, I guess we would agree, all share a predictive element and to be sure if the Applicants were willing to make concrete, tangible and measurable commitments, then I think this element of unpredictability could be resolved; that is, the Applicants would be willing to demonstrate that they can guarantee with baseline and what I consider to be truly incremental investment commitments, as some of the individuals and public citizens yesterday suggested were necessary, and if they did so, I think post-merger investment and, therefore, adequate service quality in Wyoming would be preserved and service quality would be enhanced by this merger.

"But in the absence of these concrete commitments, you're forced to weigh predictions by McLeod, AT&T and the Applicants about the likely outcomes that are unknowable with absolute certainty."

* * *

"After looking at the statute and the evidence in this proceeding, I think you need to receive greater assurance that there will be adequacy to serve the public in all the Wyoming exchanges. And I find it remarkable the Applicants have made sweeping generalizations and broad statements about new services, but oftentimes I want to interject the adjective 'selective' in some of their statements, because I think adequately serve the public means the public generally, not just selectively in exchanges that may happen to meet or exceed their business case for high-growth, high-profit margin invest [sic].

"The evidence shows to me these exchanges are not typically located in Wyoming." (Tr., pp. 734 and 735.)

138. Goodfriend warned of the merged company's ability to use "poor service quality as a weapon of discrimination" against wholesale market entrants like McLeodUSA. She argued that a company giving the assurances made by the Applicants should not be concerned with giving more specific assurances that the interests of customers outside of major profit centers and unaffiliated wholesale customers would not experience discrimination. (McLeodUSA Exhibit 4, pp. 4-5.)

139. Goodfriend thought that the merged company should provide adequate service quality, stating that "quality of service is an evolutionary construct." She agreed that this meant that an examination of service quality requires the Commission ". . . to look at an ever-increasing array of services to adequately consider the subject of service" in telecommunications markets. (Tr., p. 860.) She argued that the idea of adequate service could encompass improvements in service quality:

". . . given that adequacy is an evolving construct, when other areas are having enhanced or some areas within the 14-state area will have enhanced service quality, it seems to me that the Commission can identify adequacy if it chooses as something more than simply the existing standard." (Tr., p. 869)

140. Goodfriend anticipated that regulators would encounter difficulty in assuring sufficient ILEC service quality, in part because of the incentive for incumbent companies to use their inherent information advantage to withhold important facts. Goodfriend testified that state regulatory tools to counter this are measurable minimum quality standards kept revised and current over time, penalties and price cap regulation. In this regard, she noted that, after five years of consideration and four notices of proposed rule making, U S WEST has challenged the Commission's newly promulgated telecommunications quality of service rules based on the cost of compliance and the idea that the proceeding (General Order 73) exceeded our authority. She argued that, in the transition to local service competition, ". . . maintaining an active service quality monitoring function and access to service quality information is even more critical to regulatory effectiveness than before", noting also that the federal Telecommunications Act of 1996 asks state commissions to play an important role in prohibiting discrimination by ILECs against unaffiliated market entrants. This is particularly relevant when low quality service by an incumbent damages the reputation of the new entrant. Goodfriend noted that the Applicants' post merger business plans address services for retail customers but do not

address services for wholesale customers, concluding that this demonstrated a lack of predisposition to treat wholesale customers as valued customers. (McLeodUSA Exhibit 4, pp. 6-15.)

141. Goodfriend argued that tracing dollars and personnel among affiliates in the more complex merged company will be more difficult, agreeing with Dr. Mitchell that the information disadvantage of the regulators would increase and that the merged firm would have increased incentive to discriminate against competitors. (McLeodUSA Exhibit 4, pp. 15-16.)

142. Goodfriend found that the Applicants' assurances that there are no plans for changes in rates, terms or conditions of service in Wyoming, for assignments of assets or plans to reduce investment in Wyoming, are facially correct in that they refer only to the present time. She did not ". . . accept these statements as blanket promises of an enduring future." She also argued that governance of the merged firm would change and emphasize profitable national and international markets, including shifting the management emphasis of U S WEST, which would cease to have a separate corporate existence. Goodfriend asked the Commission to reject the Stipulation and instead adopt McLeodUSA's proposal for incentives, including a "most favored nation" concept, to improve service quality and the quality of the information available to the Commission (and new market entrants) to deal with the described challenges to adequate wholesale service quality and regulatory effectiveness in Wyoming after the merger. (McLeodUSA Exhibit 4, pp. 16-21 and 23-26.) She noted, however, that some of the potential problems going forward could be of an anti-trust nature, actionable by entities competing with the merged company but beyond the jurisdiction of the Commission. (Tr., pp. 877-878.)

143. Goodfriend noted that Qwest is a relatively new company growing strongly but having small earnings compared U S WEST. She believes that Qwest may divert U S WEST's cash flow from operating budgets and capital budgets to Qwest projects. (Tr., pp. 741-744.) She also found an increased incentive for Qwest to redirect U S WEST capital and operating budgets in the possibility that certain merger-related capital expenditure synergies might not occur and the likelihood that the merged company would draw on U S WEST monies as a substantial source of capital for its expansion plans, although the business plans reviewed might not be final. (Tr., pp. 749-760, generally, this portion of the transcript contains highly confidential material and was sealed by order of the Commission; and Tr., pp. 802-805 and 851-855, also confidential and sealed by the Commission.)

144. Goodfriend discussed the impending diversion of most of U S WEST's dividends from the shareholders to internal purposes of the merged company. She thought that some of that money would go to the public switched network but cautioned that:

". . . there will be parts of the United States and parts of other areas where Qwest is doing business that will see an extremely enhanced quality and quantity, scope, offerings, product offerings of service in what has been typically Qwest's target markets which are large metropolitan areas, both nationally and internationally." (Tr., p. 864.)

She acknowledged that Wyoming might see a portion of that investment but observed, regarding the merged company, that:

"From their business perspective, I have no reason to believe that in their opinion that absent any conditions -- I mean, their position is that there shouldn't be any conditions imposed. And under that view, I think -- and they have testified that they will be giving everywhere * * * their allocation of good service. That is not my view." (Tr., pp. 864-865.)

She thought that the merged company would tend to be highly selective in making further investments in the local public switched network, favoring larger and more profitable markets, saying that ". . . there will be elements there that will be the ones most subject to the lack of enhancement of service quality going forward because of investment decisions in personnel and capital." (Tr., pp. 867-868.) She nevertheless agreed that the merged company would have some incentive to keep the local service portion of its business healthy although the incentive would not be as great in rural areas. (Tr., pp. 872-873.)

145. Goodfriend conceded that the merger would not necessarily raise the combined company's cost of capital, even if it might attract a different kind of investor than the traditional utility might. (Tr., p. 866.)

146. Stacy Stewart, Vice President for ILEC Relations, testified for McLeodUSA. Stewart stated that McLeodUSA offers service in Wyoming through resale of U S WEST's Centrex Plus service and that it currently provides service to

12,784 business lines and 5,263 residential lines in the state. McLeodUSA also has 105 miles of fiber in Wyoming through which it provides services other than local exchange service. It currently has 21 employees in Wyoming and provides 191,000 telephone directories to Wyoming residences and businesses. It is one of the largest customers of U S WEST in Wyoming as well as being a competitor. (McLeodUSA Exhibit 3, pp. 1-2.)

147. Stewart noted that McLeodUSA depends on U S WEST for many services and interconnection; and he expressed a concern that the merger would result in a decline in the U S WEST presence in Wyoming, degrading U S WEST's service and, in turn, degrading the service McLeodUSA could offer to its customers while lessening the prospect for obtaining an interconnection agreement with U S WEST. He expressed reservations similar to those of other McLeodUSA witnesses regarding the lack of future plans for the merged company and the seeming incentives to de-emphasize the local service business and argued therefore that conditions should be placed on the merger, described in detail at Exhibit A to Stewart's testimony, McLeodUSA Exhibit 3. Stewart's suggestions included asking the Commission to require the Applicants to fulfill defined conditions designed to prevent harm to CLECs, make firm commitments to investment in wholesale and retail service quality, permit interconnection on terms comparable to those adopted in other states and to honor existing orders, contracts and commitments with CLECs. He stated that McLeodUSA did not oppose the merger, but only wanted the Commission to impose conditions to prevent the exacerbation of problems it perceived concerning U S WEST. (McLeodUSA Exhibit 3, pp. 2-7; and Tr., p. 687.)

148. Stewart was apprehensive that, after the merger, the company would engage in the widespread sale of its Wyoming exchanges which he termed generally "second, third and fourth tier markets." Sales of exchanges in other states have resulted in problems with the Centrex service which McLeodUSA uses to provide local service due, in part, to the purchasers' inexperience with Centrex, and the lack of operations support systems. In some cases, purchasers of U S WEST exchanges do not even support Centrex resale. Stewart opined that competition served Wyoming well and thought that the sale of substantial numbers of exchanges would eliminate McLeodUSA's Centrex market entry strategy, dealing a setback to the emergence of competition in Wyoming (including eventual facilities-based competition by McLeodUSA) and hastening the reemergence of U S WEST as a monopoly provider of local exchange service. Stewart would limit U S WEST's ability to sell more than one-fifth of its exchanges in Wyoming before 2005. Stewart again advocated placing conditions on the merger, including guarantees of the continued operation of U S WEST, appropriate investment, service performance measures and penalties for failure to provide quality service, but acknowledged that any proposed additional sales of U S WEST exchanges in Wyoming would have to be examined separately by the Commission in other proceedings. (McLeodUSA Exhibit 3, pp. 7-9; and Tr., pp. 687-688 and 717.)

149. Stewart backed up the contention that diminished service quality could result from the lessened incentive to invest in less attractive local service markets by noting McLeodUSA's past experience with U S WEST service problems and documentation of the existence and extent of the problem in parts of the 14-state U S WEST region. Problems included "the inability to keep up with telecommunications industry norms" in trouble reports, held orders and consumer complaints, including an extensive list of particular problems, a number of which, although they pertained to U S WEST, did not pertain directly to U S WEST's service in Wyoming. Stewart also thought that the Commission should address investment issues relating to wholesale services separately from retail services because McLeodUSA is dependent upon U S WEST, as the incumbent service provider, for the services necessary for McLeodUSA to enter new local exchange markets. (McLeodUSA Exhibit 3, pp. 10-16; and Tr., pp. 697-701.)

150. Noting the relatively small size of the Wyoming telecommunications market and the great amount of effort which would be required in attempting to obtain a negotiated interconnection agreement in Wyoming, which McLeodUSA finds necessary for it to evolve as a successful competitor in Wyoming, Stewart advocated that the Commission condition approval of the merger on U S WEST and Qwest adopting a regional most-favored nations policy for Wyoming interconnection and resale agreements, under which, any competitive local exchange carrier in Wyoming could adopt in whole or in part the terms of any arbitrated or negotiated interconnection agreement entered into by U S WEST or the merged company anywhere in its 14-state region, with the exception that ". . . prices would be unique to this state." Stewart also acknowledged that a clause placed in a contract under a most favored nations procedure would still be subject to approval by the Commission as part of its review of the overall agreement. (McLeodUSA Exhibit 3, pp. 18-19; and Tr., p. 708.)

151. Stewart was additionally concerned that the merged entity should be required to honor its existing contracts with McLeodUSA. Stewart testified that the Stipulation does not adequately address the concerns raised by the merger, in part because it contains no enforceable provisions regarding the merged company's pursuit of compliance with Section

271 of the federal Telecommunications Act of 1996 or with respect to the related investment necessary to achieve Section 271 compliance. (McLeodUSA Exhibit 3, p. 20.)

The Case of AT&T

152. Thomas C. Pelto, AT&T's Law and Government Affairs Vice President for the Western Region, testified as the AT&T employee in charge of development and implementation of policy in the 14-state U S WEST region. He testified to AT&T's customer relationship with and reliance on U S WEST for local exchange access for long distance service and for local interconnection services to provide Digital Link -- a local service -- in Wyoming. He characterized U S WEST's service as "rather erratic and poor quality" and stated that AT&T intervened in this case to prevent lower service quality that could damage AT&T's ability to continue its business in Wyoming. He stated that AT&T did not seek to block the merger but to ensure that it resulted in a better company. He suggested that the Commission should obtain specific commitments rather than taking the word of the company about the continued ability to serve the public. (AT&T Exhibit 1, pp. 1-3; and Tr., p. 407.)

153. Pelto gave the details supporting his belief that a merger without conditions could have a bad outcome for Wyoming:

"Wyoming is not going to be high on the list of the merged entities' priorities.

"First of all, Qwest has no facilities here.

"Second, they have no employees here.

"Third, none of the major markets that Qwest has identified are located in Wyoming.

"Fourth, and here I'm going to be careful, but there are very few high priority wire centers according to the U S WEST classification scheme in Wyoming.

"In sum what I see here, absent some action from this Commission, is a recipe for neglect. And, quite frankly, I've heard nothing coming forth from the Applicants so far in their testimony that changes that. They've expressed hopes, beliefs, expectations, opinions, dreams, but when we have asked them to reduce those to specific commitments * * * that's where the talk stops and the hopes and dreams and expectations are all we get. I think this Commission deserves more." (Tr., p. 412.)

154. Pelto expects the merged company to reduce employee levels in Wyoming and notes that it does not have plans to provide new advanced services in Wyoming or to spend merger synergy savings in Wyoming as it does in certain other states. He suggests that the post-merger company will target large metropolitan areas for new investment and will support that investment from U S WEST's revenues. A reallocation of resources away from Wyoming would affect the ability of the merged company to serve in the state. (AT&T Exhibit 1, pp. 4-6.)

155. Pelto argues that nothing in the Application, in the Stipulation or the data responses provided by the Applicants shows that Wyoming is a priority for the deployment of advanced services or for the investment necessary to secure Section 271 approval. Mr. Pelto also finds it significant that responses to data requests and the Stipulation do not identify a specific synergy savings to Wyoming or contain commitments for new service deployments or service quality in Wyoming. (AT&T Exhibit 1, pp. 7-8.)

156. Pelto expressed his view that the construction of new (WEN-related) interoffice facilities in northern Wyoming should not be viewed as U S WEST investment since independent companies will make a significant part of that investment and lease facilities to U S WEST. Additionally, he believes that the promised construction of the Kemmerer to Bondurant fiber optic link is ". . . little more than U S WEST executing its existing wire center priority plan." Pelto pointed to specific instances of orders held for substantial periods of time, including ones in northern Wyoming as well as in Cheyenne. Pelto believes that there will be no relief for AT&T or its customers any time soon and that Qwest will have no incentive to improve U S WEST's performance in Wyoming, given its expressed attitude toward local service priorities and the fact that Wyoming would rank as a low priority. The merged company's incentive to devote substantial resources to seeking an interconnection agreement with AT&T in Wyoming will also not be as great.

(AT&T Exhibit 1, pp. 8-12.)

157. Pelto testified to his belief that U S WEST's network will be allowed to continue to deteriorate following the merger from lack of adequate investment, while the Applicants address higher priorities, even in face of the fact that Wyoming will continue to depend on the U S WEST system very heavily for "years to come." He also believes that there is a threat that the Applicants will make additional sales of local exchanges in Wyoming after the merger; and, he states, retail customers of smaller companies enjoy a diminished range of calling plans because independent companies require higher billing and collection charges than larger companies. In Wyoming, for example, customers of AT&T in the territories of larger companies have nine calling plan options while its customers in the territory of a smaller independent telephone company have only four. (AT&T Exhibit 1, pp. 13-15.)

158. Pelto testified that he believed AT&T and its Wyoming customers, and wholesale customers in general, were largely ignored by U S WEST in negotiations for the Stipulation in this proceeding. He also testified that the Stipulation does not provide adequate assurances regarding service quality or interconnection, noting that it merely repeats little more than the obligations which U S WEST already has under the federal Telecommunications Act of 1996. He believes the language of the Stipulation ". . . confirms that the Applicants still refuse to make any substantial commitments or disclosures such that one can confirm that there will not be an adverse impact . . . with respect to how the post merger Qwest will operate." (AT&T Exhibit 1, p. 17-18.) Therefore, Pelto argued that a series of conditions should be attached to the merger to make certain that the merger does not negatively impact Wyoming. His recommendations include [i] unconditional requirements for incremental investment, [ii] a two year price cap on essential services including special and switched access, [iii] "most favored nation" requirements regarding the provisions of any interconnection agreement or SGAT from any place in the 14-state U S WEST region (except for rates, which should be local), [iv] a two-year moratorium on future sales of exchanges until the Commission can assess the result of the proposed sales to Citizens Telephone, and [v] specific requirements for wholesale quality of service standards and remedies. Although termed "modest", one of the remedies, for failure of on time performance by U S WEST, could result in a payment of \$7,200,000 per year to AT&T from U S WEST and would represent a large amount in relation to the amount of AT&T's business in Wyoming. They were not derived mathematically but were suggested as being sufficient in size to "get U S WEST's attention and to cause them to comply." (AT&T Exhibit 1, pp. 19-20, and Pelto Exhibit D attached thereto; and Tr., p. 467-470.)

159. Pelto testified that none of AT&T's proposed conditions ". . . should cost the merged entity a single dime if they have any serious aspirations whatsoever about complying with the standards required for interLATA relief" (i.e., obtaining Section 271 authority in Wyoming). Pelto argued that none of his proposals were:

". . . the slightest bit inconsistent with the beliefs, the expectations, the hopes, the dreams or the opinions that have been expressed by the Applicants' witnesses during the course of this hearing. The only difference is that what we propose would be binding, enforceable and subject to sanctions if the Applicants failed to comply." (Tr., p. 417.)

160. Pelto agreed that there were other proceedings and other dockets within which AT&T's concerns could be addressed although he did not believe that they would be capable of yielding the rapid solutions which commitments in the merger proceeding could produce. He also admitted that, if the Commission allowed the merger to go forward and a problem developed later, it could still deal with it, albeit not as easily. (Tr., pp. 453-454 and 481.)

The Consumer Advocate Staff Case

161. Lou Ann Westerfield, a rate analyst at the Commission, testified for the Consumer Advocate Staff, recommending approval of the merger if done on the terms of the Stipulation. Westerfield testified that adoption of the Stipulation would meet the statutory test of W.S. § 37-1-104(a) and that, because of the Stipulation, the Commission could find the merger to be in the public interest. She believed that the Stipulation offered substantial benefits to U S WEST's Wyoming customers. Westerfield testified to the extent of the Consumer Advocate Staff review of the merger through examination of the Application and supporting materials, proxy materials provided shareholders of the merging companies and voluminous discovery responses, including materials posted to a U S WEST discovery website accessible by all of the states examining the merger. She explained that the Consumer Advocate Staff had met over twenty times with the Applicants to discuss issues in the case and to negotiate the Stipulation, also noting that other parties to the proceeding were present at some of the meetings. The Consumer Advocate Staff also separately discussed the case with intervenors AT&T and McLeod, discussed the case with the staffs of other state commissions engaged in

reviewing the merger and reviewed testimony and stipulations in other state proceedings. Westerfield stated that the Consumer Advocate Staff addressed the matter because it believed that the Application ". . . lacked sufficient evidence to support approval under Wyoming statute because of its vagueness and absence of any commitments to customers." (Consumer Advocate Staff Exhibit 1, pp. 1-3 and 7-9; and Tr., p. 955.)

162. Westerfield stated that the Consumer Advocate Staff's concerns included that U S WEST might leave the state after the merger, and that they unsuccessfully sought commitments for it to stay for even a term of one year, which it declined to give, citing the "volatile nature of the telecommunications industry at this juncture." It was also concerned about the possibility of the diversion of capital from Wyoming, service quality problems, the merger's impact on competition in Wyoming, how Wyoming customers would see synergy benefits of the merger, whether affiliate transactions would harm consumers and how the merged company could be successfully monitored. (Consumer Advocate Staff Exhibit 1, pp. 10-12.)

163. Westerfield included in her reasons for reaching the Stipulation the fact that U S WEST is no longer rate of return regulated in Wyoming, thus making the options of rate reductions to reflect savings, earnings reviews, performance based rate making and other initiatives grounded in traditional or innovative rate making principles inapplicable in this proceeding to insure benefit to Wyoming rate payers from the proposed merger. Westerfield also noted that separate proceedings concerning quality of service rules and interconnection are still pending and unresolved before the Commission and the courts to which U S WEST has appealed. (Consumer Advocate Staff Exhibit 1, p. 12-13.)

164. Westerfield identified three major benefits contained in the Stipulation as [i] the commitment to loop the statewide network through the construction of fiber facilities from Bondurant to Kemmerer; [ii] the "price cap" commitment not to file price increases for basic residence and business services (confirmed as excluding such services as Centrex) until January 1, 2002; and [iii] the fact that the Stipulation will bind any successor to U S WEST or Qwest in Wyoming, including the case of a possible merger by the new company with yet another telecommunications entity, such as Deutsche Telekom. In Westerfield's view, these provisions offer benefits to customers statewide. The new commitment to the Kemmerer-Bondurant fiber optic construction project and the existing commitment to the WEN project demonstrate a continuing commitment to invest capital in Wyoming infrastructure. The commitment to the provision of ATM service in Sheridan and Gillette also helps. Westerfield points out that operational savings related to the merger which do occur would be reflected in the future in the total service long run incremental cost of regulated services in Wyoming. (Consumer Advocate Staff Exhibit 1, p. 14-15; and Tr., pp. 972 and 1010.)

165. Westerfield found benefit in the Stipulation commitments regarding costs related to the merger, including commitments by the Applicants: [i] that transaction and goodwill costs will not be included as inputs to future TSLRIC determinations; [ii] to exclude non-recurring transition costs related to the merger from future TSLRIC determinations; and [iii] that cost of capital for total service long run incremental cost purposes will be based on U S WEST's cost of capital adjusted to eliminate any adverse effects of the merger. Economic lives to be utilized in 2000 TSLRIC filings will be those currently approved; and any future changes will be put in place only upon U S WEST's affirmative showing that changes are justified. She also noted that the Stipulation provided that it is binding on successors to U S WEST, including the obligation to continue to file TSLRIC studies. (Consumer Advocate Staff Exhibit 1, pp. 16-18.)

166. Westerfield also explained that the Stipulation addresses the Consumer Advocate Staff's concerns with the transition process by requiring U S WEST to file a report with the Commission within 180 days after the closing date of the merger describing how the merger is being implemented with an additional similar report being due within one year after closing of the merger. The Applicants are also required to advise the Commission of any material modifications that directly affect Wyoming regulated operations or customers which occur within three years of the closing of the merger. (Consumer Advocate Staff Exhibit 1, p. 20.)

167. Westerfield explained the Stipulation provisions which address affiliated entity transactions and the cross subsidization problems they could present. The Consumer Advocate Staff sought ongoing information about affiliate transactions and protection from the risks of deregulated and foreign investments which Qwest and its subsidiaries are already making. In the Stipulation, U S WEST agrees to maintain appropriate accounting and structural separations between its Wyoming regulated telecommunications business and any division of U S WEST or any affiliated entity which engages in unregulated businesses or investments in foreign ventures. U S WEST agrees that it will abide by the prohibitions against cross subsidization in the Wyoming Telecommunications Act of 1995. It also, Westerfield noted, agreed to abide by and comply with all FCC accounting requirements. Finally and to Westerfield, most importantly, the

parties to the Stipulation agreed that the Commission will have access to all books and records of the merged company necessary to track affiliate transactions and to assure that charges involving affiliates are booked at appropriate levels. The Consumer Advocate Staff believes that this provision gives the Commission the ability to satisfactorily examine and verify the appropriateness of U S WEST's Wyoming operations doing business with any affiliated entities ". . . under the new Qwest Communications International, Inc., umbrella." Westerfield also stated that, under the Stipulation, any successor or assign of U S WEST will be bound by its terms and that the Stipulation's benefits to U S WEST's Wyoming customers are "guaranteed" to occur regardless of future transfer of ownership of any of U S WEST's Wyoming facilities. (Consumer Advocate Staff Exhibit 1, pp. 21-22.)

168. Westerfield testified, with respect to the merger conditions proposed by AT&T and McLeodUSA, that although they might be appropriate for purposes of negotiation, they are not necessary for a finding that the merger will not adversely affect the ability of U S WEST to serve the public. She noted that the Stipulation does not limit ". . . the legal rights and remedies available to AT&T and McLeodUSA with regard to interconnection, quality of service, Section 271 filings or any other future issues, including future sales of exchanges that might appear before this Commission or any court of law." Ms. Westerfield testified that penalties suggested by AT&T and McLeodUSA do not satisfactorily address quality of service issues. She also found concerns regarding the difficulty of regulating U S WEST following the merger because of the larger size and scope of the resultant entity were misplaced, arguing that the Commission and its staff had wide experience in such matters relating to multistate utilities having a number of affiliates in which affiliate transactions were common. (Tr., pp. 973-977.)

169. Westerfield argued that commitments to a fixed level of spending would be unwise because there are many variables which affect such matters and flexibility is required. She noted that efficiencies should be allowed to affect the level of spending and noted that emergencies occur occasionally. Market demand and new services must also be taken into account. (Tr., pp. 977-978.)

170. Westerfield testified that sales of exchanges in the future should not generate concern. The U S WEST investment in Wyoming, if sold, would not be enough to cover Qwest's anticipated capital spending; there is no basis on which to assume that a new provider would be worse than U S WEST; and the Commission's authority to review and approve such sales would presumably guard against the occurrence of harm. (Tr., p. 979.)

171. Westerfield addressed the conditions that Mr. Glass suggested for Commission consideration and found them generally to be outside of the purview of the merger proceeding or, as in the case of a forced divestiture of portions of the WEN network, "clearly illegal." She noted that regulating how U S WEST advertises and sells its services would constitute inappropriate micromanagement. (Tr., pp. 981-984.) Westerfield testified that, in her view, the Stipulation addressed the issues Mr. Di Rocco of the Wyoming Business Council brought before the Commission, except for the lack of competition resulting from absence of substantial demand in Wyoming markets. Ms. Westerfield noted that it would be very difficult or impossible to create demand where there is none and did not believe that this point could be effectively addressed. Regarding infrastructure forecasts, she suggested that it was the customers and other companies which should be furnishing U S WEST with those forecasts to assist it in meeting needs. Concerning the possible future sale of Wyoming exchanges, she did not believe that the prerogatives of buyers and sellers should be inappropriately limited in this proceeding. Concerning confidential "pink sheet" business planning documents, nothing therein caused Westerfield to change her support for the merger, with the Stipulation attached, and some of the information reinforced her conclusions after the fact. (Tr., pp. 984-991; and Tr., pp. 1049-1050 and 1069-1070, which discussed highly confidential material and was therefore sealed by the Commission.)

172. Westerfield agreed that the best way to achieve the maintenance of the quality of service is to measure it. (Tr., p. 1080.) She testified with respect to the diversion of capital away from Wyoming that the issue would exist whether there is a merger or not because Wyoming constitutes such a small fraction (on the order of 2%) of U S WEST's business, noting that no party produced evidence to show that U S WEST operations and equipment in Wyoming will "be left in a state of neglect." (Tr. pp. 1089-1090.)

173. Westerfield stated that she believed that mergers involving companies providing utility services to the public should produce some benefit to the public but acknowledged that the Wyoming merger standard did not allow the Commission to insist on such benefits. The benefits obtained by way of the Stipulation were therefore more than could be gotten otherwise. (Tr., pp. 1104-1105.) Concerning indiscernibly subtle harm which might be caused by the merged entity, Westerfield stated that:

". . . the way to compete in my view is better, faster, smarter. I think that the indiscernible harm theory indicates turning toward furtive or nefarious activities. If a corporation the size of Qwest could only be competitive against AT&T or McLeod by constantly cheating in some way that couldn't be detected, which I'm still having a little trouble with, then I think that that company would not be around very long." (Tr., p. 1110.)

174. David L. Walker, a Commission technical advisor, testified for the Consumer Advocate Staff. He stated that, in opinion, U S WEST has, since 1990, made considerable strides in upgrading its system to full digital switching and digital interoffice capability in Wyoming, although northern Wyoming was served with digital radio. Simple complaints about voice grade service have "essentially vanished" but newer complaints, many relating to interoffice data capacity, have surfaced. The ability to loop the system to create redundancy is also an issue of current concern. (Consumer Advocate Staff Exhibit 2, pp. 3-4.) The Stipulation addressed some of his concerns. He testified that the fiber connection from Kemmerer to Bondurant will provide fiber service to Jackson and Moran and would provide a loop proposed to be closed to Casper with redirection of existing digital radio, which is an important reliability enhancement related to the WEN network project which will help to avoid widespread outages in the event of a fiber cut at a sensitive location in the loop network. Additionally, U S WEST has committed, as part of the WEN contract, to provide fiber based service to Gillette-Wright, Sheridan-Buffalo, and Cody-Powell. Although, after the enhancement, a fiber cut could still result in a service cut off to Gillette and Wright, such a cut would not cause service to the Sheridan-Buffalo, Cody-Powell and Riverton-Lander areas to be lost. (Consumer Advocate Staff Exhibit 2, pp. 3-7.)

175. Regarding the possible future sales of Wyoming exchanges, Walker notes that the Stipulation does not restrict future sales of exchanges except for the existing legal requirements that the technical, financial and managerial resources of the potential purchaser necessary to provide safe, adequate and reliable service must be shown. Walker noted that the Stipulation does not include any requirement for continuing service in Wyoming or for a continuing presence in any specific Wyoming exchanges because Applicants stated that no such commitments could be made, given the dynamic state of the telecommunications industry. (Consumer Advocate Staff Exhibit 2, pp. 7-9.)

176. Walker additionally testified that the Stipulation does not contain any provisions concerning service quality. He notes, however, that retail service quality issues are being considered in other dockets including General Order 73 which U S WEST has appealed to court. He acknowledged that wholesale quality of service was being addressed in interconnection proceedings but that, otherwise, the provider-to-provider rules are under active development. He notes that the Stipulation acknowledges that infrastructure additions should generally enhance service quality. (Consumer Advocate Staff Exhibit 2, pp. 8-10.) Walker clarified that:

"It was CAS's view that there were appropriate proceedings and rules to address quality of service issues and to institute into the stipulation a provision on quality of service would duplicate and possibly complicate future actions on service quality." (Tr., p. 1134.)

177. Walker began his work in the case with a "wish list" of eight specific areas of service enhancement in which he hoped to receive some commitment; but he testified that he was, in general, unable to obtain commitments for the listed items. (Tr., pp. 2-3.) Walker testified that, although the Stipulation does not contain specific requirements for roll out of new services, the Applicants have agreed that they will, for the four years following closing of the merger, advise the Commission annually of new service availability and plans for future roll-outs. Walker further noted that the Stipulation also provides a U S WEST commitment to provide ATM capabilities to Gillette and Sheridan. (Consumer Advocate Staff Exhibit 2, pp. 11-12.)

178. Walker explained the makeup of his "wish list," including, for example, broadband to each exchange, which would support videoconferencing, and digital subscriber line service to 75% of customers because it is a new service "that will be a moneymaker to all utilities . . ." He expressed serious concerns about the future welfare of utilities which are not involved in DSL. (Tr., pp. 1136-1144.) He noted that U S WEST makes many measurements of service quality for its own purposes which are not addressed in the Stipulation or in the Commission's rules with respect to which the Commission would not be able to assess any changes. Walker shared his opinion that analog carrier and outside plant shortcomings are one of the big problems to be faced if "U S WEST or any other operator" is to provide digital subscriber line with today's technology. The subject was not addressed in the Stipulation. (Tr., pp. 1155-1156 and 1161.) He also noted that the items on his "wish list" would not change whether or not the merger was before the Commission. (Tr., p. 1170.)

179. Walker also testified at the May 12, 2000, supplemental open meeting proceedings. He participated in discussions with U S WEST concerning the service quality monitoring proposals they put before the Commission on May 12, 2000, stating that that it would give the Commission ". . . the ability to judge service quality in a general and, in some instances, specific senses going into the future." It provides both an historical baseline, where statistics are available, and the ability to ". . . compare those exact numbers number for number into the future." (Supp. Tr., pp. 50-52.) He testified that the reports would be useful:

". . . with the one caveat that U S WEST/Qwest has not changed the basis upon which they are measuring them now and does not change the formula with which they are calculated, I believe that provides you the same measure, the same element going into the future." (Supp. Tr., p. 57.)

His level of comfort with the ability to monitor retail business was greater than it was with respect to the wholesale dimension. (Tr., p. 57.)

180. Regarding high-cost held orders, Walker stated that the level of high cost was determined by a formula by U S WEST, resulting in a \$10,000 threshold in Wyoming. As long as the criterion does not change going forward, the definition of a high cost order would remain comparable. Walker also testified that those high-cost orders were not simply orders in which long distances from the central office drive costs up. They also included situations in which more sophisticated services such as T-1 lines were required or where, for example, a larger order would require the regenerating of a feeder trunk all the way back to the central office. He thought that such held orders should be a concern to the Commission with respect to the level of service offered by a telecommunications company. (Tr., pp. 54-56.)

181. The Consumer Advocate Staff also presented evidence through the testimony of Mr. Michael W. Korber, a Commission rate analyst. Korber explained that there are six basic reporting requirements in the Stipulation. The Applicants have committed to file annual reports with the Commission providing the status of projects involving the construction of interoffice fiber facility between Bondurant and Kemmerer and the provisioning of asynchronous transfer mode (ATM) capabilities in the Sheridan and Gillette exchanges. The Applicants also committed to provide, for four years, an annual report on incremental capital investment and operations and maintenance expenses expended or incurred by U S WEST in Wyoming, with sufficient scope and detail to give the Commission an ability to evaluate U S WEST's ongoing commitment to provide quality services in Wyoming. U S WEST must also file reports regarding merger transition and implementation with the first report due 180 days after the closing date of the merger, a second due one year after the closing with updates to be filed for three years following the merger regarding modifications which materially affect their Wyoming regulated operations or customers. Finally, U S WEST committed to report annually to the Commission regarding new services anticipated in Wyoming. (Consumer Advocate Staff Exhibit 3, pp. 7-10.) Korber opined that the merger transition reports would be considered by the Consumer Advocate Staff to be compliance filings in this merger proceeding and available to all of the parties. He also did not believe that the Stipulation reporting requirements themselves would require reports of held orders. (Tr., pp. 1203-1205.)

182. Korber stated that the Stipulation addresses the customer complaint process and contains the assurance of U S WEST that it does not contemplate changes to the current process which is agreed to be efficient and effective. The Stipulation also provides that U S WEST and any successor will honor and be bound by all existing U S WEST interconnection agreements relating to Wyoming. (Consumer Advocate Staff Exhibit 3, pp. 10-11 and 13-14.)

183. Korber advocated approval of the merger noting that it, with the Stipulation, would be functionally and administratively transparent to U S WEST's Wyoming customers and that Wyoming customers will continue to be provided services pursuant to the existing price schedules, terms and conditions, operating authorities and tariffs of U S WEST as they exist today. (Consumer Advocate Staff Exhibit 3, p. 15.)

Statements by Members of the Public

184. Roy Page, a retired U S WEST employee, voiced his concerns about the future administration of the U S WEST retirement fund, including whether benefits would be decreased by the merged company. Counsel for U S WEST read into the record relevant language from the joint motion withdrawing the intervention of the Retirees to the effect that any rights the retirees may have regarding any entitlement to pension or other retirement benefits ". . . will not be

enhanced or prejudiced . . ." as a result of the merger proceedings. (Tr., pp. 83-89.)

185. Paul Guyot of Cheyenne, Wyoming, an early Mountain Bell retiree and communications consultant, noted that the Kemmerer to Bondurant fiber optic project was in the interest of Qwest because of the nature of the Jackson area market in Wyoming and further cautioned the Commission to obtain specific assurances of future conduct based on his experience as a retiree. He contrasted the investment attitudes of smaller companies with that of U S WEST and urged the Commission to use this case as its opportunity to protect Wyoming consumers and retirees. He noted that \$6 billion in retirement funds would not be protected by the federal ERISA law from being applied to other purposes. (Tr., pp. 196-201.)

186. JoAnn Cole of Cheyenne, Wyoming, appeared on behalf of U S WEST retirees, as the wife of a long time Mountain Bell/U S WEST employee who had passed away. She expressed concerns with the increasing cost of premiums for health benefits as well as other coverage and coverage diminution issues under the retirement plan and asked that assurances from U S WEST be committed to writing. (Tr. Vol. I, p. 201-204.)

187. Senator John Hanes, of Cheyenne, Wyoming, appeared in the capacities of private citizen, attorney, State Senator and as a member of the Senate Corporations, Elections and Political Subdivisions Committee (and a former member of the analogous House committee). Senator Hanes supported the proposed merger, noting that mergers and consolidations are becoming common in the telecommunications industry in the United States and internationally. He summed up his position on the merger, stating:

"I think we are concerned, very deeply, about the quality of telecommunications service that's provided to our citizens. I think in the event the merger goes through that we would have sufficient ways of making sure that that happens and that we do have quality communications opportunities for everybody in the state.

". . . the standard that we have to look to is whether or not this merger will cause any harm to the citizens of Wyoming and particularly the telephone users.

"I don't think that any harm at all will occur to the citizens. If fact, I think there will be benefits that flow from all of this.

"I think that through the merger access to the capital markets, larger capital markets, the strength of arrangements elsewhere is going to bode well for the people who use the telephone system in the state of Wyoming, . . ." (Tr., p. 310.)

Senator Hanes further expressed his hope that the Commission would not add to the order in this case ". . . things that really the law didn't contemplate or didn't provide for, . . ." (Tr., pp. 308-312.)

188. Joseph Di Rocco, Chief Financial Investment Officer of the Wyoming Business Council, who is also responsible for infrastructure matters concerning telecommunications and electrical transmission, stated that the Wyoming Business Council generally supported the proposed merger. He stated that the Wyoming Business Council has:

". . . recently completed a telecommunications strategic plan for Wyoming which has identified certain issues which we feel are relevant to this hearing. Those issues specific to the hearing are the need for more high-speed data access within the state; limited infrastructure redundancy within the state; limited capacity and service availability; limited capacity over existing microwave; the lack of advanced telecommunications services offered, such as DSL, ISDN and others, especially outside Cheyenne and Casper; the lack of competition as a result of the absence of a substantial demand to markets."

"To the extent that the merger conditions are drafted by the Commission to address these issues where relevant and if relevant, it would support our economic development efforts." (Tr., pp. 314-315.)

He also stated that, to the extent possible, the Commission should consider imposing conditions or agreements because the likelihood that there would be less emphasis on Wyoming would be greater. Because the likelihood that more Wyoming exchanges will be sold will increase, he also expressed the hope that the Commission could frame merger conditions to lessen the negative implications of future sales of Wyoming exchanges for residential, business and

wholesale customers such as, for example, ensuring that purchasers assume the obligations of the incumbent company, that local competition is facilitated and not diminished and also by consideration of:

". . . requiring the forecasting of short-term expansion needs and normal maintenance to meet demand which is 6 to 12 months out in order to mitigate the existence of held orders." (Tr., p. 317.)

Di Rocco also noted the good relationship of U S WEST with the Wyoming Business Council and hoped that U S WEST would continue after the merger to assist with the economic development efforts of the Council. On the subject of merger conditions, he agreed with the suggestion of counsel for U S WEST that business entities, rather than the government, should manage business. (Tr., pp. 313-320.)

189. The Reverend Jon K. Laughlin, pastor of the Grace United Methodist Church in Cheyenne, Wyoming, testified regarding, among other things, service problems he had experienced, discussing the public encouragement of Qwest to U S WEST regarding improving service as part of the merger process. His service problems were summed up in an April 10, 2000, letter to the Commission discussing service, billing, and wireless issues which his Church encountered in switching service back to U S WEST from McLeodUSA. He also expressed his concerns about the Church's classification as a business rather than a residence for billing purposes and ongoing issues regarding the charges incurred as a result of the classification (which had recently been referred to a collection agency while the dispute continued). He found no company among McLeodUSA, AT&T and U S WEST which could take responsibility for solving many of the various service problems he had encountered. Reverend Laughlin testified that he would not be in favor of the Commission granting the proposed merger until U S WEST successfully addresses its service problems. (Tr., pp. 378-390.)

190. Mayor Frank W. Latta of the City of Gillette, Wyoming, made a statement on behalf of the City concerning his involvement with U S WEST and its impact on the City and in support of the merger. Mayor Latta traced the history of bringing fiber optics to Gillette to assist it in attracting new types of businesses and helping existing business. Mayor Latta recounted his frustrations in obtaining fiber optics for Gillette, including some with U S WEST. However, Mayor Latta also commended U S WEST for continuing to work with the City and delivering "what they said they were going to deliver" in terms of ultimately providing fiber optics, in conjunction with Range Telephone Cooperative, to northeastern Wyoming. Mayor Latta also testified that he understood the economic challenges of providing service in a sparsely populated area of Wyoming, testifying that:

"Because I believe that money could have been spent elsewhere in larger metropolitan areas with a greater return on their money than what they're going to get out of Gillette, Wyoming and northeastern Wyoming.

"However, they have a commitment to our community. Sometimes I questioned that commitment. They proved they have a long-range commitment." (Tr., p. 518.)

Mayor Latta told the Commission that he had recently met with the mayors of Buffalo and Sheridan and that they also supported the merger. (Tr., pp. 514-529.)

191. Leonard W. May of Cheyenne, Wyoming, appeared and made a statement as a customer of U S WEST and as a former Bell System employee with experience in physical plant matters and 42 years of service. He testified about his perception of lessened quality of service, including lengthened repair commitment times for business telephones and other concerns. He urged the Commission:

". . . to pin them down in a very concrete manner in writing to specific items of improvement; not efforts, results." (Tr., p. 621.)

He gave specific recommendations for further action by the Commission, stating:

I think it essential that you go back to some form of measuring specifically the level of service. Subscriber reports are certainly one of them. Clearing time is an important one. You know, two hours versus two days and all of those things were measured. They were kept track of. * * * It was a demonstrable method of measuring results." (Tr., p. 624; and see, generally, Tr., pp. 616-624.)

192. Representative Clarene Law, of Jackson, Wyoming, made a statement as a member of the Wyoming House of Representatives and in her capacity as a member of the Wyoming Business Council as well as a businessperson in Jackson. Representative Law testified in favor of the proposed merger and stated that such a merger would be "in the best interests of Wyoming" for numerous reasons. She noted that ". . . U S WEST has had some handicaps certainly by its size and certainly by its lack of capital to provide the type of high-speed modem service that people are asking for and the broadband capabilities," and thought the merger would facilitate the provision of such service, which, she said, accounted for a substantial number of constituent inquiries. She also spoke favorably about the increased reliability to come from the proposed system redundancy discussed by U S WEST. (Tr., pp. 674-678.)

193. Brett Glass of Laramie, Wyoming, a member of the Wyoming Telecommunications Council, presented a statement as a current customer of U S WEST and as a consultant and author working in the field of telecommunications. He clarified that he was not appearing for the Council. Glass argued that the proposed U S WEST/Qwest merger, the first such vertical merger of a "Baby Bell" with a long distance carrier, deserved "special scrutiny" because of the incentive it would generate to divert investment away from Wyoming, because of service problems and because it would harm competition in Wyoming to the detriment of the development of needed telecommunications resources for economic development. He recommended that approval of the proposed merger be made subject to certain conditions regarding [i] reaching interconnection agreements with potential competitors; [ii] making local infrastructure, including local loops, available to all business which can make use of them regardless of whether they are local exchange carriers; [iii] requiring U S WEST to "divest some or all of its intrastate network or to subcontract a percentage of future development to other companies" to spur rapid competitive development of infrastructure; [iv] requiring a firm schedule for deployment of DSL as has been done in other states; [v] keeping unfair "leverage" from occurring in combinations of regulated and unregulated services; and [vi] requiring commitment to verifiable quality of wholesale and resale service standards. He argued that, if these conditions were not imposed, ". . . the Qwest merger will damage Wyoming's economic and business development prospects for the foreseeable future, and perhaps forever." He also stated that Wyoming's unique situation warranted thorough scrutiny of the proposed merger rather than reliance on the approvals given by the federal government or other states with higher population density. (Tr., pp. 768-777 and 796.)

The Stipulation

194. During this proceeding there has been much discussion of the Stipulation in this case among the Applicants, the Consumer Advocate Staff and wyoming.com (Joint Applicants/Consumer Advocate Staff Exhibit 1). A copy of the Stipulation is attached to this Order, marked as Attachment A, and incorporated herein by this reference. Because our discussion of the Stipulation in this Order is not, with the exception of the modification already approved in our order herein of May 9, 2000, intended to modify the text thereof and because it is incorporated herein, we will not summarize it here at length. We note with approval, however, that paragraph 7(a)(iii) shows that some 91% of the exchanges in Wyoming will be served by interoffice fiber within 36 months of the closing of the merger. (Joint Advocate Staff Exhibit 1, p. 3.)

195. When, at paragraph 14 of the Stipulation ". . . U S WEST and Qwest agree, fully and without reservation, to the extent that it is in U S WEST's control, that the quality and reliability of all such regulated services shall, in all respects, following consummation of the merger be preserved", we are heartened by this but note that the Stipulation does not provide any specifics on what the level of quality or reliability is now or how we could discern that it is being preserved. Applicants recite that U S WEST will obey the Commission's quality of service rules which remain ". . . after administrative and legal remedies have been exhausted or waived," but do not go on to make any connection in the Stipulation to the level of service provided before or after the merger. (Joint Applicants/Consumer Advocate Staff Exhibit 1, p. 6.)

Supplements to the Stipulation

196. We have described generally above the Supplemental Exhibit and Affidavit to Stipulation and Agreement offered by the Applicants and examined as the subject of our supplemental regular open meeting proceedings on May 12, 2000. A copy of the Supplemental Exhibit and Affidavit to Stipulation and Agreement (consisting only of the Supplemental Exhibit and the Affidavit of Perry W. Hooks, Jr., themselves, without further attachments and appendices) is attached to this Order and marked as Attachment B. However, the entire supplemental filing is incorporated herein by this reference. Our discussion below contains specific details of the extent to which the Supplemental Exhibit and Affidavit

to Stipulation and Agreement, as it supplements the Stipulation in this case, must be modified. Because it is incorporated herein, we will not summarize it here at length.

Applicable Legal Standards

197. The basic statutory law applying to utility mergers in Wyoming is simple. The Commission has jurisdiction over "reorganizations" under W.S. § 37-15-104(b), which states, in part, that:

"(b) For purposes of this section, "reorganization" means any transaction which, regardless of the means by which it is accomplished, results in a change in the ownership of a majority of the voting capital stock of a public utility, or the ownership or control of any entity which owns or controls a majority of the voting capital stock of a public utility."

The much quoted basic statutory merger standard which we are bound to apply is found at W.S. § 37-1-104(a), which states:

"(a) No reorganization of a public utility shall take place without prior approval by the public service commission. The commission shall not approve any proposed reorganization if the commission finds, after public notice and opportunity for public hearing, that the reorganization will adversely affect the utility's ability to serve the public."

This standard is specifically made applicable to telecommunications reorganizations by W.S. § 37-15-408 in the Wyoming Telecommunications Act of 1995. Also, under W.S. § 37-15-408, the term "public utility" includes telecommunications companies. Further, the Commission has the power to regulate telecommunications companies according to the Wyoming Telecommunications Act of 1995 at W.S. § 37-15-401(a)(vi).

198. Regarding reorganizations, under W.S. § 37-1-105(a), also applicable to telecommunications matters under W.S. § 37-15-408:

". . . the applicant shall reimburse the state for the expenses of the state in reviewing and acting upon each application [for approval of a reorganization] and defending any public service commission decision in case of legal appeal. The expenses of the state shall not be deemed to include the normal salary and benefits of the public service commissioners but shall include substantially all other actual expenses of the state in connection with the application." [Editorial material added.]

The Consumer Advocate Staff and the members of the Commission staff working on this case should be directed to promptly prepare statements of the time worked and the actual expenses incurred in the analysis and hearing of this case.

199. The Wyoming Telecommunications Act of 1995, at W.S. § 37-15-401(a)(v), requires us to conduct our hearings according to the Wyoming Administrative Procedure Act. Regarding the quality of the evidence which we must consider, in the Wyoming Administrative Procedure Act, W.S. § 16-3-114(c)(ii)(E) requires our decisions to be supported by "substantial evidence"; and W.S. § 16-3-108(a) therein would not allow the Commission to issue an order in a contested case [i] except upon consideration of the whole record ". . . and unless supported by the type of evidence commonly relied upon by reasonably prudent men in the conduct of their serious affairs."

200. Finally, under W.S. § 37-15-102, we must serve the express legislative intent of the Wyoming Telecommunications Act of 1995 in our decisions. It stated that:

"It is the intent of this act to ensure essential telecommunications services are universally available to the citizens of this state while encouraging the development of new infrastructure, facilities, products and services. The provision of telecommunications services has been developed and regulated under a monopolistic environment. This act recognizes the increasingly competitive nature of the telecommunications industry and the benefits of competition. It is the intent of this act to provide a transition from rate of return regulation of a monopolistic telecommunications industry to competitive markets and to maintain affordable essential telecommunications services through the transition period, and the provisions of this act shall be construed to achieve those goals."

Further Findings and Conclusions

201. Each of the Applicants and the other entities for which this case is docketed is a "telecommunications company" as that term is defined in the Wyoming Telecommunications Act of 1995 at W.S. § 37-15-104(a)(xi), duly authorized to provide various telecommunications services in Wyoming; and they are subject to the Commission's jurisdiction pursuant to W.S. § 37-15-401. All of the above-described interventions, and the withdrawals from this case by the Retirees, AT&T and McLeodUSA, were all properly granted under the Commission's Rules and the Wyoming Administrative Procedure Act. Each grant of intervention created the concerned intervenor as a full party to the proceeding with all rights, privileges and obligations of a party. The parties appeared in person and through counsel participated as fully as they desired to do so in the proceedings.

202. The Consumer Advocate Staff's authority to present testimony in contested cases such as this as a party to promote the interests of the citizens of Wyoming is described generally in W.S. § 37-2-110 (which is not specifically applicable to proceedings under the Wyoming Telecommunications Act of 1995) and Sections 103, 111, and 113 of the Commission's Rules. The Consumer Advocate Staff appeared in all phases of this proceeding in a capacity separate and apart from the Commission.

203. The transactions proposed by Qwest and U S WEST, as they were described in the Application and at the public hearing, constitute a "reorganization" jurisdictional to the Commission under W.S. §§ 37-1-104(b) and 37-15-408.

204. Proper public notice of these proceedings was given in accordance with the requirements of the Wyoming Administrative Procedure Act, (W.S. § 16-3-101, et seq.), W.S. § 37-2-203 and the Commission's Rules. The public proceedings in this case, including the prehearing proceedings, the public hearing and the supplemental open meeting proceedings, were held and conducted in compliance with the Wyoming Telecommunications Act of 1995, the Wyoming Administrative Procedure Act and applicable Commission Rules.

205. The merger transaction herein to which we must apply the standard of W.S. § 37-1-104(a), mandates disapproval of the merger if we find ". . . that the reorganization will adversely affect the utility's ability to serve the public." This basic Wyoming statutory standard which we are bound to apply requires us to focus on the continued ability of the company to serve the public after the proposed transaction as well as it did before. It does not invite us to compare related merger cases filed or decided in other states or by the federal government.

206. We will not restate our findings regarding the contents of the cases of the parties here as they are set forth elsewhere in this order.

207. We have heard a great deal of testimony tending to suggest the propensity of the merged entity to provide good service in Wyoming, to improve that service, to solve customer complaints and to deploy advanced services. We have heard that the merger will provide greater incentives for the merged company to behave in competitive and service-enhancing ways, e.g., by obtaining Section 271 approval in all of the 14 states in which U S WEST serves and by drawing on the technological synergies available after the merger to enable business cases for advanced services to be made more easily in smaller markets like Wyoming. We have received limited and specific commitments to deploy certain advanced services in certain places in the state after the date of the merger and to build fiber from Kemmerer to Bondurant as a direct result of the merger. We have heard of the WEN enhancement project, which is important but which is largely separate from the merger and represents a major educational initiative. We have even received a commitment by the merging entities that they will preserve the quality of service in Wyoming "in all respects" after the merger. (See, Joint Applicants/Consumer Advocate Staff Exhibit 1, paragraph 14.) That commitment did not, initially come with companion information showing us what that service quality was or how it could be determined that it was being preserved after the merger "in all respects."

208. Our previous positive observations about the value of the Stipulation and the merger itself which we made in our order of May 9, 2000, remain valid; and we adopt and reaffirm them here.

209. Just as the benefits of the merger were couched in terms of general possibility, so were the potential negatives. We have received much testimony about how the merged entity will have increased incentives to neglect, ignore or actually leave Wyoming altogether, deploying capital in large metropolitan markets where there are more customers and not doing so in Wyoming. We have heard that there might be an increased propensity for the merged company to behave in

ways inimical to the retail and wholesale customers in Wyoming, including being anticompetitive or engaging in discrimination so subtle that it might escape detection. What we have not received is testimony proving with substantial evidence or even stating absolutely that the merged entity will in fact act in such negative ways in Wyoming or that the ability of the merged company to serve in Wyoming will be adversely effected. In fact, the evidence is that the resulting company will have greater technological abilities and a greater propensity to use its capital for expansion, although nothing links this to Wyoming in a hard and fast way. Some of the negative considerations urged upon us were not directly related to the merger and have existed or would in the future exist entirely apart from the merger.

210. The proposed merger between U S WEST and Qwest is considered "vertical" in that the merging entities generally do not now compete with one another in their primary service offerings. The merger itself will thus not eliminate a competitor from the Wyoming telecommunications market; and it will, in the Applicants view, serve to produce a stronger and more capable competitor than U S WEST would have been standing alone. To this extent, and given that the negative outcomes argued by various intervenors were couched in terms of incentives and propensities, the merger comports with the standard of W.S. § 37-15-102 under general guidance of which we are to view activities taking place within the purview of the Wyoming Telecommunications Act of 1995.

211. We agree with the Consumer Advocate Staff that the Application, standing alone, would not be sufficient grounds to approve the merger; and we agree with them that the Stipulation provides positive benefits to Wyoming and that it helps the merger a long way toward meeting that standard. We will accept the Stipulation, in the form attached hereto, as being in the public interest and tending to show that Wyoming will not be adversely affected by the merger. The merging entity should be directed to abide by its terms; and the only modification to the actual text which we will require is that already ordered on May 9, 2000. That is, there should be a modification to paragraph 21 of the Stipulation concerning existing contracts to clarify the often-stated intention of the merging parties to abide by all contracts which concern Wyoming rather than wrongly and inadvertently excluding those which might fail an unintended two-pronged "originated" and "related" test. The modification is as set forth below:

"21. Existing Contracts. U S WEST, or any successor or assign, including, but not limited to, Qwest Communications International, Inc., will honor and be bound by the terms and conditions of all Wyoming originated ~~and~~ or related contracts which are currently in force between U S WEST and any party."

We also note that the Applicants have said on numerous occasions in the hearing that successors and assigns would be bound by the Stipulation and that there was no intent to evade responsibility through such language. We will construe this to be a general and material assurance by the Applicants that they agree to be bound by the Stipulation and will not seek to evade the plainly stated obligations of the merged entity and any successors and assigns.

212. We still cannot approve the merger on the strength of the Stipulation alone. We agree with the observation that, to understand the continuity of service quality, we must be able to measure it and have some baseline data to show what the measurements mean. We also believe that the merger standard of W.S. § 37-1-104 requires that we be able to discern the level of service which will be maintained and measure it. We understand that service in the telecommunications industry is, in fact, an "evolving construct" and do not believe that an unending comparison of the merged company with the pre-merger company has value, even though there is great value in comparison in the relatively short run. We therefore consider it critical that the merger be approved on the additional basis of the service reporting requirements and consultations offered by the Applicants in their Supplemental Exhibit and Affidavit to Stipulation and Agreement, the major parts of which are Attachment B hereto.

213. The only deficiencies in the Supplemental Exhibit and Affidavit to Stipulation and Agreement found at Attachment B are that it would not provide for reports on larger held orders or on orders held where facilities do not currently exist. When the statute speaks of adverse effects on the ability of the merged entity to serve the public, it does not thereby exclude larger customers or persons who request service for which facilities would have to be built from the term "public" and it does not limit the sense of "serve" only to those who make small requests or seek to draw only on existing facilities. We understand that larger orders and orders requiring system construction are not as easily captured as those for which the orders are small and simple. We also believe that they are likely to be much less numerous than smaller orders, although they are nonetheless important. We will therefore require, to fulfill the statutory mandate and as a necessary consideration for the approval of the merger, that the held order reports in the future include information about large held orders (as that term is defined from time to time for Wyoming by the merged company) and about orders held because no facilities currently exist. They will be presumptively entitled to

confidential treatment under the Commission's rules and they should be furnished for so long and at the same intervals as other held order reports are furnished to the Commission under the Supplemental Exhibit and Affidavit to Stipulation and Agreement. The reports may be summary in nature but should contain sufficient detail to allow the Commission to understand the location, nature and duration of these held orders. The only other responsibility which we will place on Applicants regarding the reports generally to come under this Supplemental Exhibit and Affidavit to Stipulation and Agreement, as extended herein, is to inform the Commission when reporting criteria change.

214. Taking into consideration the Stipulation, as modified, and the Supplemental Exhibit and Affidavit to Stipulation and Agreement, as it amends the Stipulation and as it has been necessarily directed hereinabove to be more comprehensively implemented, we conclude that the proposed merger, subject to these articulated considerations, meets the Wyoming statutory test for approval of a reorganization and that, by substantial evidence on the record, it has been demonstrated that the merger will not ". . . adversely affect the utility's ability to serve the public." The merger therefore ought to be approved on condition of faithful, timely and complete observance of the letter and spirit of the Stipulation, as modified, and the Supplemental Exhibit and Affidavit to Stipulation and Agreement as it amends the Stipulation and is extended by the Commission hereinabove.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. The reorganization, as generally described hereinabove and in the Application, is hereby approved but only on the condition that the Applicants faithfully, promptly and completely observe and fulfill all of the reporting requirements and other requirements, terms and conditions of the Stipulation and the Supplemental Exhibit and Affidavit to Stipulation and Agreement as described and explained in greater detail hereinabove.
2. All proprietary materials remaining in the hands of parties or former parties which they have an obligation not to retain shall promptly hereafter be returned or otherwise dealt with to the satisfaction of the party originally furnishing the information. Any person may apply to the Commission for further assistance in obtaining expedited compliance with this ordering provision.
3. This order is effective immediately.

MADE and ENTERED at Cheyenne, Wyoming, on June 9, 2000.

Public Service Commission of Wyoming

STEVE ELLENBECKER, Chairman

STEVE FURTNEY, Deputy Chair

(SEAL) KRISTIN H. LEE, Commissioner

Attest:

STEPHEN G. OXLEY, Secretary and Chief Counsel

Disclaimer: The following attachments to the Wyoming Public Service Commission's Order of June 9, 2000, in the above captioned cases have been produced for the information and convenience of Internet users by scanning original documents in the U S WEST/Qwest merger proceeding. In the case of any variance between these electronic documents and the original attachments to the actual order of the Commission entered in this case, the filed original document taken from the original transcript shall be controlling.

Please refer any questions to the attention of the Chief Counsel at the Commission.

Thank you.

ATTACHMENT A

BEFORE THE PUBLIC SERVICE COMMISSION OF WYOMING

IN THE MATTER OF THE JOINT) Docket No. 74142-TA-99-16

APPLICATION OF QWEST) (Qwest Corporation)

COMMUNICATIONS CORPORATION, WITH) Docket No. 70000-TA-99-503

QWEST SUBSIDIARIES (PHOENIX) (U S WEST)

NETWORK, INC., USLD) Docket No. 74037-TA-99-8

COMMUNICATIONS, INC., AND LCI) (Phoenix)

INTERNATIONAL TELECOM CORP., DBIA) Docket No. 70034-TA-99-4

QWEST COMMUNICATIONS SERVICES)) (LCI)

AND U S WEST COMMUNICATIONS, INC.,) Docket No. 74089-TA-99-9

(ALSO CONSIDERING U S WEST LONG) (USLD)

DISTANCE, INC.) FOR APPROVAL OF THE) Docket No. 74029-TA-99-43

MERGER OF THEIR PARENT) (Qwest Services)

CORPORATIONS, U S WEST, INC., AND) Docket No. 74337-TA-99-2

QWEST, INC., TO FORM QWEST) (U S WEST Long Distance)

STIPULATION AND AGREEMENT

This Stipulation and Agreement ("Stipulation") is entered into between Qwest Communications Corporation, Phoenix Network, Inc., USLD Communications, Inc., and LCI International Telecom Corp. (collectively, "Qwest") and U S WEST Communications, Inc. ("U S WEST") U S WEST Long Distance, Inc., (Qwest, U S WEST and U S WEST Long Distance, Inc., collectively the "Joint Applicants"), the Consumer Advocate Staff of the Wyoming Public Service Commission ("CAS"), and wyoming.com ("wyoming.com"), (the "Parties").

BACKGROUND

1. The Joint Applicants are telecommunications companies as defined by W.S. §37-15-103(a)(xi), and have filed an application with the Public Service Commission of Wyoming ("Commission") for approval of the merger of their parent companies.
2. CAS consists of employees of the Commission who have been authorized by the Commission to act as a Party/Intervenor to this proceeding. CAS, in fulfilling its statutory mandate to promote the best interest of the citizens of the state or a broad class of citizens, appears as a Party separate and distinct from the Commission in this proceeding.
3. wyoming.com is an internet service provider.
4. This proceeding is before the Commission upon the Joint Application of Qwest and U S WEST and U S WEST Long Distance, Inc., requesting approval of the merger of their parent companies, Qwest Inc. and U S WEST, Inc. (the "merger"), filed with the Commission on August 19, 1999. As part of the procedural management of the application, on March 2, 2000, the Commission issued an order, which among other things, required that the Joint Applicants specifically address a number of issues as part of their case.

Docket No. 70000-TA-99-503. et al.

03/27/00

page 1 of 10

5. Joint Applicants, CAS, and wyoming.com have met on numerous occasions in order to address and resolve outstanding issues. Those discussions have resulted in agreement on outstanding issues enumerated below, which were among those issues identified by CAS, AT&T, McLeod and the Commission in this proceeding.

SPECIFIC TERMS AND CONDITIONS

6. **Scope of the Stipulation.** The terms and conditions of this Stipulation, as set forth below, constitute the Parties' agreement as to the issues enumerated herein. Upon the Joint Applicants' agreement with these terms and conditions, CAS and wyoming.com agree that they will support and will actively request Commission approval of the Joint Application subject to this Stipulation in formal filings and testimony before the Commission.
7. **Incremental Investment in Wyoming.** Separate from this stipulation and the merger, U S WEST has previously committed to move forward with Interoffice Facilities (IOF) to the Northern part of Wyoming consisting of fiber to six exchanges (Gillette, Wright Buffalo, Sheridan, Cody and Powell). U S WEST has also previously agreed through the contract extension of the Wyoming Equality Network to provide additional capacity for another four exchanges (Lander, Riverton, Jackson and Moran), and has agreed to construct fiber connecting Lander and Riverton and to construct fiber connecting Cody and Powell. The approval of these projects was expedited because of this merger proceeding. All the agreements mentioned above are based upon separate contractual agreements for providing these facilities which will be entered into with telecommunications companies and other parties (this commitment will be referred to hereinafter as "IOF project"). The IOF project is intended to be completed through construction of facilities

and the lease of fiber facilities through agreements with other providers.

(a) Apart from the separate and previously committed IOF project, as a condition of the approval and closure of the merger transaction, Joint Applicants commit to the following investments within Wyoming:

(i) U S WEST agrees to build additional fiber facilities from Bondurant to Kemmerer within 36 months of the closing date of the merger. This construction will provide interoffice fiber to Jackson and Moran and will provide additional redundancy for U S WEST's Wyoming network.

(ii) It is anticipated that based on such projects U S WEST will have IOF fiber connectivity to Wyoming exchanges on the following schedule:

Docket No. 70000-TA-99-503, et al.

03/17/00

page 2 of 10

U S WEST InterOffice Fiber To Exchanges

| | | |
|--|------|--|
| To date - | | Casper, Cheyenne, Douglas, Evanston, Glenrock, Glendo, |
| Year 2000 | 55 % | Green River, Kemmerer, Laramie, Rawlins, Rock Springs, & Wheatland |
| End of Year 2001 | 82 % | In addition to exchanges listed above, Buffalo, Sheridan, Gillette, Wright, Cody*, & Powell. ⁽¹⁾ |
| | | These projects are associated with the contract extension of the Wyoming Equality Network. |
| Within 36 months of the closing date of the merger | 91 % | In addition to exchanges listed above Jackson & Moran |

(iii) **Benefits of Interoffice Fiber to Wyoming Citizens.** IOF fiber optic connections between exchanges provide a component of the network capability that will enable U S WEST or third party providers to rollout expanded services through the additional bandwidth that fiber optic cable provides.

(iv) **Benefits of Closing the Loop (Bondurant - Kemmerer) to Wyoming Citizens.** Connecting the North and South loop of the U S WEST Wyoming Network will benefit Wyoming communities by creating additional redundancy or diversity. The need for redundancy became apparent last fall when the U S WEST fiber network between Cheyenne and Casper was cut. Consumers in Northern Wyoming could not make certain long distance calls. With additional redundancy, voice and data traffic would be re-routed and service would not be interrupted. Redundancy will redirect E911 traffic in the event of a cut. In sum, the telecommunication opportunities for Wyoming cities and towns and their citizens are significantly enhanced as a result of the network improvements addressed in this Stipulation.

(v) U S WEST will file an annual report of its capital investment and operation and maintenance expenses in Wyoming for four (4) years following the closing date of the merger.

(vi) In addition to the existing ATM capabilities in Casper, Cheyenne, Laramie, Rock Springs, and Riverton, U S WEST will provision for ATM capabilities to Sheridan and Gillette upon completion of IOF construction referenced in

Paragraph 7.

(b) This undertaking by U S WEST to invest in Wyoming exhibits U S WEST's continuing commitment to the provision of quality interexchange and local exchange telecommunications services in Wyoming.

Docket No. 70000-TA-99-503, et al.

03/17/00

page 3 of 10

(c) U S WEST will file reports, at least annually, on the status of all projects described in Paragraph 7 (a) above, until all said projects have been completed. U S WEST can apply to the Commission under Commission Rule 120 to have such studies treated as confidential and proprietary. These commitments agreed to in Paragraph 7 (a)(i), 7 (a)(v) and 7 (a)(vi) will be binding on any successor or assign to U S WEST.

8. Price Cap. Because the prices approved in the 1999 Price Plan became effective on October 1, 1999, U S WEST agrees not to file to increase prices for basic residential or business services, and zone charges related thereto, until January 1, 2002, unless required to do so in order to comply with State and Federal regulatory requirements or other applicable law.

9. Sale of Exchanges. Joint Applicants state that there are no current plans to sell Wyoming exchanges absent those sales to Citizens Telecommunications Company of Wyoming, Inc., currently before the Commission in Docket No. 70000-TA-99-525 and Docket No. 70061TA-99-1. Joint Applicants commit that in the event future plans include the sale of additional Wyoming exchanges, Joint Applicants will address in the applications) for sale the purchaser's technical, financial and managerial resources to provide safe, adequate and reliable local exchange services within the exchanges.

10. Merger Related Costs. Qwest, Inc. and U S WEST, Inc., will incur merger transaction costs, including "goodwill." These merger costs will be non-operating costs such that none of these merger costs will be included as inputs in any future Total Service Long-Run Incremental Cost (TSLRIC) determinations.

(a) Other merger transaction costs that are identified and specifically reported to Joint Applicants' shareholders as merger related, and that are non-recurring, will not be included in TSLRIC determinations in Wyoming.

(b) In its order dated March 2, 2000, the Commission requested that the Joint Applicants address the identification and allocation of merger related savings that may occur in Wyoming. Joint Applicants do not believe that Wyoming law imposes an affirmative duty upon them to demonstrate whether any "merger related savings" inure to the benefit of Wyoming customers. Notwithstanding this position, Joint Applicants and CAS agree that the infrastructure investment described in Paragraph 7(a)(i) and 7(a)(vi) is a more efficient way of demonstrating that the reorganization of Joint Applicants will not adversely affect the utility's ability to service the public, rather than attempting to track such "merger related savings."

(c) The cost of capital in U S WEST's current price plan shall not be affected by the result of the merger. In future regulatory proceedings, U S WEST's cost of capital shall be set commensurate with the risk of U S WEST. Any decline in the credit rating of U S WEST caused by the merger shall be quantified in future cost of debt determinations, and the cost of capital will be adjusted as if such decline did not occur. U S WEST shall bear the burden of proving that any increase in cost of capital is not a result of the merger.

Docket No. 70000-TA-99-503, et al.

(d) For the annual 2000 TSLRIC filing, U S WEST will utilize the economic lives which have been approved by the Commission. U S WEST shall bear the burden of proving that any future change in economic lives is warranted.

(e) U S WEST or any successor to its Wyoming regulated operations will be bound by the provisions of this Paragraph 10 and its subparts, and will continue to file TSLRIC studies as required by law after the merger closes.

(f) As with any operational savings including any that may be derived from the merger, savings will appropriately be reflected in the TSLRIC for regulated services in Wyoming regulated operations.

11. Interconnection. Joint Applicants commit that U S WEST or any successor to its Wyoming regulated operations will honor and be bound by all existing U S WEST Interconnection Agreements relating to the State of Wyoming.

(a) U S WEST has previously entered into an Interim Interconnection Agreement with AT&T dated November 3, 1998, and has participated in an arbitrated Interconnection process with AT&T in Docket No. 70000-TF-96-319 and Docket No. 72000-TF-96-95. The arbitrated interconnection process resulted in an Order dated June 30, 1999 in the above dockets. This Order was temporarily suspended pending progress on negotiations between U S WEST and AT&T on a 14 state, region wide, agreement. These negotiations have been unsuccessful and have been presently abandoned by the parties. Therefore, U S WEST has filed a contract in the above stated arbitration dockets, which it believes is in substantial compliance with the Commission's Order of June 30, 1999. The filing was made on March 14, 2000. U S WEST will continue to provide interconnection services to AT&T pursuant to the above referenced Interim Interconnection Agreement until a final Order on the Interconnection Agreement is entered and not stayed, although appeals may be sought. In the event that a stay of the final Order is entered by the appropriate legal body, the Interim Agreement will continue in effect until the stay is lifted.

(b) U S WEST, or any successor to its Wyoming regulated operations, will honor and be bound by the Interconnection Agreement which the Commission may eventually approve in Docket No. 70000-TF-96-319 and Docket No. 72000-TF-96-95 including the results of all administrative and legal processes and after all appeals have been exhausted.

(c) U S WEST intends that the Interconnection Agreement as filed on March 14, 2000, referenced in paragraph 11 (a), is filed as a template to assist other carriers that may desire to interconnect with U S WEST by providing them a contract to consider for purposes of adoption consistent with the Telecommunications Act of 1996.

(d) The Interconnection Agreement, filed on March 14, 2000, will be superseded as a template by a Statement of Generally Available Terms ("SGAT") at the time that such an agreement is developed for and made available in Wyoming.

Docket No. 70000-Tit-99-503, et al.

12. Protection of Telecommunications Consumers. U S WEST will abide by the provisions of W.S. §37-15-404 regarding the protection of telecommunications consumers.

13. Post Merger Filing. Within 180 days after the closing date of the merger, U S WEST will file a report with the Commission that will describe how the merger is being implemented, transition team progress, and organizational changes including specific impacts on U S WEST's Wyoming operations and customers. U S WEST will file an additional report addressing these same issues within one year after the closing of the merger. These reports will be

filed as compliance filings and can be discussed by the Commission and U S WEST at open meeting. Joint Applicants will advise and inform the Commission of any modifications that materially and directly affect the Joint Applicants' Wyoming regulated operations or customers occurring within three years after the closing of the merger.

14. **Quality of Service.** The quality and reliability of all regulated services provided in Wyoming by U S WEST are of vital concern to Wyoming customers and the Wyoming public. U S WEST and Qwest agree that the quality and reliability of all such regulated services will be in no way adversely impacted following consummation of the merger. U S WEST and Qwest agree, fully and without reservation, to the extent it is in U S WEST's control, that the quality and reliability of all such regulated services shall, in all respects, following consummation of the merger be preserved.

(a) U S WEST has committed, as discussed above in Paragraph 7, to significant new investment in IOF in Wyoming. That investment will significantly enhance the quality of telecommunications services available in Wyoming. The result of these efforts will be an increase in the quality of service provided by U S WEST in Wyoming.

(b) U S WEST acknowledges that the Wyoming Public Service Commission promulgated certain retail service quality standards which are applicable to the provision of services by a carrier to an end-user customer. After administrative and legal remedies to amend or delete the rules have been exhausted or waived, U S WEST agrees that it will be bound by those standards in Wyoming in the same manner and to the same degree as other telecommunications carriers.

15. **Complaint Process.** U S WEST and the Commission staff have developed an efficient and effective process for addressing customer complaints concerning services provided by U S WEST. The process is based upon U S WEST personnel being available to address the complaints in a timely manner. U S WEST will continue to provide adequate personnel to address customer complaints following the merger.

(a) U S WEST will use its best efforts to initially respond to any informal complaints received by the Commission within five (5) business days of notification of a complaint from Commission staff. U S WEST will also use its best efforts to attempt to reach final resolution of any informal complaint within thirty (30) days of notification of a complaint from the Commission staff. This commitment shall continue until all administrative and legal remedies to amend or delete Commission Rule 504(a)(ii) regarding Complaint Processes have been

Docket No. 70000-TA-99-503, et al.

03/27/00

page 6 of 10

exhausted or waived, at which time the Parties acknowledge that such Rule shall supersede this Paragraph 15 including subparts. (b) Formal complaints shall be addressed as provided for in the Commission's Procedural rules.

16. **Rollout of New Services.** Joint Applicants commit that for a period of four (4) years following the closing date of the merger, U S WEST or its successor within Qwest will meet with the Commission or its staff annually at the request of the Commission to address its plans to provide new services in Wyoming. U S WEST will request that such meeting shall be a closed meeting, and information discussed at the meeting shall be treated by the Commission and its staff as confidential pursuant to Commission Rule 120.

17. **Affiliated Entity Business Risk and Transactions.** U S WEST will ensure that its Wyoming regulated telecommunications business is insulated from costs and risks associated with unregulated businesses and ventures involving foreign investments by maintaining appropriate accounting and structural separations between its Wyoming regulated telecommunications business and any division of U S WEST or any affiliated entity that engages in unregulated businesses or invests in foreign ventures. In no event will U S WEST's provision of Wyoming regulated telecommunications services result in any cross-subsidization that is prohibited by applicable provision of the Wyoming Telecommunications Act of 1995. Transactions between U S WEST and its affiliated entities will be at the rates specified by the 47 CFR Part 32.27 Uniform System of Accounts for Telecommunications Companies, Transactions for Affiliates, so long as such regulation is in effect. The Parties agree that the Commission will have access to books and records of the merged company as necessary to determine that affiliate transactions, as they relate to Wyoming regulated operations, are properly accounted for and that charges involving affiliates are booked at

appropriate levels. The merged company will comply with all applicable Federal Communications Commission (FCC) accounting requirements.

18. Toll Divestiture and 47 U.S.C. §271. Qwest, Inc. has committed to divest itself of prohibited in-region interLATA toll services prior to closing of the merger and has developed a plan for divestiture. Qwest Inc. has also submitted its plan to the FCC. Joint Applicants commit that they will comply with all requirements of 47 U.S.C. §271, both with regard to divestiture of current interLATA toll services by Qwest before the closing of the merger and resumption of interLATA toll services by U S WEST after the closing of the merger.

(a) In order to address the Commission's concern, expressed in its March 2, 2000 procedural order, that the divestiture of interLATA long distance customers may constitute a separate "reorganization" pursuant to W.S. §37-1-104, Qwest has filed an application requesting Commission approval of the divestiture of all of Qwest's relevant Wyoming assets to Touch America, on March 16, 2000 (the "Divestiture Application"), which details to whom and how such assets are to be divested and the steps that are to be taken to protect Qwest's Wyoming customers. Joint Applicants further agree that the subject merger application will not be deemed approved until the Commission has specifically reviewed the impact on Wyoming customers of the divestiture of Qwest's interLATA long distance, or has ordered that the merger is approved without specific approval of the divestiture of said interLATA services.

Docket No. 70000-TA-99-503, et al

03/17/00

page 7 of 10

(b) The Parties recommend that the scope of any proceedings under W. S. §37-1-104 related to Qwest's toll divestiture be limited to a consideration of the Divestiture Application and not extend to issues unrelated to the divestiture.

19. Financial Reports. Following the merger, U S WEST will be required to file financial reports, on an annual basis, now filed with the Commission by U S WEST on a quarterly basis. This requirement is in addition to and not to be construed as the Annual Report required by W.S. §37-15-407. The Parties agree that Joint Applicants may seek confidential treatment of any such reports pursuant to Section 120 of the Procedural Rules of the Commission.

20. The March 2, 2000 Order. The Commission issued an Order in these dockets directing "Applicants . . . to respond to questions propounded by the Commission. The areas of inquiry are summarized as:

(i) Stipulations entered into by the Applicants in other states together with a

description of the pertinent law of those states;

(ii) Specific commitments or assurances provided each state, including

Wyoming, regarding merger savings guarantees, facilities investment

commitments or any other specific assurance proposed by Applicants;

(iii) Potential of additional sales of exchanges and consequences thereof to U S WEST's Wyoming customers;

(iv) Future investment in the State of Wyoming;

(v) Merger savings identification and allocation;

(vi) New product offerings;

(vii) The status of the AT&T interconnection arbitration process and the impact, if any, of the merger upon the process; and

(viii) Section 271 issues and timetable for obtaining section 271 relief.

To the extent that the issues contained in the Commission's March 2, 2000 Order are not discussed in this Stipulation, the Applicants' will address them through data responses and testimony.

21. **Existing Contracts.** U S WEST, or any successor or assign, including, but not limited to, Qwest Communications International, Inc., will honor and be bound by the terms and conditions of all Wyoming originated ~~and~~ or related contracts which are currently valid and in force between U S WEST and any party.

GENERAL TERMS AMID CONDITIONS

22. The Parties agree that the terms and conditions of this Stipulation and Agreement shall not become effective unless and until:

Docket No. 70000-TA-99-503, et al.

03/27/00

page 8 of 10

(a) the Commission enters an order approving this Stipulation or modifies this Stipulation in a manner acceptable to the Joint Applicants, and

(b) the closing of the merger transaction of U S WEST, Inc. and Qwest, Inc.,

23. This Stipulation shall be binding upon any successor or assign to U S WEST, including, but not limited to, Qwest Communications International, Inc.

24. The Parties agree that this Stipulation and Agreement represents a compromise in the position of the Parties.

25. In the event the Commission rejects all or any portion of this Stipulation as resolving the issues included within this Stipulation, or imposes additional conditions with respect to such issues, each Party reserves the right to withdraw from this Stipulation. In such case, no Party to this Agreement shall be bound or prejudiced by the terms of this Stipulation, and each Party shall be entitled to seek reconsideration of the Commission Order, to file any testimony it chooses, to cross-examine witnesses, and in general to put on such case as it deems appropriate. If this **Stipulation does not** become effective according to its terms, it shall be null and void, unless otherwise agreed to by the Parties.

26. The Parties agree that this Stipulation represents a just, equitable and reasonable resolution of issues, which were or could have been contested by the Parties, in these dockets. The Parties acknowledge that this Stipulation is the product of negotiations and compromise and shall not be construed against any Party on the basis that it was the drafter of any or all portions of this Agreement. This Stipulation constitutes the Parties' entire agreement on all matter set forth herein, and it supersedes any and all prior oral and written understandings or agreements on said matters that previously existed or occurred in this proceeding, and no such prior understanding or agreement or related representations shall be relied upon by the Parties.

27. The Parties acknowledge and agree that no cause of action can be maintained by the Parties before this Commission, or any court, contending that the approval of the merger by the Commission should be vacated, withdrawn, or rescinded in any manner, based upon any alleged subsequent breach of any material term or condition of this Stipulation by either of the Joint Applicants. No other limitation is intended to exist upon the lawful jurisdiction of the Commission to address the issues set forth in this Stipulation.

28. In light of the provisions of this Stipulation, and the other benefits to Wyoming consumers that the proposed merger can deliver or enable, the Parties respectfully request that the Commission act as necessary to resolve all applications necessary to the consummation of the proposed merger by May 15, 2000.

29. The Parties agree that the provisions of this Stipulation are not binding upon the Commission until the Commission considers the terms hereof and determines to approve this Stipulation.

Docket No. 70000-TA-99-503, et al.

03/27/00

page 9 of 10

30. The Parties agree that the headings to this Stipulation are not material to this stipulation and have no legal force or effect.

31. The Parties agree that those rights and obligations of Joint Applicants reflected herein which are created by statute or rule shall apply only so long as, and to the extent that, such statutes or rules continue to be in effect.

32. Except as otherwise specifically agreed upon in this Stipulation, nothing contained herein shall be deemed to constitute a settled regulatory practice for the purpose of any other proceeding.

IN WITNESS WHEREOF, the Parties hereto have executed this Stipulation:

QWEST

BY: s/ Gregory C. Dyekman

U S WEST Communications, Inc. and U S WEST Long Distance, Inc.

BY: s/ Paul J. Hickey

CONSUMER ADVOCATE STAFF

BY: s/ David Lucero

wyoming.com

BY: s/ Alex Davison

Docket No. 70000-TA-99-503, et al.

03/27/00

ATTACHMENT B: part 1 of 2.

BEFORE THE PUBLIC SERVICE COMMISSION OF WYOMING

IN THE MATTER OF THE JOINT) Docket No. 74142-TA-99-16

APPLICATION OF QWEST) (Qwest Corporation)

COMMUNICATIONS CORPORATION, WITH) Docket No. 70000-TA-99-503

QWEST SUBSIDIARIES (PHOENIX) (U S WEST)

NETWORK, INC., USLD) Docket No. 74037-TA-99-8

COMMUNICATIONS, INC., AND LCI) (Phoenix)

INTERNATIONAL TELECOM CORP., D/B/A) Docket No. 70034-TA-99-4

QWEST COMMUNICATIONS SERVICES)) (LCI)

AND U S WEST COMMUNICATIONS, INC.,) Docket No. 74089-TA-99-9

(ALSO CONSIDERING U S WEST LONG) (USLD)

DISTANCE, INC.) FOR APPROVAL OF THE) Docket No. 74029-TA-99-43

MERGER OF THEIR PARENT) (Qwest Services)

CORPORATIONS, U S WEST, INC., AND) Docket No. 74337-TA-99-2

QWEST, INC., TO FORM QWEST) (U S WEST Long Distance)

COMMUNICATIONS INTERNATIONAL, INC.) (Record No. 5134)

SUPPLEMENTAL EXHIBIT AND AFFIDAVIT

TO STIPULATION AND AGREEMENT

On March 27, 2000, a Stipulation and Agreement (the "March 27th Stipulation") was entered into between Qwest Communications Corporation, Phoenix Network, Inc., USLD Communications, Inc., and LCI International Telecom Corp. (collectively, "Qwest"), U S WEST Communications, Inc. ("U S WEST") and U S WEST Long Distance, Inc., (Qwest, U S WEST and U S WEST Long Distance, Inc., collectively the "Joint Applicants"), the Consumer Advocate Staff of the Wyoming Public Service Commission ("CAS"), and wyoming.com ("wyoming.com") (the "Parties").

In order to address the concerns in the May 9, 2000 Order Directing Presentation of Further Information, Joint Applicants hereby detail the following information and commitments, which, following approval thereof by the Commission, will supplement and clarify the March 27'h Stipulation.

I. SERVICE QUALITY

A. Wyoming Baseline Data Reports.

In Paragraph 14 of the March 27th Stipulation, the Joint Applicants committed that "the quality and reliability of all such regulated services will be in no way adversely impacted following the consummation of the merger" and that, to the extent it is in U S WEST's control, "the quality and reliability of all such regulated services shall, in all respects, following the consummation of the merger be preserved." Accordingly, the Joint Applicants have attached Appendix A which details the most recent period of Wyoming aggregate data for the relevant service reports for retail services in the state.

Docket No. 70000-TA-99-503, et al.

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page 1 of 5

Specifically, Appendix A details current Wyoming data for all of the following retail service reports:

1. Provisioning % Commitments Met
2. Provisioning % 3-Day Standard Interval Offered
3. Repair % Commitment Missed
4. Repair % Standard Interval Offered
5. Business Office Access % Not Answered in 20 Seconds
6. Repair Bureau Access % Not Answered in 20 Seconds
7. Total Primary Held Orders Greater Than 30 Days Excluding High Cost

Also attached are Appendix B and Appendix C which detail the most recent period of Wyoming aggregate data for wholesale services in the state, and ARMIS data which is filed with the FCC on an annual basis.

Specifically, Appendix B details current Wyoming data for all of the following wholesale service reports:

Provisioning

1. Resale Firm Order Confirmation given on Time⁽²⁾
2. Resale % Commitments Met
3. Resale Average Provisioning Interval
4. Resale Held Orders Greater Than 30 Days Where Facilities Exist
5. LIS Trunks Firm Order Confirmation given on Time I

6. LIS Trunks % Commitments Met
7. LIS Trunks Average Provisioning Interval
8. Unbundled Loops Firm Order Confirmation given on Time I
9. Unbundled Loops % Commitments Met
10. Unbundled Loops Average Provisioning Interval

Repair

1. Resale Repair % Commitments Met
2. LIS Trunks Average Mean Time for Repair
3. Unbundled Loops Mean Time to Restore

Appendix C details the current data for all the following total state retail and wholesale service reports, as included in U S WEST's most recent annual Automated Reporting Management Information ("ARMIS") Service Quality Reports to the Federal Communications Commission:

Docket No. 70000-TA-99-503, et al.

05/11 /00

page 2 of 5

1. Installation and Repair Intervals (Interexchange Access)
2. Installation and Repair Intervals (Local Service)
3. Common Trunk Blockage
4. Total Switch Downtime
5. Occurrences of Two Minutes or More Downtime
6. Service Quality Complaints

Joint Applicants have attached an affidavit of Perry Hooks Jr. The affidavit describes what each of these reports address, and how and to what extent they provide a comprehensive baseline, for both retail and wholesale services, for any Commission review of U S WEST service quality following approval and consummation of the proposed merger.

Finally Joint Applicants have agreed that even though they are still pursuing administrative and legal remedies to amend or delete certain portions of the Commission's retail service quality, U S WEST is bound by those standards in Wyoming in the same manner and to the same degree as other telecommunications carriers.

B. Ongoing Wyoming Retail Service Reports.

The Joint Applicants hereby commit to submit to the Commission, on a quarterly basis for a period of two years

following the approval and closing of the merger, a confidential copy of a report adhering to the same or substantially similar format as Appendix A with data from the most recently available calendar quarter. Joint Applicants further agree that the seven categories included in such reports shall be subject to an annual audit, if requested, by the Commission.

C. Ongoing Wyoming Wholesale Service Reports.

The Joint Applicants hereby commit to submit to the Commission, on a quarterly basis for a period of two years following the approval and closing of the merger, a confidential copy of a report adhering to the same or substantially similar format as Appendix B with data from the most recently available calendar quarter. Joint Applicants note that the provision of such data in no way guarantees that the data reflects a statistically valid or representative sample size, as the extent of such data is directly dependent on the number of customer requests. Joint Applicants also note that, to the extent the content or provision of such report is contrary to any applicable legal authority, such report may be modified in accordance with the relevant legal authority. Joint Applicants further agree that the thirteen categories included in such reports shall be subject to an annual audit, if requested, by the Commission.

D. Ongoing ARMIS Service Quality Reports

The Joint Applicants hereby commit to submit to the Commission, on an annual basis for a period of two years (2000 and 2001) following the approval and closing of the merger, a copy of U S WEST's ARMIS Service Quality Report. Joint Applicants also note that, to the extent the content or provision of such report is contrary to any applicable legal authority, such report may be modified in accordance with the relevant legal authority.

Docket No. 70000-TA-99-503, et al.

05/11 /00

page 3 of 5

II. FUTURE DEPLOYMENT OF COMPETITIVE SERVICES:

In further response to the Commission's Order Directing Presentation of Further Information issued May 9, 2000, Joint Applicants address the concerns set forth in paragraph 6 of the Order.

A. DSL Deployment

Joint Applicants understand Chairman Ellenbecker's desire for additional information regarding plans of the merged entity to deploy competitive and deregulated services in the future.⁽³⁾

In this regard, U S WEST deployed DSL services in Laramie on April 25, 2000 following the hearing in these dockets. In addition, DSL services will be deployed in Casper in the near future. Both Applicants are aware of the commitments made to deploy these advanced services and have endorsed these decisions.

With the announcement of the deployment of DSL in Casper, 3 of the states' largest communities, Cheyenne, Laramie and Casper, will have exchanges capable of deploying DSL. These communities and their special needs of business, government, and education are being addressed by the commitment to deploy DSL service.

B. Future Meetings on Service Deployment

Joint Applicants further commit, that they will meet with the Commission on a regular basis in order to discuss the deployment of additional advanced services within the State of Wyoming following the merger. Joint Applicants that additional services will be deployed within the State of Wyoming and restate their commitment in this regard found at paragraph 16 of the March 27; 2000 Stipulation and Agreement, to wit:

Joint Applicants commit that for a period of four (4) years following the closing date of the merger, U S WEST or its

successor within Qwest, will meet with the Commission or its staff annually at the request of the Commission to address its plans to provide new services in Wyoming.

C. Importance of Approval of Merger

Joint Applicants also observe that the degree to which U S WEST can continue to deploy advanced services is dependent upon the approval and closure of the merger. The highly competitive and dynamic nature of the telecommunications industry requires that U S WEST align itself with a provider that together the combined company will be capable of providing the substantial technical, capital, and human resources necessary to effectively compete in increasingly competitive markets for telecommunications service. As noted by Commissioners

Docket No. 70000-TA-99-503, et al.

05/11 /00

page 4 of 5

during their public deliberations of May 3, 2000, the vertical integration of U S WEST and Qwest is a desirable combination of resources which clearly strengthens U S WEST's ability to competitively deploy advanced services. Therefore, failure to approve the merger could place Wyoming in a worse position for the deployment of additional advanced services.

II. EFFECT ON STIPULATION.

All commitments made herein are governed by and subject to the terms of the March 27th Stipulation, including, but not limited to, its General Terms and Conditions. Accordingly, all commitments made herein are in addition to the service quality commitments set forth in paragraph 14 of the March 27th Stipulation.

ATTACHMENT B: part 2 of 2.

AFFIDAVIT OF PERRY W. HOOKS, JR.

State of Colorado)

) SS.

City and County of Denver)

Comes now, Perry W. Hooks, Jr., after being duly sworn, states and deposes:

1. My name is Perry W. Hooks, Jr.. I am a Director, Legal & Regulatory Affairs for

U S WEST Communications, Inc. ("U S WEST"). My business address is 1801

California Street, Room 2410, Denver, CO 80202.

2. My responsibilities include addressing service issues, particularly wholesale

service issues, with wholesale customers, the Federal Communications Commission

("FCC") and state public utilities commissions. I have been involved with these and

other issues relating to local telecommunications competition since passage of the

Telecommunications Act of 1996.

3. The purpose of my Affidavit is to respond directly to the service quality issues raised by Commissioner Furtney, as set forth in the Order Directing Presentation of Further Information issued May 9, 2000, paragraph 5, by providing information and assurances relating to service quality monitoring and reporting for U S WEST Communications, Inc., before and after the merger of Qwest Inc. and U S WEST, Inc. ("the Joint Applicants"). In order to assist the Wyoming Public Service Commission ("Commission") in appraising the performance of the Joint Applicants under W. S. § 37-1-104 going forward, the Joint Applicants make the following representations:

Reports for Comparisons of Retail Service Performance

4. U S WEST has provided, and will continue to provide, the Commission on a confidential basis with quarterly results for the following Wyoming-related service

performance reports. The report for the first quarter of 2000 is provided as Appendix A to the Supplemental Exhibit and Affidavit to the Stipulation and Agreement. Attachment 1 hereto contains descriptions of the retail service categories.

Provisioning

Percentage Commitments Met

Percentage Standard Interval Offered

Repair

Percentage Commitments Missed

Percentage Standard Interval Offered

Office Access

Business Office Access - Percentage Not Answered in 20 Seconds

Repair Bureau Access - Percentage Not Answered in 20 Seconds

Held orders (Excluding High Cost) - Total Primary Residential and Business

Lines Greater Than 30 Days

5. U S WEST will continue to confidentially provide the above-referenced reports without changes throughout calendar year 2000. The Joint Applicants reserve the right to

make changes to the above-referenced reports after calendar year 2000, but will only do so following consultation with the Commission's staff. U S WEST will provide these reports for two years following close of the merger.

6. These service performance categories may be used by the Commission to compare U S WEST's service provided to end-user customers prior to the proposed merger of the Joint Applicants to service provided to end-user customers following the merger. The data which is provided is quantifiable and pertinent to determining the continuing quality of U S WEST's service performance.

27. The aforementioned retail service reports will provide the pertinent and quantifiable measurement information with respect to retail service quality sought by Commissioner Furtney as set forth in paragraph 5 of the Commission's order. The reports to be provided are a combination of company developed and Commission ordered service reports which together fulfill the Commission's request for "reliable identifiers" of service quality.

8. Further, earlier this year, the Commission's General Order 73 became effective. Among other things, General Order 73 includes a requirement for U S WEST and all other telecommunications providers in Wyoming to provide the Commission with the results of different but, in some cases, similar categories relating to end-user customers. General Order 73 also sets forth the levels of service quality U S WEST and all other telecommunications providers in Wyoming are required to provide to retail customers. In June, 2000, U S WEST will file reports in response to General Order 73.

9. Additionally, in June, 2000, U S WEST will also be filing with this Commission ARMIS data as required by the FCC. This filing is attached to the Supplemental Exhibit and Affidavit to Stipulation and Agreement as Appendix C. This ARMIS data is currently filed annually with the FCC. In subsequent quarterly reports to be filed with this Commission in response to General Order 73, U S WEST will refer to its most recent ARMIS report filed with the FCC. Additionally, on a quarterly basis, U S WEST will

provide the Commission with "Abnormal Condition Reports" which describe the scale and identify the cause (if known) of any large-scale network outages. A sample of an abnormal condition report is attached hereto as attachment 3.

Reports for Comparisons of Wholesale Service Performance

10. The Telecommunications Act of 1996 ("Act") contemplates the opening of the local telecommunications market in Wyoming and elsewhere by one or more of the following three means: first, interconnection between the networks belonging to the Incumbent Local Exchange Carriers ("ILECs"); second, the unbundling of elements of

3

the ILEC's networks for leasing to the Competitive Local Exchange Carriers ("CLECs"); and/or third, the resale of the ILEC's services, at a discount, to the CLECs.

11. The Joint Applicants will confidentially provide the Commission with service data quarterly for the performance categories below, where the data is available upon merger approval and closure. Appendix B to the Supplemental Exhibit and Affidavit to Stipulation and Agreement is an example of wholesale service reports that will be filed. The merged Joint Applicants are willing to continue to provide such data until such time that other reporting requirements may go into effect for the periods 2000 and 2001. The above-mentioned performance categories are listed below and described in Attachment 2, hereto:

Local Interconnection Service (LIS) Trunking (Forecasted) (Availability anticipated in the quarter following closure of the merger.)

Percentage of Firm Order Confirmations Given on Time

Percentage of Installation Commitments Met

Average Installation Intervals

Mean Time to Restore

Unbundled Loops

1. Percentage of Firm Order Confirmations Given on Time (Available effective July, 2000)

Percentage of Installation Commitments Met

Average Installation Intervals

Mean Time to Restore

Resale of Residence, Business and "Centrex" Services (Separately reported)

Percentage of Firm Order Confirmations Given on Time (Available effective July, 2000)

Percentage of Installation Commitments Met

Average Installation Intervals

4

1. Percentage of Repair Appointments Met

Resale Held Orders (Excluding High Costs Orders)-Primary Lines Greater Than 30 Days separated by Residence, Business and "Centrex" Service, where facilities are available.) (Available effective August, 2000)

12. With the exception of the Resale Held Order report, which is still under development, all of the wholesale performance categories described in paragraph 8, above, are derived from the efforts of U S WEST, numerous CLECs, and representatives of each of the public utilities commissions in the fourteen states where U S WEST principally does business, primarily under the auspices of the Regional Oversight Committee, or "ROC".

13. The wholesale service reports described above will provide meaningful information to the Commission. Provisioning and repair data for all three means of local exchange competition, (network interconnection, access to unbundled network elements (loops) and finished services resale) are addressed. These reports provide data to the Commission that is both pertinent and quantifiable with respect to wholesale service quality. U S WEST is also willing to discuss wholesale performance with the Commission and its staff when requested.

14. To date, U S WEST has not experienced statistically significant amounts of local exchange service competition in Wyoming that would allow either U S WEST or the

Commission as a basis to establish standards. However, for the Commission's reference, the ROC has set forth standards in its Performance Indicator Definitions (PID). These standards are generally based upon statewide averages and, in no instance, are these standards based upon performance at an individual exchange level. Therefore the Joint Applicants recommend that this Commission use the ROC standards in the PID which will provide the pertinent and quantifiable measurement information with respect to wholesale service quality sought by Commissioner Furtney as set forth in paragraph 5 of the Commission's order.

5

FURTHER AFFIANT SAYETH NOT.

s/ Perry W. Hooks, Jr.

Subscribed to before me this 10th day of May, 2000.

s/ Notary Public

Docket No. 70000-TA-99-503, et al.

05/11 /00

page 5 of 5

1. For these exchanges, U S WEST agrees to pursue fiber facilities through a combination of constructed and leased facilities. U S WEST will pursue these projects only if acceptable contracts are negotiated with the provider of leased fiber facilities.
2. The firm order confirmation given on time category for Resale, LIS Trunks, and Unbundled Loops is under development and will be delivered to the Commission by July 1, 2000.
3. The advanced services discussed in paragraph 6 of the Order are competitive services pursuant to W.S. §37-15-202, over which the Commission has no direct jurisdiction.