

In the Matter of the Commission on its) Application No. C-1540
Own Motion to Establish Procedures to)
Review U.S. West Communications,) Notice of Inquiry
Inc.'s Entry Into the InterLATA Market)
Pursuant to 47 U.S.C. 271.) Entered: July 28, 1997

BY THE COMMISSION:

Pursuant to 47 U.S.C. 271, U.S. West Communications Inc. (USW), a Bell operating company, is allowed to provide interLATA services originating in Nebraska only if it receives approval from the Federal Communications Commission (FCC). As a part of its review of a 271 application, the FCC must consult with the Attorney General and with the appropriate state commission, such as the Nebraska Public Service Commission (NPSC). The purpose of the consultation with the NPSC is to verify USW's compliance with the requirements of 271(c).

Prior to offering interLATA services, USW must enter at least one binding agreement, approved under 252 by the NPSC, to provide access and interconnection to its network to an unaffiliated competing provider of telephone exchange service to residential and business customers. The competing provider must be either exclusively or predominately facilities-based. In the alternative, USW can satisfy the requirements of 271 by having a statement of the terms and conditions it generally offers to provide such access and interconnection. The statement must be approved and permitted to take effect by the NPSC under 252(f). The alternative is available only if no competing provider has requested access and interconnection in the three months before USW makes its 271 application to the FCC.

The US Department of Justice (DOJ) has indicated that it will seek information from the state commission regarding whether the Bell operating company satisfies the separate affiliate requirement in 272 and whether entry into the interLATA market is in the public interest, as required under 271(d). Presumably, the FCC's review of USW's Nebraska 271 application will also be aided by information provided by the NPSC.

We open this docket for the purpose of gathering information to establish a policy regarding the consultative role on the competitive status of USW in Nebraska. It is not clear at this time when USW will make a Nebraska 271 application to the FCC. However, 271(d)(3) allows the FCC only 90 days from the receipt of an application to approve or deny the application. The NPSC recognizes that the FCC's review within that short time will be aided if a factual record is made at the state level prior to the filing of the application at the FCC. The FCC has indicated that it expects the state to provide its recommendation within 20 days after the filing is made. For that reason, the NPSC opens this proceeding to receive comments from interested parties on general policy and procedural issues even before USW has announced its time table in this area.

There is no statutory requirement, but the NPSC requests that USW file its application, supported by sworn testimony with the NPSC at least 90 days before filing the application with the FCC. By letter dated June 30, 1997, Joanne Harrell, Vice-President of Nebraska operations for USW, committed to the NPSC that any 271 filing made with the FCC will be submitted to the NPSC at least 90 days in advance. This additional time will enable the NPSC to receive testimony and argument concerning the 271 issues and make findings that can be provided to the FCC and

DOJ within 20 days after the filing with the FCC.

I. PROCEDURAL SCHEDULE

We seek comment from all interested parties concerning the appropriate procedure that should be followed to review USW's 271 application with the FCC. We tentatively propose the following schedule:

1. Within 20 days of the issuance of this order, all persons other than the USW and the DOJ, will notify the NPSC of their desire to participate in these proceedings. Requests to participate filed after the deadline must show cause for the late filing.
2. No less than 90 days before filing its 271 application for Nebraska with the FCC, USW will provide the NPSC with notice of its intent to file the application, along with its supporting sworn evidence, exhibits, and work papers on the issues of actual compliance with 271(c), USW's intentions as to separate affiliates, and issues relating to the public interest, convenience and necessity, including a detailed account of the current status of local service competition in USW's Nebraska service territory. On the same date, USW will also notify all interested persons from paragraph 1 above of its intention to file the application with the FCC and of the pendency of this fact-finding procedure before the NPSC.
3. On or before 21 days after the filing in paragraph 2, interested parties will file sworn evidence, exhibits, and work papers related to the question of whether USW should be allowed to provide interLATA service for calls originating in Nebraska.
4. On or before 42 days after the filing in paragraph 2, USW will file reply sworn evidence, exhibits, and work papers.
5. A hearing to cross-examine prefiled testimony will be held between 49 - 63 days after the filing in paragraph 2.
6. Simultaneous post-hearing briefs of all parties will be filed on or before 14 days after the beginning date of the hearing.
7. Because the NPSC will be providing copies of the record to the FCC and the DOJ, two additional copies will be necessary. Therefore, hard copies of documents will be filed with an original and eight (8) copies. In addition, whenever possible, electronic filings shall also be made. All documents created with word processing software are to be filed in either Microsoft Word Version 6.0 or earlier, or WordPerfect 6.1, or earlier. Any documents created with spreadsheet software are to be filed in Lotus 1-2-3 Version 5.0 or Microsoft Excel Version 5.0. Electronic filings may be made on 3 inch IBM formatted diskettes or on compact discs. Two copies of diskettes or compact discs are to be filed. Furthermore, if a request for a copy of an electronic filing on a compact disc is made to the NPSC, the party making the filing on compact disc will be required to furnish a copy to the person making the request.
8. Within one business day of its 271 filing for Nebraska with the FCC, USW shall file with the NPSC two copies of the filing, including copies of any evidence filed with the FCC that was not included in the NPSC's fact finding.

Comments to the schedule proposed herein should be submitted to the Commission on or before August 15, 1997. Reply comments will not be accepted. After comments are reviewed, the NPSC will

issue an order setting forth the procedure will be followed to review USW's 271 application.

II. COMMISSION REVIEW

We believe it would be beneficial to receive input from interested parties regarding the information the NPSC should consider in reviewing USW's application. While such information will not be formalized in a Commission policy, we find it would be helpful to obtain input on the following issues:

1. What is the meaning of the phrase "predominantly over their own telephone exchange service facilities" in 271(c)(1)(A)?
2. How will USW show that its interconnection agreement or statement of terms and conditions with or available to a competing provider of telephone exchange service allows choice to both residential and business customers?
3. What standards should be applied to determine compliance with each item on the 271(c)(2)(B) checklist?
4. Can the checklist items be satisfied from different sources such as arbitrated agreements, negotiated agreements, a statement of generally available terms and conditions and interconnection tariffs?
5. What are the standards to prove the requested interLATA authorization is in the public interest as required under 271(c)(3)(C)? Does the public interest requirement indicate the NPSC should evaluate the current status of local competition beyond verifying compliance with just those requirements listed in 271(c)?
6. What are the necessary procedures and safeguards to facilitate the submission of proprietary portions of the record to the FCC and DOJ?

Answers to these informational questions and comments to any other relevant issues regarding 271 should be submitted to the NPSC on or before September 30, 1997.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that interested parties may submit comments on the procedural schedule contained herein on or before August 15, 1997. Reply comments will not be accepted.

IT IS FURTHER ORDERED that interested parties may submit comments on the informational issues contained herein on or before September 30, 1997. Reply comments will not be accepted.

MADE AND ENTERED in Lincoln, Nebraska on this 28th day of July, 1997.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chairman

ATTEST:

Executive Director

