DECISION MEMORANDUM

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FROM:DON HOWELL

DATE:JULY 14, 1997

RE:AT&T’S PETITION FOR THE COMMISSION TO INITIATE A SECTION 271 PROCEEDING; CASE NO. USW-T-97-14

On June 3, 1997, AT&T petitioned the Commission to initiate a proceeding to establish procedures for this Commission to handle the “expected” Section 271 application of U S WEST Communications.  Section 271 of the federal Telecommunications Act of 1996 sets out the requirements U S WEST must satisfy before it may offer interLATA long-distance services in each state of its 14-state region.  The Act further requires the FCC to consult with this Commission and the U.S. Department of Justice (DOJ) to verify U S WEST’s compliance with the entry requirements.  The Act requires the FCC to issue a written decision on U S WEST’s application within 90 days of its filing.  47 U.S.C. § 271(d)(3).  Because of this short time frame, the FCC has restricted the consultation phase for state commissions to 20 days after the filing of an application.

AT&T asserts in its transmittal letter accompanying its Petition that U S WEST “has repeatedly expressed its intention, or desire, to provide long-distance services in all of its states by the beginning of 1998.”  Letter at 1 (emphasis original).  Given this anticipated schedule, AT&T calculated that U S WEST would need to file its Petition this summer.  Id.  On July 10, 1997, U S WEST filed a response to the Petition arguing that adopting 271 procedures at this time would be premature and an inefficient use of the Commission’s resources.  U S WEST Answer at 5, 6.

SECTION 271

A Bell Operating Company (BOC) may provide interLATA long-distance services originating in any of its in-region states only with the expressed written approval of the Federal Communications Commission (FCC).  47 U.S.C. § 271(b)(1).  In its Application to the FCC, a BOC (such as U S WEST) must first establish that it satisfies the requirements of either Section 271(c)(1)(A) (“Track A”) or 271(c)(1)(B) (“Track B”).  To satisfy Track A, a BOC must demonstrate that it is “providing access and interconnection to its network facilities for the network facilities of one or more unaffiliated competing providers of telephone exchange service . . . to residential and business customers.”  A BOC may seek entry under Track B if “no such provider has requested the access and interconnection described in [Track A]” and the BOC’s statement of generally available terms and conditions has been adopted by the respective state commission.

Under either Track A or Track B, the BOC must also demonstrate that its interconnection agreements or its statement of generally available terms and conditions satisfy the requirements of the competitive interconnection checklist contained in Section 271(c)(2)(B).  Section 271 also requires the FCC to consult with this Commission and the DOJ to verify a U S WEST’s compliance with the provisions set out in the Act.  As previously mentioned, the time period for consultation is notably limited because the Act requires that the FCC issue a written decision on the BOC’s 271 Application within 90 days.  Because of this shortened time frame, the FCC has restricted the consultation phase for state commissions to 20 days after the filing of an application.  See FCC Public Notice No. 96-469 “Procedures for BOC Applications Under New § 271 of the Communications Act.”

AT&T’S PETITION

Given the short 20-day period for state consultation, AT&T urges the Commission to “initiate an investigation regarding U S WEST’s compliance with Section 271.”  Petition at 3.  As explained in greater detail in the proposed Order attached to the Petition, AT&T envisions a two-phase process.  In the first phase, AT&T recommends that the Commission “examine general, legal and policy issues and determine a procedure for formal review of the U S WEST’s Section 271 filing.”  AT&T proposed Order at 2.  Appendix B to the proposed Order contains a list of issues or “questions” that the Commission should consider when evaluating a 271 application.

In the second phase of the proceeding, AT&T recommends that the Commission direct U S WEST to submit responses to all issues and questions identified in the first phase.  “Interested parties will then have the opportunity to reply.”  Proposed Order at 2.  The proposed Order contains a number of appendices including: Appendix A—FCC Public Notice; Appendix B—Recommended Issues and Questions to be Addressed in the 271 Docket; Appendix C—DOJ working paper and suggested areas of 271 inquiry; Appendix D—Washington UTC Order initiating a 271 docket; and Appendix E—NARUC best practices letter.  AT&T’s Petition, proposed order and the order’s appendixes are attached.

After reviewing the proposed issues and questions to be addressed by U S WEST (contained in Appendix B to the proposed Order), it appears that AT&T anticipates that the second phase of the proceeding initiates a 271 inquiry now.  In other words, rather than determined the procedures, and information that U S WEST should submit at the time it files its 271 notice with the Commission, AT&T contemplates that the Commission will open its 271 inquiry now.  For example, the first set of proposed questions asks U S WEST when it will file a 271 application and whether such application will be a Track A or Track B filing.

U S WEST’S ANSWER

U S WEST asserts that undertaking an investigation as proposed by AT&T “will only result in wasted time and effort.”  U S WEST Answer at 8.  U S WEST argues that there are several reasons why initiating a 271 docket at this time is premature.  First, U S WEST anticipates that it will not make a 271 filing for Idaho before the first quarter of 1998.  U S WEST states that it doesn’t intend to file its 271 Application in its 14-state region simultaneously nor does it expect the Idaho Application will be among the first to be filed.  Answer at 5.  Consequently, initiating a 271 proceeding now would not constitute “the best use of Commission and party resources.”  Id. at 6.

Second, rather than undertaking a 271 application in an effort to develop the legal standard for satisfaction of the 271 requirements, U S WEST suggests that “the most prudent course [of action] is to watch the application process as it unfolds at the FCC and in other states where the process is farther along in order to learn from those experiences.”  Id. at 6.  Given the Company’s assurance that it will not file a 271 application in 1997, the Idaho Commission will simplify its own process by evaluating the procedures adopted by other states.

Third, U S WEST objects to the “questions and issues” contained in Appendix B.  The Company complains that much of the requested information does not relate to an appropriate 271 inquiry, was too detailed, was too burdensome, and “much of the information that U S WEST would be required to provide is not in the possession of U S WEST but rather of its competitors.”  Id. at 7.  The Company urges the Commission to remember that the federal Telecommunications Act sought to promote competition in both the local and interLATA markets.  Id. at 8.  The Commission should not allow U S WEST’s competitors to create administrative road blocks as part of the Commission’s 271 proceeding.

U S WEST states that it had no objection to providing this Commission with 90 days prior notice of its 271 filing at the FCC.

Summary and Commission Decision

AT&T has requested that the Commission initiate a two-phase 271 proceeding.  U S WEST maintains that initiating such a proceeding at this time would be wasteful and burdensome.  The Staff anticipates that AT&T and other parties may file a response to U S WEST’s Answer prior to your decision meeting on July 16, 1997.

1.  Does the Commission wish to initiate a 271 proceeding as proposed by AT&T at this time?  Does the Commission desire to initiate a 271 investigation in some other form?

Don Howell

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