

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: U S WEST COMMUNICATIONS, INC.	DOCKET NO. INU-99-2
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ORDER DISMISSING PETITION WITHOUT PREJUDICE

(Issued July 8, 1999)

On May 5, 1999, U S WEST Communications, Inc. (U S West), filed a "Petition For Determination Of Effective Competition, For Waiver Of Accounting Plan Requirement And For Expedited Consideration" (the Petition), asking the Board to determine that the provision of custom calling features and premium directory listings are subject to effective competition and should be deregulated by the Board. In addition, U S West asked the Board to grant a waiver of the accounting plan requirements of IOWA ADMIN. CODE 199-5.7, based upon the fact that U S West's prices are currently subject to price regulation pursuant to IOWA CODE § 476.100 (1999).

In support of its Petition, U S West alleges that "every Iowan seeking residential or business services, in an exchange historically served by U S WEST, has a choice of providers of dial tone service." U S West points to local service resellers, facilities-based providers, municipal utility competitors, and the expansion of some of Iowa's smaller telephone companies as examples of the claimed extent of customer choice. U S West argues that as a result of these competitors, U S West

has lost its market power with respect to custom calling features and premium directory listings.

Custom calling features are found in U S West's Iowa Tariff No. 1 at Sections 5.4.3 and 5.4.4. Premium directory listings are not defined in U S West's tariff or in the Petition. U S West acknowledges it is required to ensure that telephone directories are published on an annual basis, listing the name, address, and telephone number of all customers choosing to be listed. IOWA ADMIN. CODE 199-22.3(1). U S West appears to distinguish these basic listings from all other information in the standard directory and define that other information as "premium listings."

U S West argues that premium directory listings are subject to competition. U S West claims McLeodUSA distributes a competitive telephone directory to every Iowa subscriber, including additional information such as premium listings. U S West claims that other named entities also distribute telephone directories, some being specialized but others listing information of a type contained in U S West's Iowa directories. U S West also points to the increasing availability of similar, and sometimes more comprehensive, information through the Internet, often at no charge. U S West argues that some of these alleged competitive alternatives may be superior to U S West's printed directories.

U S West asks the Board to consider and determine, on an expedited basis, that the provision of custom calling features and premium directory listings should be deregulated because they are subject to effective competition. U S West also asks the Board to waive the accounting plan requirement of IOWA ADMIN. CODE 199-

5.7(c) because U S West's prices are currently established pursuant to a price regulation plan under IOWA CODE § 476.96, rather than rate-of-return regulation.

On June 4, 1999, the Consumer Advocate Division of the Iowa Department of Justice (Consumer Advocate) filed a Response To Petition, Request For Docketing, And Request For Order Directing Compliance With Rule 199-5.2(2)"c" (Consumer Advocate Response). Consumer Advocate argues the matter should be docketed as a formal notice and comment proceeding, with evidentiary hearings and discovery to develop a reliable record of facts related to the issues raised. Consumer Advocate expresses the belief that such a record will establish that custom calling features and premium directory listings are not yet subject to effective competition.

Consumer Advocate also asks the Board to direct U S West to comply with IOWA ADMIN. CODE 199-5.2(2)"c," which requires that a petition for deregulation of telecommunications services must include "an identification of all persons or parties who are actual or potential competitive providers of the service or facility." In its petition, U S West acknowledges its failure to comply with this rule, arguing it would be "extremely difficult if not impossible to identify all [competitive] suppliers" of custom calling features (petition at p. 7) and that "comparable suppliers of competitive listing services are too numerous to list." (Petition at p. 12.)

Finally, Consumer Advocate resists U S West's request that this proceeding be considered on an expedited basis.

Also on June 4, 1999, AT&T Communications of the Midwest, Inc. (AT&T) filed a "Response To U S West's Petition For Determination Of Effective Competition" (the AT&T Response). AT&T argues U S West's Petition is based

upon three faulty premises: first, that local exchange service, and therefore custom calling features, are subject to effective competition; second, that because some customers have alternatives, all customers are benefiting from effective competition; and third, that because some custom calling features may be subject to effective competition, all custom calling features are subject to effective competition.

AT&T argues that the presence of resellers of U S West's services does not amount to effective competition because U S West is the effective provider of the services at both the wholesale and retail levels. AT&T argues that resale competition fails the first prong of the two-part effective competition test in IOWA CODE § 476.1D, which requires consideration of whether "a comparable service or facility is available from a supplier other than [U S West]."

AT&T also argues that many customers do not have effective alternatives to U S West's custom calling features, particularly small business and residential customers. For these customers, according to AT&T, U S West remains the only source of many custom calling features. Further, for some of the other services, the U S West custom calling features can only be duplicated through the use of smart telephones and the purchase of other U S West monopoly services, such as Caller ID or a second telephone line. AT&T believes this disqualifies these features as being "available from a supplier other than [U S West]."

AT&T also argues that under any circumstances not all custom calling features are subject to effective competition and they must be individually examined, rather than as a group.

Finally, AT&T suggests that regardless of the outcome of this proceeding, the Board should make it "clear that deregulation of a custom calling feature does not exempt that feature from the resale and other obligations of § 251(c)(4), et al., of the Telecommunications Act of 1996."

The Board will dismiss U S West's Petition, without prejudice, for failure to comply with the Board's filing rules applicable to such petitions. First, the Board's rules require that a petition for a deregulation of telecommunications services must identify "[t]he specific service or facility which the petitioner is asking the board to consider." IOWA ADMIN. CODE 199-5.2(2)"a." U S West's Petition provides no definition of the "premium directory listings" that U S West seeks to have deregulated; the Board cannot proceed to consider deregulation of a service without an adequate identification of the service.

Second, the Board's rules require that a petition for deregulation of telecommunications services must include "an identification of all persons or parties who are actual or potential competitive providers of the service or facility." U S West's claim that the actual or potential competitive providers are "too numerous to list" and that such a listing would be "extremely difficult if not impossible" does not excuse U S West from making at least a reasonable attempt to identify the most significant competitors, that is, those who are most likely to be directly affected by, and interested in, any Board action on U S West's Petition. The Board uses these lists, among other resources, to notify potentially-interested persons of deregulation proceedings. Without U S West's identification of these alleged competitors, the

Board cannot be certain of notifying all of the entities that U S West believes to be potentially interested and affected.

Finally, the Board will deny U S West's request for expedited consideration. Expedited consideration is limited to petitions for deregulation of a *proposed* service or facility; that is, one that is not an existing service or facility. IOWA ADMIN. CODE 199-5.2(3). Clearly, custom calling features are existing services, and it appears that premium directory listings, however they may be defined, are also existing services. Expedited consideration would not be available for this Petition.

IT IS THEREFORE ORDERED:

The "Petition For Determination Of Effective Competition, For Waiver Of Accounting Plan Requirement And For Expedited Consideration" filed on May 5, 1999, by U S WEST Communications, Inc., is dismissed without prejudice to re-filing in compliance with this Order and applicable Board rules.

UTILITIES BOARD

/s/ Allan T. Thoms

/s/ Susan J. Frye

ATTEST:

/s/ Raymond K. Vawter, Jr.
Executive Secretary

/s/ Diane Munns

Dated at Des Moines, Iowa, this 8th day of July, 1999.