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EX PARTE OR LATE FILED

EX PARTE FILING

April 24, 2000

Mr. Larry Strickling
Chief - Common Carrier Bureau
Federal Communications Commission
445 12th Street SW Room 5-C540
Washington, DC 20554

APR 2 0 2000

RE: Ex Parte in CC Docket No. 98-147

Dear Mr. Strickling:

This letter is to respond to your inquiry as to how U S WEST intends to treat collocated equipment in its central offices and elsewhere on U S WEST property, which equipment does not meet the test for collocation articulated in the recent Opinion of the United States Court of Appeals for the District of Columbia Circuit in *GTE Service Corporation v FCC*. Such equipment is referred to herein as "non-conforming equipment." The mandate in that case is expected to be released in mid May. Your inquiry appears to be directed at minimizing disruption to CLEC and ILEC operations while the Commission considers what, if any, modifications to its collocation rules must be made to bring them into conformance with the Court's Opinion and the Court's interpretation of Section 51.251(d)(1) of the 1996 Telecommunications Act.

It is U S WEST's plan and desire to minimize the disruption to CLECs and to its own operations during this period, subject to several caveats. First, U S WEST is concerned that some CLECs might utilize the fact that another CLEC has "grandfathered" some non-conforming equipment in the manner described in this letter as a basis for demanding that it is entitled to some sort of equal opportunity to collocate its own non-conforming equipment, either under Section 252(i) if the Act or otherwise. This possibility must be guarded against. Second, as the Court found (reaffirming prior law), U S WEST's physical property is its private property, which is entitled to protection under the United States Constitution. Accordingly, we believe that rapid action by the Commission is necessary to guard against unnecessary physical takings of U S WEST's property and to reduce the government's exposure should it be determined that the prices set to compensate U S WEST for physical collocation are less than the constitutionally adequate amount. Action by the Commission in the remand docket within 180 days after the Court issues its mandate should deal with both of those concerns.

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You first asked how U S WEST would treat non-conforming equipment currently collocated on U S WEST's premises. U S WEST will take no steps to remove or require the removal of such equipment, including ATM switches and remote switching units, or to delete connections between CLEC collocated equipment, on the basis of the GTE Opinion for at least six months after the Court's mandate has issued. If six months has passed and no order has been issued, U S WEST will reevaluate its position in light of the concerns expressed above and discuss the matter with the Commission before any action is taken. Should this Commission or a state regulatory authority rule that the presence of this equipment grants to others the opportunity to collocate additional non-conforming equipment on U S WEST's property, U S WEST will be forced to take immediate steps to secure the removal of the equipment in order to prevent such action.

You next asked how U S WEST would treat requests to collocate non-conforming equipment ordered prior to the date of the Opinion (March 17, 1999) and not yet installed. U S WEST will follow the same steps and procedures outlined above for pre-existing equipment in the case of equipment ordered prior to March 17 where U S WEST collocation space was actually accepted by the CLEC on or before that date. That is, U S WEST will continue to process and fill the order and fulfill its other obligations concerning the equipment under the Commission's vacated rules, subject to the 180 day and Section 252(i) limitations described in the above paragraph. Of course, equipment covered by this paragraph includes only equipment for which collocation of specific equipment has been sought prior to March 17. A blanket agreement setting forth broad general collocation rights would not confer the right to install additional non-conforming equipment during the period while the FCC is considering what action to take in response to the Court's opinion. In addition, U S WEST will not disrupt existing CLEC-to-CLEC connections installed prior to March 17.

Both of these paragraphs are "equipment specific." That is, a particular piece of equipment will be grandfathered, not a particular collocation space itself. While the collocating CLEC will be permitted to replace a particular piece of equipment with a direct "like-for-like" substitute for maintenance purposes, no other substitutions will be allowed. Moreover, the fact that a CLEC's agreement has expired or is expiring and is being renegotiated will not impact on the ability of the CLEC to retain the equipment in the collocation space. The equipment may stay regardless of contract renegotiation status, although the new contract will contain language-requiring conformance to the new rules once they have been issued. Moreover, U S WEST will not seek to limit the use of grandfathered equipment collocated on U S WEST property to make it conform to the terms of the Act as interpreted by the Court.

Your final question concerns equipment for which collocation was sought after March 17. It is U S WEST's intention not to permit collocation of non-conforming equipment for which there was not a specific order for which space has been accepted prior to March 17 of this year. In this regard, U S WEST will not negotiate with CLECs for collocation of non-conforming equipment during the period between the Court's Opinion and the issuance of the Court's mandate. While we recognize that the mandate is not yet in effect, negotiations for collocation of equipment at this time would be a futile and wasteful act, as most such equipment could not be actually collated until after issuance of the mandate. Ceasing such negotiations seems to be a reasonable approach to the collocation issue during the period between March 17 and issuance of the mandate itself.

Please call me (202.429.3120) with questions.

Sincerely,

Melissa E. Newman

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Vice President – Federal Regulatory
U S WEST