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**VIA ELECTRONIC MAIL
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Mr. Dennis Crawford
Utility Division
Public Service Commission
1701 Prospect Avenue
P.O. Box 202601
Helena, Montana 59620-2601

Re: Review of U S WEST Communications, Inc.'s Statement of Generally Available
Terms Pursuant to Section 252(f) of the Telecommunications Act of 1996,
Docket No. D2000.6.80

Dear Mr. Crawford:

Pursuant to the Notice of Opportunity to Comment (June 27, 2000) in the above-referenced docket, McLeodUSA Telecommunications Services, Inc., New Edge Network, Inc. d/b/a/ New Edge Networks, and the Association for Local Telecommunications Services (collectively, "Joint Commenters") hereby provide the following comments addressing the Statement of Generally Available Terms ("SGAT") filed by U S WEST Communications, Inc. ("USWC") on June 9, 2000.

Section 252(f) of the Telecommunications Act of 1996 (the "Act") requires that the Public Service Commission of Montana (the "Commission") review and approve or reject any SGAT that USWC submits for Commission approval within 60 days of submission unless USWC agrees to an extension of that time period. Alternatively, the statute authorizes the Commission to allow the SGAT to "take effect," subject to additional Commission review. The

Commission may not approve the SGAT as a result of that review unless the SGAT complies with Sections 251 and 252(d) and all applicable federal regulations, as well as requirements of Montana law. USWC submitted its SGAT to the Commission for review under Section 252(f) on June 9, 2000, requiring the Commission either to complete its review by August 8, 2000, unless USWC agrees to an extension, or to permit the SGAT to take effect.

Based on USWC's submissions, the Commission cannot approve this SGAT because it fails to meet the standards set forth in Sections 251 and 252(d) of the Act. Thus, the Commission should reject USWC's SGAT filing and close this docket, or, at a minimum, should request that USWC agree to an extension of the statutory review period until completion of the Section 271 proceeding underway in Montana in Docket No. D2000.5.70 (including both the collaborative multistate process to which the Commission has committed as well as any Montana-specific workshops held separately), where interested parties will have the opportunity to examine, review, and negotiate changes to the SGAT.¹

The SGAT deviates from existing federal and state law in myriad ways. Its language is often vague, many of its proposed rates are "under development," and its provisioning intervals will cause unreasonable delay in bringing competitive telecommunications services to residents of Montana. Some of the more egregious deficiencies identified by the Joint Commenters in the SGAT include the following observations: (1) that USWC wrongly seeks to limit the controlling law of the SGAT to the Act and the law of Montana; (2) that traffic terminated to Internet Service Providers is wrongly excluded from reciprocal compensation; (3) that collocation provisions fail to meet federal requirements; (4) that USWC fails to provide access to, and interconnection with, certain "new" network elements, including the subloop, high frequency portion of the loop, packet switching, dark fiber, and UNE combinations consistent with recent federal orders and regulations. This list is by no means exhaustive, but it is clear that, at best, the SGAT is a work in progress and therefore does not merit Commission approval.

Furthermore, USWC has failed to provide the Commission with sufficient information to undertake the requisite review. To the knowledge of the Joint Commenters, USWC has not filed any brief, testimony, or other document that supports USWC's contention that the SGAT complies with Sections 251 and 252(d) and applicable federal regulations, as well as the requirements of Montana law. USWC bears the burden to make that demonstration and has yet even to attempt to do so. The Commission should not be forced to make a determination based upon nothing more than USWC's filing of its SGAT.

While USWC has recognized the time constraints and other limitations posed by Section 252(f), USWC nonetheless proposes that the Commission allow the SGAT to "take effect" pending Commission approval or disapproval as a result of the Section 271 review process. The

¹ Other states, including Colorado, for example, have determined that using the Section 271 workshop process as a means of examining and reviewing the SGAT both conserves party and Commission resources and also provides parties with an opportunity to fully examine, negotiate, and revise the SGAT in detail.

Joint Commenters strongly oppose this proposal. An effective but unapproved SGAT not only provides no benefit to the Commission and requesting carriers, the SGAT poses substantial harm. The Act requires carriers to negotiate and, where necessary, to arbitrate interconnection agreements, even where an SGAT has been filed or approved by a state commission. An SGAT is intended solely to address those situations where no competitive local exchange carrier (“CLEC”) has requested a particular network element or interconnection arrangement that USWC is obligated to make available; it is not intended to be a substitute for an interconnection agreement. Allowing the SGAT to “take effect” absent Commission review and approval will give USWC’s SGAT a legitimacy it does not deserve. If the SGAT were allowed to become effective absent review and approval, the Commission essentially would be giving the SGAT its “stamp of approval,” thereby making the SGAT the bargaining basis for USWC’s negotiations for interconnection – even though the SGAT fails to meet the Act’s, FCC’s and Montana’s minimum requirements. CLECs, therefore, gain nothing if the SGAT’s unilateral terms, conditions, and rates “take effect,” and are, in fact, put at a distinct disadvantage.²

USWC’s actual intent is to give a patina of legitimacy to its unilateral interconnection terms and conditions and to use that document to demonstrate that it has a legal obligation to provide the Section 271 checklist items. However, as CLECs have requested every one of the Section 271 checklist items, USWC may not rely on its SGAT to demonstrate compliance with Section 271; rather, USWC must rely on existing interconnection agreements to establish that it has a legal obligation to provide these items as required by federal and state law. To the extent existing Commission-approved agreements do not reflect the latest requirements adopted by the FCC or the Commission, the remedy is to amend those agreements through negotiation between the parties, not to rely on USWC’s contract of adhesion. Indeed, most, if not all, interconnection agreements include a provision requiring modification of the agreement to reflect changes in governing law. Permitting the SGAT to take effect will not enable or facilitate either interconnection negotiations or the Section 271 review process. Furthermore, if the SGAT is allowed to “take effect,” USWC will have less incentive to negotiate terms and conditions if it can rely on an effective but unapproved SGAT to prove that USWC has a legal obligation to provide one or more of the Section 271 checklist items. The SGAT must be reviewed and analyzed by both the Commission and interested parties before it can be deemed a useful tool in the interconnection process.

Permitting the SGAT to go into effect without Commission approval would serve no legitimate purpose and would provide a disincentive for USWC to negotiate access to, and interconnection with, its network. The Commission, therefore, should reject USWC’s SGAT filing and refuse to allow it to “take effect” without Commission approval. At a minimum, the Commission should request that USWC agree to extend the statutory period for Commission

² Without Commission review and approval, the SGAT is nothing more than USWC’s proposed form contract, which USWC has offered – and continues to offer – requesting carriers regardless of whether it is on file with the Commission. The SGAT thus need not “take effect” to enable requesting carriers to accept some or all of its provisions as part of their interconnection agreements.

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review of the SGAT until the Commission and interested parties have thoroughly reviewed and resolved disputed issues with respect to the SGAT in Docket No. D2000.5.70 (including both the collaborative multistate process to which the Commission has committed as well as any Montana-specific workshops held separately), where interested parties will have the opportunity to examine, review, and negotiate changes to the SGAT.

The Joint Commenters appreciate the opportunity to provide comments on these issues and look forward to continued participation in this proceeding.

Very truly yours,

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