

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)
) CC Docket No. 99-272
Merger of Qwest Communications)
International Inc. and U S WEST, Inc.)

**COMMENTS OF
THE COALITION TO ENSURE RESPONSIBLE BILLING**

The Coalition to Ensure Responsible Billing (“CERB”),¹ by undersigned counsel and pursuant to the Public Notice released September 1, 1999,² respectfully submits the following comments in response to the Applications for approval of a transfer of control filed by U S WEST, Inc. (“U S WEST”) and Qwest International Inc. (“Qwest”) (collectively, the “Applicants”).

CERB is composed of seven billing clearinghouses (also called billing aggregators).³

The members of CERB have established billing and collection contracts with all of the Regional Bell Operating Companies (“RBOCs”), GTE, and most independent incumbent local exchange carriers (“LECs”) to bill for the telecommunications charges of third parties on the local bill. CERB members primarily assist smaller competitive companies offering

¹ The Coalition to Ensure Responsible Billing (“CERB”) comprises billing clearinghouses that process more than 90 percent of all billing submitted to local telephone companies by third parties. These billing clearinghouses perform billing and collection functions for competitive providers of basic and enhanced telecommunications services.

² *Qwest Communications International Inc. and U S WEST, Inc. Seek FCC Consent for a Proposed Transfer of Control*, CC Docket No. 99-272, DA 99-1775, Public Notice (rel. Sept. 1, 1999).

³ The members of CERB are Billing Concepts, OAN Services, Federal TransTel, HBS Billing Services, ILD Teleservices, Integretel, and USP&C.

interexchange services, voicemail, paging, and other services by aggregating these companies' charges under a single contract with each LEC. The proposed merger under consideration in the instant proceeding generates heightened concerns about U S WEST's efforts to discriminate against these competitive providers in terms of billing and collection services. In short, the proposed transaction would not serve the public interest because it would give U S WEST both increased incentives and opportunities to discriminate against other telecommunications providers – and the billing and collection clearinghouses that serve them – by denying nondiscriminatory access to the local end user bill. For the reasons explained below, the Commission should condition any transfer of control between U S WEST and Qwest upon a formal commitment by the companies to allow other service providers to include their charges on the U S WEST local telephone bill on a nondiscriminatory basis.

I. CONCERNS ALREADY EXIST OVER U S WEST'S CONDUCT TOWARD THIRD PARTIES IN TERMS OF BILLING AND COLLECTION SERVICES.

Before discussing how the merger would lead to greater opportunities and incentives to discriminate against third party telecommunications providers and the clearinghouses that serve them, the Commission should understand that there are already problems in gaining adequate and nondiscriminatory access to U S WEST's local end user bills. By way of background, the local telephone bill plays a central role in ensuring that telecommunications service providers can bill and collect from customers for services rendered. Consumers clearly prefer to see all of their telecommunications charges on a single bill, as evidenced by a Yankee Group study that indicated that 80 percent of consumers prefer a single bill.¹ Credit card billing² or direct billing³

¹ Presentation of panelist E. E. Estey, Vice President, Government Affairs, AT&T Corporation, before the Federal Communications Commission Public Forum on Local Exchange Carrier Billing for Other Businesses (June 24, 1997).

² Credit card billing simply cannot reach all consumers who might wish to purchase services such as voicemail or paging from providers other than the local exchange carrier. Census Bureau statistics show that as of 1995, approximately one-third of American families did not have general purpose credit cards. The same data show that lower income consumers were much less likely to possess credit cards. U.S. Census Bureau, *Statistical Abstract of the United States* (Oct. 13, 1998), at 524. Finally, even where families may hold credit cards, the market dynamic of switching balances from one card to another limits the long-term usefulness of credit card billing.

– once thought to offer viable potential alternatives to billing through each customer’s local telephone bill – have not turned out to be popular with consumers or feasible for providers. Recognizing this, many smaller telecommunications providers contract with billing and collection clearinghouses to ensure that their charges for services make their way onto the local telephone bill.

As LECs such as U S WEST seek to become full-service telecommunications providers, however, risks related to this reliance on the local telephone bill become increasingly apparent. Although it cannot yet offer long distance services in-region, U S WEST has actively expanded its operations beyond its core local market to include wireless and data services. In pursuing such expanded service opportunities, U S WEST has developed even more of an incentive to discriminate against competing service providers. To this end, U S WEST can gain a clear competitive advantage over third-party carriers by bundling its services and employing its local telephone bill as a bottleneck. In fact, U S WEST itself has recognized the value of its local telephone bill as a vehicle for billing for telecommunications services. In describing the wonders of its residential wireless services, for example, U S WEST’s website boasts, “Think about the convenience of one bill from one company. Think about the simplest way to stay in touch from the only company that can bring you these exclusive features.”⁴ Similarly, in touting the merits of its Internet services, U S WEST states, “Billing is easy, too – your U S WEST.net charges simply appear on your monthly U S WEST bill.”⁵ By denying competing providers the ability to employ this same “easy” billing in serving their customers – or by dictating unreasonable terms in order to make this “easy” billing available to other providers – U S WEST can significantly impair competition for non-local services.

³ Direct billing is problematic as well. Most smaller carriers cannot afford to print and send direct bills themselves; hence, they contract with clearinghouses and ultimately the LECs to bill for them.

⁴ See www.uswest.com/advancedpcs/main.shtml (visited Sept. 30, 1999) (provided as Attachment A).

⁵ See www.uswest.com/pcat/for_home/product/0,1084,41_1_3,00.html (visited Sept. 30, 1999) (provided as Attachment B).

U S WEST's "*Your Bill*" program represents just this kind of anticompetitive effort. Under this program, U S WEST separates billing for its own ancillary services and billing for competitors' ancillary services. Thus, while it will still process and print the bill for the clearinghouses' third-party provider clients, U S WEST will only do so by moving these providers' charges to a secondary envelope separate and apart from the traditional U S WEST envelope in which the LEC's services are billed. Thus, if a customer orders ancillary services from U S WEST, it will see those charges as part of its local telephone bill. By contrast, non-U S WEST ancillary service charges will be on a separate bill in a separate envelope (with the only difference between this and the direct billing discussed above being that the LEC, rather than the third-party provider, has processed and printed the separate bill). The lack of a single bill – the very marketing advantage that U S WEST trumpets to potential customers on its website – therefore is cause for significant concern under the *Your Bill* program. In light of U S WEST's statements to potential customers regarding the value of a single bill, it is hard to argue that the *Your Bill* segregation program represents anything other than an effort to make competitors' services less attractive to consumers.

The truly invidious nature of the *Your Bill* program can perhaps best be demonstrated through an example of the curious manner in which U S WEST administers the program. While U S WEST would push third-party providers off of the local telephone bill under *Your Bill*, it has made exceptions to this policy – but only in cases where it has a proprietary interest in the underlying service offering. When one CERB member questioned whether a third-party vendor served by the CERB member could have charges for its services included on the U S WEST local bill, a U S WEST representative responded:

I know you have been in negotiations with [vendor name deleted] who are [sic] the vendor for a U S WEST provided service. . . . I have received confirmation from our Director of Information and Billing Services that U S WEST will continue to bill these messages in the shared bill on behalf of [the CERB member]. *This decision has been made because the product being billed is a U S WEST product. This is the only service U S WEST will make an exception for with [the CERB member].* (emphasis added)

In other words, U S WEST is willing to grant exceptions from the *Your Bill* segregation program to third-party vendors – and the clearinghouses that serve them – only if U S WEST itself maintains an interest in the product in question. By contrast, for comparable products offered by other third- party vendors, U S WEST has made clear that under no circumstances will it allow these other vendors’ charges onto the local telephone bill. Such patent discrimination clearly provides U S WEST and its affiliated interests with a significant competitive advantage. Indeed, as explained below, the incentives and opportunities to grant these discriminatory exceptions will only increase with consummation of a Qwest-U S WEST merger.

II. A MERGER BETWEEN QWEST AND U S WEST WOULD ONLY EXACERBATE THESE CONCERNS OVER DISCRIMINATION IN THE BILLING AND COLLECTIONS CONTEXT.

Qwest and U S WEST argue in their Applications that “[t]his combination of a competitive carrier and an RBOC brings together two companies with no material overlaps in services.”⁶ While this may be true, it is the very expansion of diverse services highlighted in the merger Applications that generates concerns in the billing and collection context. As explained above, the problem with U S WEST’s billing and collection policies arises in how the LEC handles the inclusion (or more appropriately, exclusion) of third-party-provided ancillary services from the local telephone bill – unless U S WEST has a proprietary interest in those third-party-provided services. Following the merger, U S WEST would suddenly have a vested interest in the success of an increased volume of ancillary (non-local) services. The Applications make clear that U S WEST and Qwest envision the expanded deployment of advanced services and Internet services as a major component of the benefits that their merger would provide.⁷

⁶ *Applications for Transfer of Control* at 2.

⁷ *Id.* at 15-16.

Furthermore, Qwest's website indicates that the Denver-based company already offers, among other things, paging services and Internet services to both residential and business customers.⁸ In fact, the Applications state quite clearly that Qwest "provides a minimal amount of intraLATA toll service and offers Internet access and other Internet-based services in the U S WEST region."⁹

As U S WEST increases its stake in non-local services as a result of this planned merger, it will have greater incentives and opportunities to limit access to the local telephone bill to only those services provided by itself and its affiliates. Just as U S WEST now highlights its ability to provide a single bill for wireless and Internet services, one can expect that it will aggressively market a package of services that includes wireless and Internet services that will appear on the local telephone bill following the acquisition of a greater stake in such interests. Consumers who want to take advantage of the single bill that U S WEST believes is so important will have no choice but to use U S WEST/Qwest products if they want Internet services.

Given the opportunity, U S WEST and Qwest will therefore have a much greater chance and incentive to monopolize ancillary services by exercising their presently unfettered control over access to the local telephone bill in an anticompetitive manner. Programs such as U S WEST's *Your Bill* would present an even larger roadblock to competition as, by the Applicants' own admission, the number of ancillary services provided by U S WEST would presumably grow through the combination with Qwest. While the Commission decided thirteen years ago to deregulate billing and collection services,¹⁰ the continuing lack of viable alternatives to the local telephone bill described above and the increased competitive threat presented through this merger now justify a formal commitment from Qwest and U S WEST to keep the local telephone bill open to all providers of all services on a nondiscriminatory basis.

⁸ See www.qhome.net (visited Sept. 30, 1999); www.qwest.com/business/business.html (visited Sept. 30, 1999) (provided as Attachments C and D, respectively).

⁹ *Applications for Transfer of Control* at 13.

¹⁰ *Detariffing of Billing and Collection Services*, 102 F.C.C.2d 1150 (1986).

The Applicants will undoubtedly respond that there is no need to impose such a formal condition upon the merger, and they will likely also assert that the *Your Bill* program merely represents an effort by U S WEST to control (and distance itself from) cramming problems on local telephone bills.¹¹ Such arguments are, however, inapposite. As a preliminary matter, U S WEST cannot reasonably argue that it gains no competitive advantage in pushing competitors onto a stand-alone bill. If there were no such advantage, U S WEST would not repeatedly tout the availability of a single bill throughout its own advertising materials. As the scope and number of ancillary services would expand through the merger, this advantage would only become greater and more meaningful. The Commission is therefore fully justified in requiring the Applicants to adhere to a principle of nondiscrimination in providing billing and collection services to third parties.

As for arguments that *Your Bill* is simply an anti-cramming effort undertaken by the LEC, one cannot overlook the significant, self-serving benefits U S WEST obtains from implementing this program. Indeed, given its unmistakable interest in pushing competitors off of the local telephone bill, U S WEST can hardly be considered a neutral “policeman” in such an anti-cramming effort. For example, it has not shown that it will similarly police identical products in which it has an interest. In addition, this Commission is already taking an active role in policing and preventing cramming problems in the billing and collection area. The Commission’s “Truth-In-Billing” order and ongoing rulemaking proceeding already provide certain protections for consumers in terms of giving them the information they may need to make informed decisions and means of protecting themselves against slamming and cramming practices.¹² There is no need to allow a self-interested entity such as U S WEST to establish a program like *Your Bill*, which would have no impact on reducing cramming, but most certainly

¹¹ Cramming is the addition of charges to a telephone bill for programs, products or services the consumer did not authorize.

¹² *Truth-in-Billing and Billing Format*, CC Docket No. 98-170, First Report and Order and Further Notice of Proposed Rulemaking (rel. May 11, 1999).

poses a threat to competition. (Incidentally, U S WEST's *Your Bill* program will not itself address cramming, as U S WEST has no plans to implement quality control efforts for charges that will appear on that bill, as it does with its current U S WEST local bill.) U S WEST should not be permitted to use tactics that discriminate against competitors in terms of providing access to the local telephone bill.

Indeed, U S WEST's actions in forcing competitors off of the local telephone bill altogether are contradictory to the kinds of nondiscrimination principles that even other LECs seem to admit should apply to billing and collection services. SBC Communications, for example, commented earlier this year in a Federal Trade Commission proceeding that "[t]he FCC requires the RBOCs to bill for interexchange carriers, interLATA information service providers, and enhanced service providers where we are billing the same charges for ourselves or one of our affiliates. State rules similarly require us to offer billing and collection services on a nondiscriminatory basis and in a number of states billing and collections are a tariffed service."¹³ Thus, applying its own peer's assessment of a LEC's obligation, U S WEST's efforts to push competitors onto an unmarked stand-alone bill would be contrary to governing principles of federal and state law. Accordingly, U S WEST should be subjected to clear and unmistakable nondiscrimination principles in the billing and collection context prior to allowing it to expand significantly the scope of ancillary services that it would favor through inclusion in the local telephone bill.

¹³ Comments of SBC Communications, FTC File No. R611016 (filed June 4, 1999), at 8.

III. CONCLUSION

In light of the impact that a Qwest-U S WEST union would have upon the LEC's incentives and opportunities to discriminate against competitors and the clearinghouses that serve them in terms of nondiscriminatory access to the local telephone bill, the proposed merger cannot be found to serve the public interest. If the Commission should decide to approve the merger of Qwest and U S WEST, it should do so only upon an express and formal commitment by the Applicants to permit third parties to include charges for their services on the local telephone bill on a nondiscriminatory basis.

Respectfully submitted,

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