

Consent Decree

I. Introduction

1. This Consent Decree is entered into by the Federal Communications Commission ("Commission") and U S WEST Communications, Inc. ("U S WEST").

II. Background

2. On August 26, 1996, the Commission commenced its Broadband Personal Communications Services D, E, and F block auction. Among the participants were U S WEST and Western PCS BTA I, Corporation ("Western").

3. According to U S WEST, in September 1996, while the auction was still underway, Mr. Corey Ford, U S WEST Wireless Group's Vice President of Business Development and External Affairs, and Cregg Baumbaugh, Western's Director and Senior Vice President for Corporate Development exchanged telephone communications about the auction (the "Ford/Baumbaugh communications"). According to U S WEST, Mr. Ford did not immediately reveal these telephone communications to his superiors.

4. The Commission's Broadband Personal Communications Services (PCS) D, E, and F block auction ended on January 14, 1997. U S WEST was the winning bidder for 53 markets in the auction. On January 30, 1997, U S WEST filed an application on FCC Form 600 for licenses for the 53 markets in which it was the winning bidder. On April 28, 1997, the Wireless Telecommunications Bureau ("Bureau"), acting under delegated authority, conditionally granted three PCS licenses to U S WEST. The grant of these three licenses became final in the ordinary course. The remaining 50 licenses sought by U S WEST were not immediately granted because they were collectively the subject of two petitions to deny. On June 26, 1997, the Bureau denied one of the petitions to deny and on June 27, 1997, the Bureau denied the other petition. Western filed an application for review of the Bureau's June 26, 1997 order. The application for review affects the disposition of 48 of the licenses sought by U S WEST. On October 21, 1998, Western filed to withdraw that application for review; that filing remains pending. No application for review or petition for reconsideration of the June 27, 1997 action was filed, and that action, involving the grant of two licenses, became a final action in the ordinary course.

5. On July 11, 1997, according to U S WEST, Western's counsel informed U S WEST's counsel about the Ford/Baumbaugh communications in the course of preparing a response to a Civil Investigative Demand from the United States Department of Justice. U S WEST has represented that it immediately commenced an internal investigation of the Ford/Baumbaugh communications. U S WEST thereafter concluded that the Ford/Baumbaugh communications raised questions regarding U S WEST's compliance with the Commission's

anti-collusion rule, Section 1.2105(c). On July 18, 1997, U S WEST terminated Mr. Ford's employment and requested a meeting with the Commission staff to discuss the Ford/Baumbaugh communications.

6. On July 18, 1997, U S WEST scheduled a meeting with Commission staff for July 22, 1997. At this meeting, U S WEST orally related to the Commission staff the events described above. Thereafter, on August 1, 1997, U S WEST filed a Statement for the Information of the Commission in Accordance with Section 1.65 of the Commission's Rules ("Section 1.65 Statement"), in which it again represented to the Commission the details of the Ford/Baumbaugh communications. According to U S WEST, Mr. Ford initiated the exchange with Mr. Baumbaugh when he left a voice-mail message for Mr. Baumbaugh concerning the auction. Mr. Baumbaugh responded by leaving a voice-mail message for Mr. Ford. Ultimately, the two company officials spoke by telephone referencing the auction.

7. On September 17, 1997, in response to a Commission request, U S WEST signed an agreement tolling the statute of limitations for six months.

8. On November 21, 1997, the Bureau's Enforcement and Consumer Information Division directed a letter of inquiry to U S WEST involving the Ford/Baumbaugh communications, pursuant to Section 308(b) of the Communications Act of 1934, as amended, 47 U.S.C. § 308(b). U S WEST submitted its response to this letter of inquiry on December 16, 1997.

9. On March 16, 1998, the Commission issued a Notice of Apparent Liability for Forfeiture, 13 FCC Rcd 8286 (1998) ("NAL"), finding U S WEST apparently liable for a forfeiture in the total amount of \$1,200,000. Specifically, the NAL concluded that U S WEST apparently violated Section 1.2105(c) of the Commission's Rules when Mr. Ford apparently discussed U S WEST's bidding strategy for the Olympia, Washington, market with Mr. Baumbaugh. The NAL proposed a forfeiture in the amount of \$200,000 for U S WEST's apparent violation of Section 1.2105(c). The NAL also concluded that U S WEST apparently violated Section 1.65 of the Commission's Rules by failing to timely report the Ford/Baumbaugh communications. The NAL proposed a forfeiture of \$5,000 for each day of the apparent continuing Section 1.65 violation, for a total of \$1,000,000.

10. On April 15, 1998, U S WEST submitted a response to the NAL in which it requested a reduction of the proposed \$1,200,000 forfeiture. In support, U S WEST represented that:

(a) U S WEST had, prior to the Ford/Baumbaugh communications, undertaken substantial steps to make Mr. Ford and its auction team aware of the content and substance of Section 1.2105(c). In connection with the auction, outside counsel provided U S WEST with ongoing advice and six memoranda regarding Section 1.2105(c). Three of the memoranda were forwarded directly to Mr. Ford.

Mr. Ford and other auction team members attended the FCC's auction seminar. Further, members of U S WEST's auction team were provided with copies of the Commission's Bidder Information Package, which included the text of Section 1.2105(c).

- (b) Mr. Ford did not disclose the Ford/Baumbaugh communications to his supervisors during the auction or during initial interviews when U S WEST was conducting its internal investigation.
- (c) U S WEST terminated Mr. Ford's employment within seven days of learning from Western about the Ford/Baumbaugh communications, and within four days of obtaining Mr. Ford's confirmation of that information.
- (d) On July 22, 1997, U S WEST voluntarily revealed the results of its internal investigation to the Commission staff at a meeting. This informal disclosure took place 11 calendar days after Western's counsel informed U S WEST's counsel about the Ford/Baumbaugh communications and before the grant of certain PCS licenses to U S WEST became final.
- (e) On August 1, 1997, U S WEST reported the Ford/Baumbaugh communications in a Section 1.65 Statement. U S WEST submitted the Section 1.65 Statement before the grant of certain PCS licenses to U S WEST became final.
- (f) U S WEST's history of compliance and measures designed to prevent violation of the anti-collusion rule indicate that Mr. Ford's conduct was an isolated incident.
- (g) U S WEST presented an analysis of the auction results opposing the tentative conclusion that the Ford/Baumbaugh communications affected the outcome of the auction, although U S WEST conceded that the impact of the communications on the auction was not relevant to whether the communication violated Section 1.2105(c).

III. Definitions

11. For the purposes of this Settlement Agreement, the following definitions shall apply:

- (a) "Commission" means the Federal Communications Commission.
- (b) "Bureau" means the Commission's Wireless Telecommunications Bureau.

- (c) "U S WEST" means U S WEST Communications, Inc., and all of its subsidiaries and affiliates.
- (d) "Order" means an order of the Commission adopting this Consent Decree.
- (e) "Final Order" means an Order that is no longer subject to administrative or judicial reconsideration, review, appeal, or stay.

IV. Agreement

12. Without admitting to any violation of the Commission's Rules, U S WEST agrees not to contest a finding that U S WEST apparently violated Section 1.2105(c) of the Commission's Rules based on the Ford/Baumbaugh communications, provided that this finding shall not be used by the Commission against U S WEST or its affiliates in any other current or future proceedings before the Commission except as set forth in paragraph 20 of this Consent Decree.

13. Without admitting to any violation of the Commission's Rules, U S WEST agrees that there is substantial evidence that U S WEST's employee's failure to promptly report the Ford/Baumbaugh communications to the Commission or to his superiors violated Section 1.65 of the Commission's Rules, provided that this finding shall not be used by the Commission against U S WEST or its affiliates in any other current or future proceedings before the Commission.

14. U S WEST and the Bureau agree that this Consent Decree does not constitute an adjudication of the merits, or any finding on the facts or law regarding any violations committed by U S WEST arising out of the Ford/Baumbaugh communications.

15. U S WEST shall make a voluntary contribution to the United States Treasury in the amount of \$800,000 within 10 calendar days after the Commission releases an Order adopting this Consent Decree. Upon consideration of U S WEST's April 15, 1998, response to the NAL, the Commission finds this amount to be appropriate in light of the mitigating factors presented in that response.

16. U S WEST agrees to implement a Compliance Program, a copy of which is appended hereto ("Attachment").

17. In express reliance upon the covenants and representations contained herein, the Commission agrees to terminate the instant enforcement proceeding upon the Order adopting this Consent Decree becoming a Final Order.

18. In consideration for the termination by the Commission of these proceedings in

accordance with the terms of this Consent Decree, U S WEST agrees to the terms, conditions and procedures contained herein.

19. The Commission agrees not to institute any proceeding, formal or informal, of any kind against U S WEST concerning the Ford/Baumbaugh communications.

20. In the event that U S WEST is found by the Commission or its delegated authority to have engaged in conduct the same or similar to that described in paragraph 12 of this Consent Decree, U S WEST and the Commission agree that the apparent misconduct described in paragraph 12 may be used only to fashion an appropriate sanction, provided that U S WEST shall not be precluded or estopped from litigating *de novo* any and all of the issues arising from the facts and allegations presented in the NAL as necessary to defend, in any forum, its interest from challenge by any person or entity not a party to this Consent Decree.

21. U S WEST admits the jurisdiction of the Commission to adopt this Consent Decree.

22. U S WEST waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Order adopting this Consent Decree, provided the Order adopts the Consent Decree without change, addition, or modification.

23. U S WEST and the Commission agree that the effectiveness of this Consent Decree is expressly contingent upon issuance of the Order, provided the Order adopts the Consent Decree without change, addition, or modification.

24. U S WEST and the Commission recognize that in the event that this Consent Decree is rendered invalid by any court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.

25. U S WEST and the Commission agree that if U S WEST, the Commission, or the United States on behalf of the Commission, brings a judicial action to enforce the terms of the Order adopting this Consent Decree, neither U S WEST nor the Commission shall contest the validity of the Consent Decree or Order, and U S WEST and the Commission shall waive any statutory right to a trial *de novo* with respect to any matter upon which the Order is based, and shall consent to a judgment incorporating the terms of this Consent Decree.

26. U S WEST agrees to waive any claims it may otherwise have under the Equal Access to Justice Act, Title 5 U.S.C. § 504 and 47 C.F. R. § 1.1501 *et seq.*

27. U S WEST agrees that any violation of the Order adopting this Consent Decree shall constitute a separate violation of a Commission order, entitling the Commission to exercise

ATTACHMENT

(a) U S WEST shall implement a formal, comprehensive compliance program ("Compliance Program") for the education of all officers, employees, contractors, consultants and any other persons or entities associated with U S WEST who have or will have auction-related responsibilities for or on behalf of U S WEST ("Auctions Personnel"). The purpose of the Compliance Program shall be to ensure future compliance by U S WEST with all applicable auction-related rules and regulations and prompt reporting of violations thereof. U S WEST may at its own discretion terminate the Compliance Program after 3 years from the date of adoption of the Consent Decree Order.

(b) The Compliance Program shall appoint the head of U S WEST's corporate compliance to administer the Compliance Program ("Administrator"). The Administrator shall establish and maintain a monitoring and evaluation scheme to oversee mandatory participation in the Compliance Program prior to the assumption of the auction-related duties by Auctions Personnel. The Administrator shall require written certification from Auctions Personnel that each has read, understands and agrees to abide by the terms of the Consent Decree and the Commission's auction rules. The Administrator shall further maintain auditable records and shall produce such records within 10 calendar days upon a written request of the Commission. The Administrator shall also report in writing any probable violations of Section 1.2105(c) of Commission's Rules within 10 calendar days of learning of the probable misconduct to the Bureau.