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**BEFORE THE ARIZONA CORPORATION COMMISSION**

CARL J. KUNASEK  
CHAIRMAN  
JIM IRVIN  
COMMISSIONER  
WILLIAM A. MUNDELL  
COMMISSIONER

SEP 10 4 04 PM '99 Arizona Corporation Commission  
**DOCKETED**

DOCUMENT CONTROL SEP 10 1999

IN THE MATTER OF US WEST  
COMMUNICATIONS, INC.'S COMPLIANCE  
WITH § 271 OF THE TELECOMMUNICATIONS  
ACT OF 1996.

DOCKET NO. T-00000A-97-0288  
*[Signature]*

**PROCEDURAL ORDER**

**BY THE COMMISSION:**

On May 17, 1999, joint intervenors AT&T Communications of the Mountain States, Inc., TCG-Phoenix, MCI WorldCom, Inc. and Sprint Communications Company, L.P. (collectively, "Joint Intervenors") filed a Motion to Compel US WEST Communications, Inc. ("US WEST") to respond to data requests JI-130, JI-131, JI-132 and JI-133. The subject data requests sought information and documents relating to any review by any outside consultants that US WEST has retained to study, evaluate or analyze the performance of its interfaces and/or access that US WEST provides to its operation support systems ("OSS") for competing local exchange carriers ("CLECs"). US WEST objected to the subject data requests to the extent they sought production of documents protected by the attorney-client privilege, the work product doctrine or the self-evaluation privilege.

In their Motion to Compel, the Joint Intervenors argued that the Commission should reject US WEST's claims of privilege for the following reasons:

1. The attorney client privilege only protects disclosure of actual communications between an attorney and client made for the purpose of rendering legal advice and US WEST had failed to provide sufficient information to determine whether the attorney client privilege attaches to the OSS reports;
2. The work-product doctrine only protects attorney work-product prepared in anticipation of litigation, and US WEST had not provided information to indicate the subject documents were prepared in anticipation of litigation; and
3. Even if the subject documents are work-product prepared in anticipation of litigation,

1           they should be discoverable because the Joint Intervenors have substantial need for the  
2           information and cannot, without undue hardship, obtain the equivalent information by  
3           other means.

4           On May 24, 1999, US WEST filed its Opposition to the Motion of the Joint Intervenors. In  
5           its Opposition, US WEST asserted that the documents at issue consist of reports and other written  
6           materials that outside consultants prepared to assist US WEST's attorneys in advising US WEST of  
7           the nature of litigation risks associated with the OSS. US WEST asserted that in addition to being  
8           prepared for litigation, the documents contain US WEST counsel's mental impressions and legal  
9           theories. US WEST submitted affidavits of its attorneys that indicate legal counsel commissioned the  
10          reports and relied upon the reports in rendering legal advice to US WEST, and consequently, these  
11          reports constitute "communications" within the meaning of the attorney-client privilege. The  
12          affidavits indicate that US WEST legal counsel requested the consultants to prepare the materials to  
13          assist in rendering legal advice regarding pending and anticipated litigation. The affiants indicate  
14          they had substantial involvement in directing the consultants' activities, reviewing their work and  
15          preparing the final reports, and consequently, the reports reflect counsel's thought processes, opinions  
16          and legal theories as well as the thought processes and opinions of non-testifying consultants that US  
17          WEST retained in anticipation of litigation.

18          The Joint Intervenors filed their Reply Memorandum on June 1, 1999, in which they argued  
19          that even if the claimed privileges attach to the subject documents, the privileges do not protect the  
20          underlying factual information from disclosure. The Joint Intervenors requested the Motion to  
21          Compel be granted or in the alternative, should the Hearing Division conclude it is unable to  
22          determine whether the documents and other information falls within the protection of the claimed  
23          privileges, that it order US WEST to produce the documents for an in camera review.

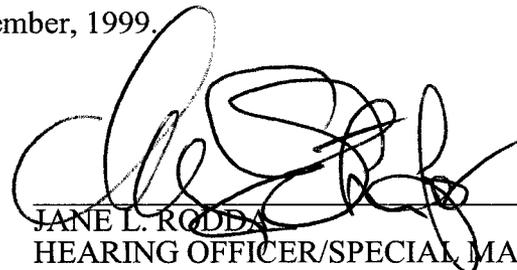
24          During a pre-hearing conference held on June 4, 1999, the presiding Hearing Officer in the  
25          §271 proceeding ordered US WEST to make the documents available for an in camera review by a  
26          Hearing Officer within the Division who is not involved in the §271 proceeding ("Special Master").  
27          US WEST produced the documents on or about June 18, 1999. US WEST produced the documents  
28          with the understanding that the Special Master would review the documents outside the presence of

1 counsel for the parties and that no one other than the Special Master making the review should have  
2 access to the materials.

3 After review of the legal arguments and in camera review of the subject reports and related  
4 documents, the Special Master finds that the subject documents are protected from discovery by the  
5 attorney-client privilege and the work-product privilege. These reports and related documents were  
6 made to facilitate the rendition of legal advice to US WEST and have been maintained as confidential  
7 for that purpose. Although the OSS reports and related documents are protected from discovery, the  
8 facts underlying these reports are not. To the extent data requests JI-130 and -132 seek disclosure of  
9 underlying facts, US WEST must respond to the extent it is possible without disclosing the mental  
10 impressions, conclusions, opinions or legal theories of its attorneys or other representatives, including  
11 its non-testifying representatives.

12 IT IS THEREFORE ORDERED that the furnished documents will be sealed subject to  
13 appeal.

14 DATED this 10th day of September, 1999.

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JANE L. RODDA  
HEARING OFFICER/SPECIAL MASTER

19 Copies of the foregoing mailed  
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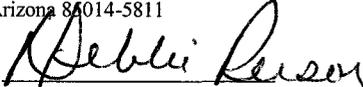
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