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BEFORE THE ARIZONA CORPORATION COMMISSION

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CHAIRMAN
JIM IRVIN
COMMISSIONER
WILLIAM A. MUNDELL
COMMISSIONER

Arizona Corporation Commission

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Docket No. T-00000A-97-0238

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

**RESPONSE OF COMMISSION STAFF TO THE
STATEMENTS OF POSITION OF
OTHER PARTIES ON BIFURCATION OF NON-OSS ISSUES**

I. INTRODUCTION

By Procedural Order dated August 27, 1999, the Commission ordered parties to address in their Statements of Position a Joint Proposal by U S WEST and Staff of the Arizona Corporation Commission ("Commission Staff") to bifurcate non-OSS related issues at this time and proceed to file testimony and have a hearing on these issues prior to completion of OSS testing. U S WEST and Staff also jointly proposed the following procedural schedule for review of non-OSS issues:

October 8, 1999	Staff/Intervenor Testimony
November 19, 1999	U S WEST Rebuttal Testimony
December 1, 1999	Surrebuttal Testimony (Staff)
December 7, 1999	Hearing

The August 27, 1999 Procedural Order asked parties to address the following issues relative to the Joint Proposal filed by U S WEST and Commission Staff:

1. Should non-OSS issues be bifurcated from OSS issues and proceed on a separate track? If so, why? If not, why not?
2. If non-OSS issues are bifurcated,
 - (a) What issues should be included in the non-OSS proceeding?

1 (b) What schedule would you consider to be a reasonable schedule for the
2 non-OSS proceeding?

3 On September 7, 1999, responses to these questions were filed by AT&T
4 Communications of the Mountain States, Inc. and TCG Phoenix (collectively "AT&T"), Cox
5 Arizona Telecom, L.L.C. ("Cox"), e-spire Communications, Inc. ("e-spire"), MCI WorldCom,
6 Inc. ("MCIW"), NEXTLINK ARIZONA, L.L.C. ("NEXTLINK"), Sprint Communications
7 Company, L.P. ("Sprint"), the Telecommunications Resellers Association ("TRA") and the
8 Residential Utilities Consumers Office ("RUCO"). Commission Staff files the following
9 response to the comments filed by these parties on the issue of bifurcation.

10 **II. THE COMMISSION SHOULD BIFURCATE NON-OSS ISSUES AND PROCEED**
11 **TO EVALUATE THOSE ISSUES AT THIS TIME FOR 271 CHECKLIST**
12 **COMPLIANCE.**

13 **A. Bifurcation of Non-OSS Issues is Appropriate and Balances the Interests of**
14 **All Parties**

15 Most of the Competitive Local Exchange Carriers ("CLECs"), with the exception of
16 TRA, argue that bifurcation is inappropriate at this time, that there are no benefits associated
17 with bifurcation and that the Commission should evaluate both OSS and non-OSS related issues
18 at the same time. AT&T/TCG Statement of Position at 15; e-spire™ Communications, Inc. and
19 Cox Arizona Telecom's Statement at 1; MCI/WorldCom Statement at 10; NEXTLINK
20 Statement at 10; Sprint Statement at 11. Commission Staff, as one of the Joint Movants for
21 bifurcation, respectfully disagrees.

22 Commission Staff has at all times during the course of this proceeding favored
23 bifurcation of non-OSS issues from OSS related issues. Contrary to the assertions of the CLECs,
24 Commission Staff believes that there are several important advantages to bifurcation.

25 First, the experience of other States, most notably California, New York and Nebraska,
26 indicates that bifurcation whether by happenstance or design, works well and expedites
27 resolution of the Section 271 checklist compliance evaluation. Arizona is one of the first States
28 to separate out OSS issues for a separate Workshop Collaborative approach prior to the
evidentiary hearing process. In that OSS issues are already scheduled on a separate track in

1 Arizona, there is no reason not to proceed with non-OSS related issues at this time. If the
2 Commission does not proceed to evaluate non-OSS issues at this time, the end result will be
3 substantial delay in the evaluation and ultimate resolution of U S WEST's application.

4 OSS issues are readily identifiable and severable from non-OSS issues. There is no
5 legitimate reason why these issues would have to be addressed together. Addressing the non-
6 OSS issues at this time would resolve a major portion of the Company's Application, leaving
7 only OSS issues for resolution at a later date.

8 In addition to facilitating the processing of the Company's Application in an efficient and
9 timely manner, Commission Staff also believes that another primary benefit of bifurcation is that
10 if any compliance deficiencies are identified with respect to non-OSS issues at this time, the
11 Company would have several months to correct those deficiencies and address them in the final
12 hearing on OSS issues, if necessary.

13 Commission Staff also believes that bifurcation would be the least confusing way to
14 proceed on these issues. One large hearing attempting to address all issues at one time, once
15 OSS testing is completed, will result in an extended hearing with one expert after the next,
16 addressing a myriad of unrelated issues. Therefore, Commission Staff believes that it would be
17 less confusing in the end to proceed to address non-OSS issues at this time.

18 Finally, Commission Staff believes that bifurcation best balances the interests of all
19 parties in this case. U S WEST filed its Notice of Intent to File with the FCC in February of this
20 year. The Commission's original Procedural Order contemplated that the Company's
21 Application would be processed in a 90 day period. While Commission Staff as well as most
22 parties recognize that processing of U S WEST's Application in 90 days would be virtually
23 impossible given the extensive OSS testing necessary, proceeding with non-OSS issues now
24 would most appropriately balance the interests of all parties.

25 **B. The Arguments Raised by the CLECs Opposing Bifurcation are Meritless**

26 Furthermore, most of the arguments raised by the CLECs against bifurcation are red
27 herrings and/or meritless.

28

1 For instance, many of the CLECs argue that a bifurcated process will result in
2 determinations being submitted to the FCC which are based upon old data or a stale record which
3 would have to be revisited again by the Commission in the final OSS hearing, if necessary. Cox
4 and e-spire™ at 2; MCI/WorldCom at 12; NEXTLINK at 8; Sprint at 12. This argument is a red
5 herring. Once the Commission finds that U S WEST has met a checklist item, that checklist item
6 is concluded or finished. The Commission need not revisit the issue. The only circumstances
7 which may require reevaluation would be allegations by the CLECs that U S WEST was
8 “backsliding” on a given checklist item and no longer met it. Allegations of backsliding, if any,
9 can easily be addressed in any subsequent hearing on OSS compliance.

10 AT&T also argues that a bifurcated process would result in duplication of testimony,
11 preparation, travel and resources generally. AT&T Statement of Position at p. 17. Staff
12 disagrees. There would be no duplication of testimony on any issues; most parties, including
13 AT&T, agree that bifurcation is feasible. Non-OSS issues are for the most part discrete issues
14 that are identifiable and severable.

15 AT&T and MCIW also argue that the Commission should delay on these issues until the
16 FCC issues its decision on unbundled network elements which was remanded by the Supreme
17 Court in the AT&T v. Iowa Utilities Board¹ decision and the Eighth Circuit Court of Appeals
18 rules on the challenges to the TELRIC pricing methodology now pending before it. Once again,
19 Staff believes these issues are red herrings. It is likely that any decisions in these cases will
20 become the subject of further appeal. The Commission should not wait but should proceed based
21 upon the state of the law as it exists at this time. If that changes at some point in time, that can
22 subsequently be taken into account, but should not form the basis for indefinite delay on the
23 Company’s Application.

24 **III. CONCLUSION**

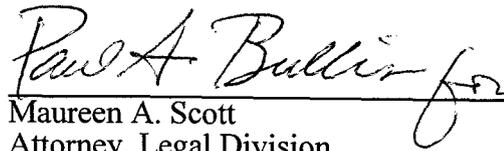
25 In summary, Commission Staff believes that bifurcation is appropriate and balances the
26 interests of all parties.

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¹ 119 S.Ct. 721 (1999).

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RESPECTFULLY SUBMITTED this 9th day of September, 1999.



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