



0000007432

ORIGINAL

BEFORE THE ARIZONA CORPORATION COMMISSION RECEIVED

**CARL J. KUNASEK**  
**Chairman**  
**JAMES M. IRVIN**  
**Commissioner**  
**WILLIAM A. MUNDELL**  
**Commissioner**

Arizona Corporation Commission

**DOCKETED**

DEC 06 1999

1999 DEC -6 P 1:47

AZ CORP COMMISSION  
DOCUMENT CONTROL

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

DOCKETED BY

Docket No. T-00000A-97-0238

**REPLY TO U S WEST'S RESPONSE  
ON JOINT MOTION FOR  
ALTERNATE PROCEDURAL  
ORDER**

AT&T Communications of the Mountain State, Inc. and TCG Phoenix  
(collectively "AT&T"), NEXTLINK Communications, Inc., MCI WorldCom, Inc., on  
behalf of its regulated subsidiaries, and Electric Lightwave, Inc., e-spire  
Communications, Inc., Rhythms Links, Inc. and Sprint Communications Company, L.P.  
("Movants") hereby reply to the response of U S WEST Communications, Inc.  
("U S WEST") to the Joint Motion for Alternate Procedural Order ("Motion").<sup>1</sup>

U S WEST does not oppose the use of the collaborative process to determine  
whether U S WEST has met the checklist items contained in Section 271 of the  
Telecommunications Act of 1996. However, after seeking (over objection from a number  
of parties), and receiving a Procedural Order from the Hearing Division bifurcating the  
proceeding, U S WEST again seeks an order treating all checklist items together before  
the completion of OSS testing. Moreover, although U S WEST has never objected to the  
Hearing Division's participation in this case, it now seeks a collaborative process that  
excludes the Hearing Division, even from disputed issues.

<sup>1</sup> The parties to this reply will be referred to as "Movants," as opposed to the parties joining the Motion, which are referred to as "Joint Movants."

Neither of U S WEST's positions in response to this Motion has merit. First, the Hearing Division has always been involved in the present proceeding, and U S WEST has never objected to the Hearing Division's participation. The procedural approach taken in the Joint Motion maximizes efficiencies that are attainable by a collaborative process, while ensuring that all parties receive the due process to which they are entitled.

Joint Movants agreed that Staff reports on undisputed issues would go directly to the Commission. This ensures that the Hearing Division is not needlessly involved in undisputed issues. However, as to disputed issues, Movants believe that the Hearing Division, and not Staff, is the division within the Arizona Corporation Commission tasked with the responsibility to weigh independently all the evidence and make recommendations to the Commission. Even Staff has agreed that the Hearing Division should be involved in the process where checklist items are in dispute. For the Movants, the participation of the Hearing Division is an integral component of the Joint Motion. If the Hearing Division is eliminated from the collaborative process, as proposed by U S WEST, Movants would withdraw their support of the Motion and would oppose the use of the collaborative process for any checklist item.

Second, the current Procedural Order covers only checklist items 3, 7, 8, 9, 10, 12 and 13. The Procedural Order only covers these items, in part, because U S WEST had asked that the proceeding be bifurcated, holding hearings on all checklist items and deferring only OSS-related issues until the testing is complete. Although Movants and a number of other parties opposed bifurcation, the opponents stated that if the Commission were to bifurcate the issues, it initially should address only checklist items 3, 7, 8, 9, 10, 12 and 13, the only truly non-OSS related checklist items. The Hearing Division agreed with U S WEST that the proceeding should be bifurcated and entered the existing

Procedural Order; all OSS-related checklist items, the public interest, performance measures, Section 272 and OSS issues were put off until after the OSS testing is complete.

Now, in the guise of a response to the Joint Motion, U S WEST essentially seeks reconsideration of the very procedural order it sought. Nothing has changed, except that U S WEST now appears willing to collaborate only if it can avoid any potential for hearings by obtaining an order that states all checklist items shall be resolved by the collaborative process before OSS testing is complete. U S WEST raised essentially the same argument before, and it did not prevail.

Although there may be reasons to use a collaborative process on the non-OSS checklist items identified in the Procedural Order, there is no compelling reason to hear all checklist items before the OSS testing is complete. The arguments raised by Movants and other parties for not addressing OSS-related checklist items until after the OSS testing is completed are still valid.

Movants agreed to use the collaborative process to address the checklist items in the present Procedural Order. They are unwilling to commit now to use the collaborative process for the remaining checklist items before the OSS testing is complete.

Significantly, Movants agreed in the Joint Motion to reconsider their position at the conclusion of the collaborative process on the initial checklist items. *See* Motion at ¶ 5.

At that time, all parties can evaluate how well the process worked and whether it would be appropriate to proceed with the remaining checklist items using the collaborative process, either before or after the OSS testing is complete. Staff also agreed to revisit the issue at the conclusion of collaborative on checklist items 3, 7, 8, 9, 10, 12 and 13.

Movants see no reason, and are unwilling to commit, to the use of the collaborative process for addressing the remaining checklist items at this time. Movants also believe it is unnecessary to make such a decision at this time. The present Procedural Order, as does the Motion, contemplates addressing only checklist items 3, 7, 8, 9, 10, 12 and 13. There is no reason to conclude, as does U S WEST, that the process set forth in the Joint Motion will extend the proceeding. The present Procedural Order contemplates that the hearings will be held in February 2000. The Motion contemplates that the collaborative process will be finished by the end of February 2000. The process is not being delayed in any way by the proposal contained in the Motion. In fact, the proposed process allows the Staff to take individual checklist items to the Commission and Hearing Division for resolution before the conclusion of the proceeding. U S WEST may obtain decisions on some checklist items earlier using the collaborative process, as proposed by the Joint Movants.

Finally, U S WEST misrepresents the Joint Motion. Staff's reports on undisputed issues will go directly to the Commission. However, Movants insisted on the opportunity to file briefs and reply briefs because, although parties may agree in workshops that U S WEST has met a particular checklist item, they may not completely agree with Staff's findings and conclusions of law, and Movants must have an opportunity to put any disagreements on the record. As for disputed issues, it was never Movants' intent that Staff would hear the evidence for the purpose of making a recommendation to the Commission.

For all of the foregoing reasons, Movants request that the Motion be adopted as proposed by Joint Movants, and without U S WEST's proposed changes. Movants must respectfully withdraw their support of the collaborative process should the changes

proposed by U S WEST be seriously considered for adoption and request that the present  
Procedural Order remain in effect.

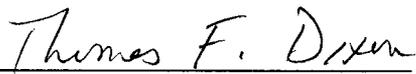
RESPECTFULLY SUBMITTED this 3<sup>rd</sup> day of December, 1999.

AT&T COMMUNICATIONS OF  
THE MOUNTAIN STATES, INC.  
AND TCG PHOENIX

By: 

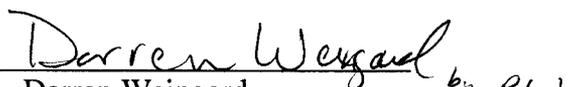
Thomas C. Pelto  
Mary B. Tribby  
Richard S. Wolters  
1875 Lawrence Street  
Suite 1575  
Denver, Colorado 80202  
Telephone: 303-298-6471  
Facsimile: 303-298-6301  
E-mail: [rwolters@att.com](mailto:rwolters@att.com)

MCI WORLDCOM, INC., on behalf  
of its regulated subsidiaries

By:  *by RSW*

Thomas F. Dixon  
707 17<sup>th</sup> Street, #3900  
Denver, Colorado 80202  
(303) 390-6206

SPRINT COMMUNICATIONS  
COMPANY, L.P.

By:  *by RSW*

Darren Weingard  
1850 Gateway Drive, 7<sup>th</sup> Fl.  
San Mateo, CA 94404-2467  
(650) 513-2475

NEXTLINK COMMUNICATIONS,  
INC.

By: Dan Waggoner by RSW  
Dan Waggoner  
Davis Wright Tremain  
2600 Century Square  
1501 Fourth Avenue  
Seattle, WA 98101-1688  
(206) 628-7707  
-and-  
Alaine Miller  
500 108<sup>th</sup> Avenue NE  
Suite 2200  
Bellevue, WA 98004  
(425) 519-8954

ELECTRIC LIGHTWAVE, INC.

By: Todd Wiley by RSW  
Michael M. Grant  
Todd Wiley  
Gallagher & Kennedy  
2600 North Central Avenue  
Phoenix, AZ 85004-3020  
(602) 530-8000

RHYTHMS LINK, INC.

By: Thomas Campbell by RSW  
Thomas Campbell  
Lewis and Roca, LLP  
40 North Central Avenue  
Phoenix, AZ 85004  
(602) 262-5311  
-and-  
Douglas Hsiao  
6933 South Revere Parkway  
Englewood, CO 80112

e:spire COMMUNICATIONS, INC.

By: Michael W. Patten  
Lex J. Smith  
Michael W. Patten *by RW*  
Brown & Bain, P.A.  
2901 North Central Avenue  
Phoenix, AZ 95012  
(605) 351-8000

## CERTIFICATE OF SERVICE

I hereby certify that a copy of the Reply to U S WEST's Response on Joint Motion for Alternate Procedural Order regarding Docket No. T-00000A-97-0238, was sent via facsimile this 3<sup>rd</sup> day of December, 1999 to:

Jerry Rudibaugh  
Hearing Officer  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, AZ 85007

and that the original and 10 copies of Reply to U S WEST's Response on Joint Motion for Alternate Procedural Order regarding Docket No. T-00000A-97-0238, were sent via overnight delivery this 3<sup>rd</sup> day of December, 1999, to:

Arizona Corporation Commission  
Docket Control – Utilities Division  
1200 West Washington Street  
Phoenix, AZ 85007

and that a copy of the foregoing was sent via overnight delivery this 3<sup>rd</sup> day of December, 1999 to the following:

Carl J. Kunasek, Chairman  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, AZ 85007

Jerry Porter  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, AZ 85007

Jim Irvin, Commissioner  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, AZ 85007

Patrick Black  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, AZ 85007

William A. Mundell, Commissioner  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, AZ 85007

Teena Wolfe  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, AZ 85007

Christopher Kempley  
Arizona Corporation Commission  
Legal Division  
1200 West Washington Street  
Phoenix, AZ 85007

Ray Williamson  
Acting Director - Utilities Division  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, AZ 85007

David Motycka  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, AZ 85007

Maureen Scott  
Legal Division  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, AZ 85007

Mark A. DiNunzio  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, AZ 85007

Jerry Rudibaugh  
Hearing Officer  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, AZ 85007

Timothy Berg  
Fennemore Craig, P.C.  
3003 North Central Ave., #2600  
Phoenix, AZ 85012

Joan S. Burke  
Osborn Maledon  
2929 N. Central Avenue, 21<sup>st</sup> Floor  
Phoenix, AZ 85067-6379

Thomas M. Dethlefs, Esq.  
U S WEST Communications, Inc.  
1801 California Street, #5100  
Denver, CO 80202

Thomas H. Campbell  
40 N. Central Avenue  
Phoenix, AZ 85004

Thomas F. Dixon  
MCI Telecommunications Corporation  
707 – 17<sup>th</sup> Street, #3900  
Denver, CO 80202

Michael M. Grant, Esq.  
Gallagher and Kennedy  
2600 North Central Ave.  
Phoenix, AZ 85004-3020

Scott Wakefield  
Stephen Gibelli  
Residential Utility Consumer Office  
2828 North Central Ave., #1200  
Phoenix, AZ 85004

Lex J. Smith  
Michael W. Patten  
Brown & Bain, P.A.  
P. O. Box 400  
2901 North Central Ave.  
Phoenix, AZ 85001-0400

Daniel Waggoner  
Davis Wright Tremaine  
2600 Century Square  
1502 Fourth Avenue  
Seattle, WA 98101-1688

and that a copy of the foregoing was sent via United States Mail, postage prepaid, this 3rd day of December, 1999 to the following:

Karen Johnson  
Penny Bewick  
Electric Lightwave, Inc.  
4400 NE 77<sup>th</sup> Ave  
Vancouver, WA 98662

Carrington Phillip  
Fox Communications, Inc.  
1400 Lake Hearn Drive, N.E.  
Atlanta, GA 30319

Charles Kallenbach  
American Communications Services, Inc.  
131 National Business Parkway  
Annapolis Junction, MD 20701

Stephen H. Kukta  
Darren Weingard  
Sprint Communications Company L.P.  
1850 Gateway Drive, 7<sup>th</sup> Fl.  
San Mateo, CA 94404-2467

Mark Dioguardi, Esq.  
Tiffany and Bosco, P.A.  
500 Dial Tower  
1850 North Central Ave.  
Phoenix, AZ 85004

Richard M. Rindler  
Morton J. Posner  
Swidler & Berlin Shereff Friedman, LLP  
3000 K Street, N.W. – Suite 300  
Washington, D.C. 20007-5116

Joyce Hundley  
United States Dept. of Justice  
Antitrust Division  
1401 H Street NW, Suite 8000  
Washington, DC 20530

Bill Haas  
Richard Lipman  
McLeod USA  
6400 C Street SW  
Cedar Rapids, IA 54206-3177

Alaine Miller  
NEXTLINK Communications, Inc.  
500 108<sup>th</sup> Avenue NE, Suite 2200  
Bellevue, WA 98004

Richard Smith  
Director of Regulatory Affairs  
Cox Communications  
2200 Powell Street, Suite 795  
Emeryville, CA 94608

Robert Munoz  
WorldCom, Inc.  
225 Bush Street, Suite 1900  
San Francisco, CA 94014

Kath Thomas  
Brooks Fiber Communications  
1600 South Amphlett Blvd., #330  
San Mateo, CA 94402

Jim Scheltema  
Blumenfeld & Cohen  
1615 MA Ave., Suite 300  
Washington, DC 20036

Raymond S. Heyman, Esq.  
Randall H. Warner, Esq.  
Roshka Heyman & DeWulf  
Two Arizona Center  
400 N. Fifth Street, Suite 1000  
Phoenix, AZ 85004

Doug Hsiao  
Rhythms NetConnections  
6933 So. Revere Parkway  
Englewood, CO 80112

Jeffrey W. Crockett  
SNELL & WILMER  
One Arizona Center  
Phoenix, AZ 85004-0001

Diane Bacon, Legislative Director  
Communications Workers of America  
Arizona State Council  
District 7 AFL-CIO, CLC  
5818 N. 7th Street, Suite 206  
Phoenix, AZ 85014-5811

Thomas L. Mumaw, Esq.  
Snell & Wilmer L.L.P.  
One Arizona Center  
Phoenix, AZ 85004-0001

  
\_\_\_\_\_