



0000008503

BEFORE THE ARIZONA CORPORATION COMMISSION

JIM IRVIN
Commissioner-Chairman
CARL J. KUNASEK
Commissioner
TONY WEST
Commissioner

RECEIVED
AZ CORP COM
FEB 26 11 29 AM '99
Arizona Corporation Commission

DOCKETED

DOCUMENT CONTROL FEB 26 1999

DOCKETED BY [Signature]

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

Docket No. T-00000B-97-0238

COMMISSION STAFF'S RESPONSE TO U S WEST'S NOTICE OF INTENT
TO FILE WITH THE FCC AND U S WEST'S MOTION FOR IMMEDIATE
IMPLEMENTATION OF PROCEDURAL ORDER

I. INTRODUCTION.

Staff of the Arizona Corporation Commission ("Commission Staff") hereby files its Response to U S WEST's Notice of Intent to File with the FCC and U S WEST's Motion for Immediate Implementation of Procedural Order. The Commission should not reject U S WEST's Section 271 Notice of Intent as the Competitive Local Exchange Carriers ("CLECs") urge, but rather the Commission should require U S WEST to supplement its Notice of Intent with a copy of its case-in-chief including a copy of all of the information contained in its Section 271 application which it intends to file with the Federal Communications Commission ("FCC"), as well as copies of its direct testimony. The time period for Commission review should commence at the time this additional information is docketed. Commission Staff recommends that U S WEST be required to supplement its current filing on or before March 30, 1999, which should give the Company sufficient time to complete its application and supporting testimony.

It follows that U S WEST's proposal for simultaneous filing of testimony by all parties should be rejected. This improperly shifts the burden of proof from U S WEST to other parties. U S WEST should be required to file its case-in-chief first so other parties are given a reasonable opportunity to review and seek discovery on it before being required to file their responsive testimony.

1 Commission Staff has always supported the development of an extensive factual
2 record in this proceeding, whether through a series of transcribed workshops focused upon certain
3 checklist items or through a more formal evidentiary proceeding. However, since all parties have
4 expressed preference for a contested case hearing, Commission Staff supports its use in this
5 proceeding to evaluate U S WEST's compliance with Section 271 of the Telecommunications Act
6 of 1996 ("1996 Act").

7 Commission Staff also supports the concept of full and fair discovery in this
8 proceeding. Not only should intervenors have a right to conduct full and complete discovery of
9 U S WEST to determine whether it has complied with the 14-point competitive checklist, but
10 U S WEST should be allowed to conduct full and complete discovery of other parties to the extent
11 necessary to demonstrate that it has met the 271 requirements. Under the procedure proposed by
12 Staff, parties would be able to engage in general discovery immediately. However, the bulk of
13 discovery would take place after the filing of U S WEST's case-in-chief.

14 **II. DISCUSSION.**

15 **A. U S WEST Should Be Immediately Required to Supplement its 271** 16 **Filing.**

17 Commission Staff agrees with the other parties filing comments to the extent those
18 parties advocate that U S WEST's filing is incomplete. See RUCO's Motion in Response to
19 U S WEST's Notice of Intent to File with the FCC and Motion for Immediate Implementation of
20 Procedural Order, filed February 18, 1999 at p. 2; Motion by Joint Movants to Reject U S WEST's
21 Notice of Intent to File with the FCC and Response to U S WEST's Motion for Immediate
22 Implementation of Procedural Order, ("Joint Motion"), filed February 15, 1999 at pp. 2-3.
23 Commission Staff agrees that this Commission's earlier Order requires U S WEST to file a copy of
24 its complete application, including any direct testimony, 90 days before it intends to file with the
25 FCC for interLATA authority. Arizona Corporation Commission Decision No. 60218, issued May
26 27, 1997, at p. 3. However, rather than reject the filing, Commission Staff recommends that
27 U S WEST be given until March 30, 1999, to supplement its Notice of Intent with the information
28 to be contained in its application to the FCC along with its direct testimony.

1 Pursuant to Decision No. 60218, until U S WEST files its case-in-chief, the period
2 for review and resolution of the Company's application should not begin to run. Commencement
3 of the 90 day period for Commission review should begin on the March 30, 1999. This will ensure
4 that the Commission still has sufficient time to process the application and that no party will be
5 prejudiced by the information having not been filed right away.

6 **B. U S WEST's Proposal For Simultaneous Filing of Testimony Results in**
7 **an Improper Shift of the Burden of Proof to Other Parties in This**
8 **Proceeding and Should Therefore be Rejected.**

9 U S WEST proposes that all parties simultaneously file direct testimony on March
10 24, 1999. U S WEST has the burden of proof in this case. Its proposal for simultaneous filing of
11 testimony by all parties would effectively result in an improper shift of the burden of proof to the
12 other parties. If other parties are required to file their testimony at the same time as U S WEST, it
13 will be almost impossible for them to effectively respond to U S WEST's case.

14 Consistent with this Commission's earlier Order in Decision No. 60218, U S WEST
15 should be required to file its case-in-chief first allowing other parties an opportunity to review and
16 undertake discovery on it before they are required to file their own testimony.

17 **C. Commission Staff Supports U S WEST's Request for An Evidentiary**
18 **Hearing On its Application.**

19 The Commission Staff supports U S WEST's request for an evidentiary hearing in
20 this proceeding. The Commission Staff has always supported the development of an extensive
21 factual record, whether through the use of transcribed workshops, or a more formal evidentiary
22 hearing. All parties, including U S WEST, appear to prefer the use of a more formal evidentiary
23 hearing, as opposed to transcribed workshops focused upon particular checklist elements, and Staff
24 has no objection to this approach. Commission Staff supports any procedure which will result in full
25 and complete development of the factual record in this case.

26 ...

27 ...

28 ...

1 **D. Full and Unlimited Discovery Should be Allowed for All Parties.**

2 The Commission Staff agrees with U S WEST that it should have the opportunity to
3 conduct discovery of parties to the extent necessary to demonstrate compliance with the Section 271
4 checklist items.

5 Commission Staff, however, also agrees with the CLECs that the process proposed
6 by U S WEST would place undue burdens on them and Staff not only during the initial phases of
7 this proceeding but after the Company is required to file its direct testimony. Joint Motion at p. 4.
8 The process proposed by U S WEST is unfair and counterproductive in that it forces the CLECs and
9 Staff to engage in broad-based, scatter-gun discovery in the initial phase of this proceeding pending
10 submission of U S WEST's case several weeks later, while the time period for Commission review
11 and approval of the application is ticking away. U S WEST's Motion for Immediate Implementation
12 of Procedural Order, filed February 8, 1997, at pp. 5-6. This takes away valuable and productive
13 time from an already extremely limited time period the Commission has in which to make its
14 determination in this case.

15 If the 90 day time period is in effect, by the time U S WEST files its case-in-chief,
16 several weeks will have already elapsed providing less time for more targeted discovery directed to
17 U S WEST's actual application. Therefore, while general discovery should proceed at this time,
18 the time clock for Commission resolution of this case should not begin until March 30, 1999 or the
19 date the full application is available to all parties. Unlike U S WEST's proposal, this will ensure that
20 no party is prejudiced by the delay in the submission of U S WEST's case-in-chief. This will also
21 ensure sufficient time for both discovery and review of U S WEST's direct case.

22 Finally, under Staff's proposal, the bulk of discovery will take place after U S WEST
23 files its direct testimony and case-in-chief.

24 **III. CONCLUSION.**

25 For the reasons stated above, Commission Staff recommends that the Commission
26 require U S WEST to supplement its Section 271 filing with a copy of the information it intends to
27 file with the FCC and its direct testimony in support of its request for interLATA long distance
28 authority on or before March 30, 1999. The Commission should reject U S WEST's proposal to

1 require simultaneous filing of testimony by all parties since U S WEST has the burden of proof and
2 simultaneous filing of testimony improperly shifts the burden of proof from U S WEST to the other
3 parties. U S WEST should be required to file its case-in-chief well in advance of the filing of
4 testimony by other parties and Staff's testimony, so that the other parties have sufficient time to
5 review the filing and conduct discovery before being required to submit their own testimony.
6 General discovery should commence immediately, as long as the 90 day time period for Commission
7 review does not begin until U S WEST files its complete application. The bulk of discovery should
8 take place after U S WEST files its case-in-chief. Finally, Staff supports U S WEST's request for
9 an evidentiary hearing, in lieu of transcribed workshops.

10 RESPECTFULLY SUBMITTED, this 26th day of February, 1999.

11 

12 Maureen A. Scott
13 Attorney, Legal Division
14 Arizona Corporation Commission
15 1200 West Washington Street
16 Phoenix, Arizona 85007
17 (602) 542-3402

16 The original and ten copies of the foregoing
17 "Commission Staff's Response To U S West's
18 Notice Of Intent To File With The FCC And
19 U S West's Motion For Immediate Implementation
20 Of Procedural Order" were filed this 26th day
21 of February, 1999, with:

20 Docket Control
21 ARIZONA CORPORATION COMMISSION
22 1200 West Washington Street
23 Phoenix, Arizona 85007

23 Copies of the foregoing were mailed this
24 26th day of February, 1999, to:

24 Thomas M. Dethlef
25 U S West Communications, Inc.
26 1801 California Street, #5100
27 Denver, Colorado 80202

27 Maureen Arnold
28 U S West Communications, Inc.
3033 N. third Street, Room 1010
Phoenix, Arizona 85012

Michael M. Grant
GALLAGHER AND KENNEDY
2600 N. Central Avenue
Phoenix, Arizona 85004-3020

Timothy Berg
FENNEMORE CRAIG
3003 N. Central Ave., Suite 2600
Phoenix, Arizona 85016

<p>1 Mark Dioguardi TIFFANY AND BOSCO PA 500 Dial Tower 2 1850 N. Central Avenue 3 Phoenix, Arizona 85004</p> <p>4 Penny Bewick ELECTRIC LIGHTWAVE, INC. 4400 NE 77th Avenue 5 Vancouver, Washington 98662</p> <p>6 Thomas L. Mumaw SNELL & WILMER 7 One Arizona Center 8 Phoenix, Arizona 85004-0001</p> <p>9 Robert Munoz WORLD COM, INC. 10 185 Berry Street, Bldg. #1, #5100 San Francisco, California 94107</p> <p>11 Donald A. Low SPRINT COMMUNICATIONS CO L.P. 12 8140 Ward Parkway SE 13 Kansas City, Missouri 64114</p> <p>14 Deborah S. Waldbaum TELEPORT COMMUNICATIONS 15 GROUP INC. 201 N. Civic Drive, Suite 210 16 Walnut Creek, California 94596</p> <p>17 Carrington Phillips COX COMMUNICATIONS 18 1400 Lake Hearn Drive, N.E. Atlanta, Georgia 30319</p> <p>19 Thomas H. Campbell LEWIS & ROCA 20 40 N. Central Avenue Phoenix, Arizona 85007</p> <p>21 Bill Haas 22 Richard Lipman McLEOD USA 23 6400 C Street, SW 24 Cedar Rapids, Iowa 54206-3177</p> <p>25 Richard Smith COX CALIFORNIA TELECOM, INC. 26 529 Jack London Square Oakland, California 94697</p>	<p>Richard M. Rindler Morton J. Posner SWIDLER & BERLIN SHEREFF FRIEDMAN, LLP 3000 K Street, N.W. Suite 300 Washington, D.C. 20007</p> <p>Lex J. Smith Michael W. Patten BROWN & BAIN 2901 N. Central Avenue P.O. Box 400 Phoenix, Arizona 85004-0400</p> <p>Charles Kallenbach AMERICAN COMMUNICATIONS SERVICES INC 131 National Business Parkway Annapolis Junction, Maryland 20701</p> <p>Karen L. Clauson Thomas F. Dixon MCI TELECOMMUNICATIONS CORP 707 17th Street, #3900 Denver, Colorado 80202</p> <p>Kath Thomas BROOKS FIBER COMMUNICATIONS 1600 s. Amphlett Blvd, #330 San Mateo, California 94402</p> <p>Richard S. Wolters AT&T & TCG 1875 Lawrence Street, Suite 1575 Denver, Colorado 80202</p> <p>Joyce Hundley UNITED STATES DEPARTMENT OF JUSTICE Antitrust Division 1401 H Street NW, Suite 8000 Washington, D.C. 20530</p> <p>Joan Burke OSBORN MALEDON 2929 N. Central Avenue, 21st Floor P.O. Box 36379 Phoenix, Arizona 85067-6379</p> <p>Stephen Gibelli RUCO 2828 N. Central Avenue, Suite 1200 Phoenix, Arizona 85004</p>
---	--

27

28 Monica A. Martinez