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Arizona Corporation Commission
BEFORE THE ARIZONA CORPORATION COMMISSION **FEB 22 10 01 AM '99**

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Commissioner

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

Docket No. T-00000B-97-0238

RESPONSE OF U S WEST TO MOTION
BY JOINT INTERVENORS TO REJECT
U S WEST'S NOTICE OF INTENT AND
REPLY IN SUPPORT OF ITS MOTION
FOR IMMEDIATE IMPLEMENTATION OF
PROCEDURAL ORDER

U S WEST respectfully submits this Response to the Motion by
Joint Intervenors to Reject U S WEST's Notice of Intent to File
With the FCC and this Reply in Support of U S WEST's Motion for
Immediate Implementation of Procedural Order.

I. INTRODUCTION

U S WEST's experience in 271 proceedings in other states is
that the Joint Intervenors will make every effort to delay this
proceeding. It is easy to understand why they want delay. The
Joint Intervenors are attempting to protect their market share in
the Arizona interLATA long distance market, which is worth over a
billion dollars per year. Thus, for every week they delay
U S WEST's entry into the Arizona long distance market, they will
protect approximately \$20 Million in market share.

The Joint Intervenors' Motion is the first of what U S WEST
expects will be many attempts to delay this proceeding. In their
Motion, the Joint Intervenors ask that the Commission "reject"

1 U S WEST's application and order it to submit a new application.
2 The Joint Intervenors further attempt to delay these proceedings
3 by requiring an unworkable and unnecessarily-protracted
4 procedural schedule. The Joint Intervenors also request that the
5 Commission hold a hearing to consider U S WEST's application.

6 By requesting that the Commission order U S WEST to resubmit
7 its application, the Joint Intervenors are attempting to
8 accomplish two things. First, as previously discussed, they are
9 attempting to delay these proceedings and protect as much as \$20
10 Million in market share per week. Second, they are attempting to
11 lock U S WEST into testimony and evidence which will be outdated
12 by the time the FCC rules on U S WEST's application (which will
13 be at least six months from the date U S WEST files its
14 application in Arizona). To support their request, the Joint
15 Intervenors rely solely on FCC rules, which do not, and should
16 not, apply here. Those rules are the result of the FCC's short
17 statutory time frame to issue an opinion. This proceeding is
18 different. In this proceeding, the Commission is developing a
19 record to send to the FCC along with its recommendation.

20 The Joint Intervenors do not propose an alternative
21 schedule; they just take unfounded pot shots at U S WEST's
22 proposed schedule. U S WEST has suggested a reasonable schedule
23 for testimony and discovery. That schedule is based on
24 U S WEST's experience in other dockets and is designed to allow
25 the Commission to consider as complete and current a record as
26 possible.

1 As for the Joint Intervenors' request for a hearing, that
2 request is consistent with U S WEST's proposed procedural order,
3 which requested a hearing before the full Commission. There
4 appears to be agreement on this proposal.

5 **II. DISCUSSION**

6 **A. Joint Intervenors' Request to Reject U S WEST's
7 application is without merit.**

8 The Joint Intervenors' request for the Commission to
9 "reject" U S WEST's application is based on a fundamental
10 misapplication of FCC rules. The Telecommunications Act of 1996
11 imposes a 90-day deadline for the FCC to rule on 271
12 applications. Due to the short deadline, the FCC has imposed a
13 short procedural schedule for 271 applications, including a 20-
14 day requirement for state commissions to file comments and a
15 requirement that an applicant file with its application all
16 evidence upon which it will rely.

17 This proceeding serves a different purpose from FCC
18 proceedings, and the FCC's rules and procedures are not
19 appropriate here. In this proceeding, the Commission is
20 conducting an investigation so that it can give the FCC an
21 informed recommendation. In addition, the Commission is
22 attempting to develop a complete and current factual record for
23 the FCC's review. The FCC recognizes that state commissions are
24 best positioned to develop a full factual record. The FCC has
25 encouraged state commissions to "develop and submit to the [FCC]
26 as much information as possible." *FCC Order on Ameritech'*

1 Michigan 271 Application, ¶ 34.

2 The Joint Intervenors' are attempting to freeze the evidence
3 as of the date of U S WEST's notice of application. That result
4 would be inconsistent with the FCC's request that the Commission
5 develop a record that is complete and current. Under U S WEST's
6 proposed procedural order, the Commission will issue an order
7 approximately 4 months following the submission of U S WEST's
8 application. The FCC then has 3 months to rule following the
9 submission of U S WEST's application in that forum. Thus, the
10 Joint Intervenors' proposal would freeze the evidence at a date 7
11 months before the FCC rules. That result is totally
12 unacceptable. The evidence of competition in Arizona will have
13 dramatically changed in that 7 month period. In addition,
14 U S WEST is working hard to continue to develop and improve its
15 systems and procedures for providing service to CLECs, and the
16 Commission should be able to consider all such improvements when
17 it makes a recommendation to the FCC.

18 If the Commission accepts the Joint Intervenors' proposal,
19 it will be unable to give a recommendation to the FCC that is
20 based on a complete and current record. In addition, the
21 Commission will not be fulfilling the FCC's request that the
22 Commission develop a record that is as complete and current as
23 possible. To develop a complete and current record, the
24 Commission should enter the procedural order submitted by
25 U S WEST.

26

1 **B. This Commission Should Enter the Procedural Order**
2 **Proposed by U S WEST.**

3 U S WEST's proposed procedural order is based upon its
4 experience in 271 proceedings in other states. In those
5 proceedings, U S WEST filed complete and detailed testimony at
6 the time of its application. Lengthy discovery phases followed,
7 in which the parties attempted to conduct general discovery and
8 in which the parties filed response and rebuttal testimony. The
9 result of that lengthy process was that significant changes to
10 the evidence had occurred between the time that the application
11 was filed and the time of the hearing. The Joint Intervenors,
12 using the same tactics they have employed here, then objected to
13 the submission of additional evidence to update the record, which
14 resulted in additional delays.

15 U S WEST is attempting to avoid those problems in this
16 proceeding. It has proposed a schedule which allows the parties
17 to obtain relevant general discovery first, and then file
18 testimony. This process will result in the Commission being able
19 to consider a record which is as up to date as possible.

20 The Joint Intervenors allege that the proposed procedural
21 order will "deprive the Commission and Intervenors of any real
22 opportunity to evaluate U S WEST's application." Motion, p. 2.
23 That allegation makes no sense. Phase II of U S WEST's proposed
24 procedural order allows the Intervenors to conduct focused
25 discovery on U S WEST's testimony and to file responsive
26 testimony. The proposed procedural order will not deprive the

1 Commission of the opportunity to evaluate U S WEST's application;
2 it is designed to provide the Commission the opportunity to
3 evaluate as complete and current a record as possible.

4 **C. The Joint Intervenors Should Not Be Allowed to Avoid
5 Their Legal Obligation to Respond to Discovery.**

6 In their Motion, the Joint Intervenors imply that they have
7 no obligation to respond to discovery. It is hard to understand
8 how they can make such an assertion. In legal proceedings, all
9 parties (and even non-parties) are obligated to respond to
10 discovery. The Joint Intervenors somehow claim that they should
11 be treated differently because they are not obligated to
12 participate in these proceedings. Motion, p. 6. U S WEST is not
13 aware of any authority to support the contention that voluntary
14 intervenors are not obligated to respond to discovery. Indeed,
15 voluntary parties are routinely required to respond to discovery
16 in legal proceedings. Plaintiffs in civil actions are voluntary
17 participants in those proceedings, and they are required to
18 respond to discovery in the same manner as any other parties.

19 Joint Intervenors also contend that all of the information
20 relevant to this case is within U S WEST's possession and
21 control. Motion, p. 7. That is not the case. Much of the
22 relevant information in this case is in the possession of the
23 Intervenors. For example, the FCC has indicated that a 271
24 applicant must establish that it can provision checklist items in
25 quantities that competitors may reasonably demand. See *FCC Order*
26 *on BellSouth's Louisiana II Application*, ¶ 54. The FCC also

1 looks to whether an applicant's OSS systems are "designed to
2 accommodate both current demand and projected demand of competing
3 carriers." *FCC Order on Ameritech' Michigan 271 Application*, ¶
4 137. To develop its case, U S WEST must conduct discovery on,
5 among other things, the projected demand of the Intervenors for
6 each checklist item.

7 By dodging their discovery obligations, the Joint
8 Intervenors are attempting to create a situation where they can
9 freely make allegations directed at U S WEST without being put to
10 the test regarding the veracity of those allegations. For
11 example, in other 271 proceedings, some of the Joint Intervenors
12 alleged that they have decided not to enter the local market
13 because of actions taken by U S WEST. Those allegations were
14 contrary to public statements of the same Intervenors that they
15 decided not to enter the local market for economic reasons.
16 Nevertheless, those Intervenors refused to respond to discovery
17 to support their allegations.

18 In short, discovery from the Intervenors should be an
19 integral part of this proceeding. Such discovery will be
20 necessary to develop a full record for the FCC. Such discovery
21 is necessary for U S WEST to fully advocate its case, and it will
22 be necessary to test the veracity of the Intervenors' testimony.

23 **D. The Commission Should Hold a Hearing to Consider**
24 **U S WEST's Application.**

25 In its Motion for Procedural Order, U S WEST asked that its
26 application be considered in a hearing before the full

1 Commission. The Joint Intervenors have made the same request for
2 a hearing, and there does not appear to be any dispute on this
3 point.

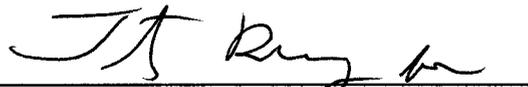
4 **III. CONCLUSION**

5 For all of the foregoing reasons, U S WEST respectfully
6 requests that the Commission deny the Motion by Joint Intervenors
7 to Reject U S WEST's Notice of Intent to File With the FCC and
8 that the Commission grant U S WEST's Motion for Immediate
9 Implementation of Procedural Order.

10 DATED this 22nd day of February, 1999.

11 Respectfully submitted,

12 **U S WEST COMMUNICATIONS, INC.**

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