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BEFORE THE ARIZONA CORPORATION COMMISSION

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1  
2 JIM IRVIN  
3 Chairman  
4 TONY WEST  
5 Commissioner  
6 CARL J. KUNASEK  
7 Commissioner  
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**IN THE MATTER OF THE U S WEST  
COMMUNICATIONS, INC.'S  
COMPLIANCE WITH SECTION 271 OF  
THE TELECOMMUNICATIONS ACT OF  
1996**

Docket No. T-0000B-97-0238

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10  
11 **U S WEST'S REPLY TO INTERVENORS' RESPONSES TO U S WEST'S**  
12 **MOTION TO COMPEL RESPONSES**  
13 **TO U S WEST'S FIRST SET OF DATA REQUESTS**  
14

15  
16 U S WEST hereby replies to the Responses of AT&T Communications of the Midwest  
17 ("AT&T"), Teleport Communications Group ("TCG"), MCI WorldCom, Inc. ("MCIW"), Sprint  
18 Communications Company ("Sprint"), Cox Arizona Telecom, Inc. ("Cox"), e.spire™  
19 Communications, Inc. ("e.spire™"), ACI Corp. ("ACI"), Electric Lightwave Inc. ("ELI"),  
20 NEXTLINK Arizona, Inc. ("NextLink"), and the Telecommunications Resellers Association  
21 ("TRA"), and renews its request that the Arizona Corporation Commission (the "Commission"  
22 or "ACC") compel intervenors to respond to U S WEST's 41 Data Requests -- all of which seek  
23 information central to this 271 case.

24 **I. INTRODUCTION**

25 As an initial matter, U S WEST has met and conferred with all 10 intervenors in this case,  
26 regrettably without closing even one substantive issue. During the last hearing, each intervenor  
27 stressed the importance of the meet and confer sessions; as a result, they were ordered.

1 Nonetheless, AT&T started its meet and confer session by stating that it refused to discuss the  
2 relevance of individual requests. Other intervenors started their sessions by stating that they did  
3 not think any progress could be made.<sup>1</sup> Moreover, U S WEST has still not received much of the  
4 substantive materials that the intervenors recognize as relevant even though the Commission  
5 ordered supplementation by March 23, 1999. Why these problems? U S WEST believes they  
6 are a transparent attempt to delay discovery and, thereby, the development of the record in this  
7 case. As a result, U S WEST renews its request to modify the Procedural Schedule to move the  
8 discovery process expeditiously.

9 This Motion concerns 41 core Data Requests that U S WEST served upon each  
10 intervenor. Contrary to intervenors' assertions, U S WEST is not on a "fishing expedition."  
11 Each of U S WEST's Requests goes to the very heart of Section 271. U S WEST spent a  
12 considerable amount of time refining its discovery to that which is essential to the case.  
13 U S WEST can and has described how these materials bear directly on U S WEST's affirmative  
14 case (*See Attachment to Motion to Compel*); yet, intervenors still refuse to respond, claiming that  
15 because U S WEST bears the burden in this case, it is not entitled to obtain discovery. In reality,  
16 what intervenors seek is the ability to levy any objection they can dream up, irrespective of  
17 whether such objection has any factual or legal basis. The information U S WEST seeks  
18 concerns what intervenors truly need in order to compete in Arizona and where they plan to  
19 compete in Arizona. These basic issues are what Section 271 is all about.

20 Section 271 exists as an incentive for BOCs to open their local exchange markets to  
21 competition. If U S WEST has opened its local exchanges in Arizona and the public interest  
22 would be served by its entry, U S WEST is entitled to enter the interLATA market. BellSouth

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<sup>1</sup> U S WEST has made some progress with NextLink. U S WEST will evaluate the extent of the progress when it receives NextLink's substantive responses.

1 Louisiana II Order at ¶13; Ameritech Michigan Order at ¶¶8-9. The intervenors ignore this  
2 fundamental concept. For them, the right to provide in-region interLATA service is somehow  
3 divorced from the goal of competition in the local exchange market. Thus, they assert that  
4 U S WEST must take the time and expend the money to create processes and functions that no  
5 competitor in Arizona actually needs or plans to use. *See, e.g.*, AT&T Response at 15; NextLink  
6 Response at 10. The FCC has held otherwise. BellSouth Louisiana II Order at ¶54 (inquiry as to  
7 each checklist item focuses on reasonably foreseeable demand – *i.e.*, the CLECs’ actual needs).

8 The intervenors have a vested interest in arguing that U S WEST must perform  
9 unnecessary tasks before entering the interLATA market. In 1997 alone, the interLATA market  
10 in Arizona was worth approximately \$1.05 billion. AT&T, MCIW and Sprint control  
11 approximately 89% of Arizona’s interLATA market. Harris Direct at p. 45. In Connecticut,  
12 where the ILEC is entitled to compete in the interLATA market, the ILEC won 35% of the  
13 customers in just over 3 years. *Id.* at 57. Thus, U S WEST’s entry into this market translates  
14 into hundreds of millions of dollars of revenue reductions for the intervenors every year. Every  
15 day of additional delay, whether through procedural tactics or the creation of unnecessary  
16 processes, means more revenue in the intervenors’ collective pockets. The citizens of Arizona  
17 will also lose by requiring U S WEST to create processes and systems that are unnecessary to  
18 open the markets, because they will ultimately foot the bill. Thus, intervenors are effectively  
19 asking Arizona constituents to pay more money for local service to help intervenors protect their  
20 interLATA market share.

21 Given these competitive realities, the intervenors assert that they need every imaginable  
22 process, function, or interface in order to compete, irrespective of whether this is true. They  
23 make bald assertions that U S WEST’s processes and procedures prevent full-fledged

1 competition. *See e.g.*, AT&T Responses to Data Requests 17 & 33. U S WEST seeks to obtain  
2 intervenor documents and information that set forth their real concerns and what they actually  
3 need in order to compete in Arizona. Intervenors do not want to produce this information  
4 because, we suspect, it would undermine their objections to U S WEST's application. In each  
5 271 case to date, U S WEST has faced intervenors' attempts to protect all internal documents  
6 from disclosure. For example, as of this date, U S WEST has not received one internal document  
7 from any intervenor in this proceeding. The only documents it has received are correspondence  
8 exchanged with U S WEST itself or self serving testimony filed in other cases.

9 Several intervenors even go so far as to say that U S WEST'S discovery is  
10 anticompetitive and intended to convince intervenors to withdraw, thereby depriving the  
11 Commission of relevant information. *See e.g.*, e.spire™ Response at 3. Nothing could be further  
12 from the truth. U S WEST seeks discovery so the Commission has more, not less, information  
13 upon which to base its decision. Discovery is not about producing the information helpful to  
14 your case and withholding that harms your case. It is a vehicle intended to further the search for  
15 truth. *Cornet Stores v. Superior Court*, 108 Ariz. 84, 49 P.2d 1191, 1193 (1972). According to  
16 the Arizona Rules of Civil Procedure, parties are entitled to discover all information reasonably  
17 calculated to lead to the discovery of admissible evidence. Ariz. R. Civ. P. 26<sup>2</sup> The ACC  
18 incorporates these exact same discovery rules. ACC R14-3-101(A). The Commission should  
19 not countenance intervenors' gamesmanship. The Commission should compel intervenors to  
20 respond completely to all 41 questions.

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<sup>2</sup> The right to broad and liberal discovery facilitates the identification of issues, promotes justice, provides more efficient and speedy case disposition, avoids surprise, and prevents the trial from becoming a guessing game. *Cornet Stores*, 108 Ariz. 84, 49 P.2d 1191 at 1193. Under Rule 26 of the Arizona Rules of Civil Procedure, parties may obtain discovery regarding any matter not privileged "which is relevant to the subject matter involved," whether or not the information would be admissible at trial, so long as the information sought "appears reasonably calculated to lead to the discovery of admissible evidence."

1 **II. DISCUSSION**

2 Intervenor raise four principal arguments as to why they should not be required to  
3 produce the requested materials. First, intervenors say they need not produce information  
4 because U S WEST has the burden of proof. Second, some intervenors assert that only the 14-  
5 point checklist, not the remainder of Section 271, is in dispute before this Commission. Third,  
6 the intervenors assert that the New Mexico and Montana Commissions have already considered  
7 and rejected U S WEST's arguments. Fourth, the intervenors assert that at least a portion of the  
8 material sought is not relevant, or is so confidential that it should not be disclosed. U S WEST  
9 will address each of these arguments in turn and demonstrate that intervenors are wrong on all  
10 counts. Despite intervenors protestations to the contrary, U S WEST is entitled to discovery  
11 from intervenors. This fundamental right of discovery is guaranteed by the due process clauses  
12 of the United States and Arizona Constitutions, as well as basic rules of civil procedure.

13 The contested 271 hearing before this Commission should be a search for the truth, based  
14 on facts. The ultimate objective should be to assess whether U S WEST has satisfied Track A,  
15 each of the 14 points in the checklist, Section 272, and public interest concerns. 47 U.S.C.  
16 271(d). The hearing should not be a forum for allowing intervenors to make unsupported  
17 allegations contradicted by their own internal documents. Allowing discovery will help  
18 U S WEST to refine issues and serve as a check on its own assessments of what is necessary to  
19 open the markets in Arizona. It should also ensure that intervenors' positions are couched in  
20 reality and not mere unsubstantiated allegations made for the sole purpose of keeping U S WEST  
21 out of the interLATA market.

1           **A.     Discovery Is Not Affected By Which Party Has The Burden of Proof.**

2           Intervenors assert that U S WEST is not entitled to the discovery it seeks because  
3 U S WEST has the burden of proof on its 271 application. See ELI Response at 6. This  
4 assertion is wrong. Intervenors' argument that discovery is unavailable or limited for a party that  
5 has the burden of proof has been soundly and repeatedly rejected. For example, in *Piscatelli v.*  
6 *IRS*, 64 T.C. 424 (June 16, 1975), the court rejected this argument as bordering on frivolous:

7           Petitioner's first contention is that because the respondent bears the burden of  
8 proving fraud he cannot discover relevant and nonprivileged information. We can  
9 only say that this argument borders on the frivolous.

10  
11 *Id.* at 4. The United States Supreme Court has held likewise. *Konigsberg v. State Bar of*  
12 *California*, 366 U.S. 36, 55 (1961) (“[r]equiring a defendant in a civil proceeding to . . . submit  
13 to discovery has never been thought to shift the burden to him”).

14           It is incumbent upon all parties to answer discovery, irrespective of which party has the  
15 burden of proof:

16           [Defendant] maintains that requiring it to answer the interrogatories improperly  
17 shifts the burden of proof to it. We believe that defendant has entirely  
18 mischaracterized the consequences of requiring it to respond to interrogatories.  
19 The issue is not one of burden of proof. Rather, . . . [defendant] may be required  
20 to specify the extent and bona fides of its claims.

21  
22 *Maryland Casualty Co. v. Grace & Co.-Conn*, 1995 U. S. Dist. LEXIS 9337 (S.D.N.Y. 1995).

23           That is exactly what U S WEST seeks to accomplish: to ensure that U S WEST collects all of  
24 the information that best allows it to present “the bona fides of its claims” and to ensure that  
25 intervenors' assertions are based on fact, not mere allegations.

26           Finally, AT&T states that U S WEST cannot obtain discovery because “competing  
27 carriers have no obligation to participate in this proceeding.” Response at 4. This completely  
28 misses the point of discovery. The discovery U S WEST has propounded on the intervenors is

1 central to this 271 action. As “parties” to the action, intervenors must respond to traditional  
2 written discovery. Ariz. R. Civ. P. 33-34. However, even if intervenors were not parties,  
3 U S WEST could seek information through a subpoena duces tecum. Ariz. R. Civ. P 45; ACC  
4 R14-3-109(O). U S WEST’s goals are to obtain facts and place those facts before the  
5 Commission. The decision by this Commission on an issue so important – opening the \$1.05  
6 billion interLATA market to full competition – should be based on facts, not conjecture or,  
7 worse, unsupported allegation.

8 Despite the fact that U S WEST has the burden of proof, several intervenors assert that  
9 discovery is unavailable on any topic that intervenors do not place into issue. Cox Response at 5-  
10 6; e-spire™ Response at 5-6; ACI Response at 5; MCI Response at 9. At the same time, Sprint  
11 asserts that U S WEST must bear its burden irrespective of whether parties make any objections.  
12 Sprint Response at 2. U S WEST agrees that a failure of any party to object is highly persuasive  
13 and powerful evidence; however, the FCC suggested that U S WEST must present  
14 comprehensive evidence on each aspect of Section 271. BellSouth Louisiana II Order at ¶¶52-  
15 53. As a result, U S WEST must be permitted to obtain discovery from all parties on every  
16 aspect of Section 271.

17 **B. U S WEST Is Entitled To Obtain Discovery About All Aspects Of Its**  
18 **Section 271 Application.**

19 Several intervenors refuse to answer certain Data Requests on the grounds that only the  
20 14-point checklist is in issue. Cox Response at 2-3; e.spire™ Response at 2-3; ELI Response at  
21 2 & 6. Others argue that the ACC has no role in the public interest inquiry contained in Section  
22 271(d). *Id*; MCI Response at 37; ACI Response at 18. Ironically, MCI and ACI both  
23 acknowledge in other portions of their briefs that both the 14-point checklist and public interest  
24

1 are at issue in this case. ACI Response at 7; MCI response at 12 (objections to Data Request 18).  
2 These objections are without merit.

3 Section 271(a) allows BOCs to enter the interLATA market once the FCC approves the  
4 BOC's application under Section 271(d). Section 271(d) contains four statutory components: (1)  
5 "Track A," which requires a showing that the BOC provides access and interconnection under the  
6 terms of approved interconnection agreements to predominantly facilities-based carriers  
7 providing residential and business service; (2) the 14-point "competitive checklist;" (3) the BOC  
8 must provide interLATA services through a separate affiliate in accordance with Section 272;  
9 and (4) the application must be consistent with the "public interest, convenience, and necessity."  
10 47 U.S.C. § 271(d)(3)(C). *See* BellSouth Louisiana II Order at ¶14; Ameritech Michigan Order  
11 at ¶9. There can be no dispute that these four elements are independent requirements of a  
12 successful 271 application. *Id.*

13 However, some of the intervenors (with AT&T a notable exception) assert that the FCC  
14 is only statutorily required to consult with the affected state commissions "in order to verify the  
15 compliance of the Bell operating company with the requirements of subsection (c)." Since  
16 subsection (c) only contains the Track A and competitive checklist requirements, these  
17 intervenors argue that U S WEST is prohibited from gathering evidence about the public interest  
18 component. The problem is that U S WEST's only opportunity to develop facts through  
19 discovery is in the state proceeding. There is no opportunity for discovery before the FCC.  
20 Consequently, the FCC has asked state commissions to assist it by developing a record regarding  
21 the "public interest" criterion as well. *See* Ameritech Michigan Order at ¶ 34 ("[A]n analysis of  
22 the state of local competition in Michigan" would be "valuable to our assessment of the public  
23 interest, and it is information which the state commissions are well-situated to gather and

1 evaluate. Accordingly, in future applications we suggest that the relevant state commission  
2 develop, and submit to the Commission, a record containing the state of local competition as part  
3 of its consultation.”).

4 Indeed, the FCC has informed state commissions that their principal role in this process is  
5 to develop a comprehensive factual record:

6 In order to fulfill [the Section 271(d)(2)(B)] role as effectively as possible,  
7 state commissions must conduct proceedings to develop a comprehensive  
8 factual record concerning BOC compliance with the requirements of  
9 Section 271 and the status of local competition in advance of filing of  
10 Section 271 applications. We believe that the state commissions'  
11 knowledge of local conditions and experience in resolving factual disputes  
12 affords them a unique ability to develop a comprehensive, factual record  
13 regarding the opening of the BOCs' local networks to competition.

14 Ameritech Michigan Order at ¶30; *see also* BellSouth South Carolina Order at ¶29 (emphasizing  
15 the importance of a "comprehensive," "complete," "detailed," and "extensive" state commission  
16 record).

17 Pursuant to the FCC's request, the ACC itself has asked for the very type of information  
18 that intervenors claim is irrelevant. Attachment A to the ACC's May 27, 1997 Order requests  
19 competitive information, information about Section 272, and information about public interest.  
20 *See Attached Exhibit 1.* Thus, every aspect of Section 271 -- the Track A requirements, the  
21 competitive checklist, the public interest consideration, and Section 272 -- are also relevant to  
22 this Commission's consideration and subject to full discovery.

23 Several intervenors also object to U S WEST's data requests insofar as they seek "region-  
24 wide" information regarding U S WEST's 14-state region. However, even the state commissions  
25 upon which intervenors rely have ruled that region-wide evidence is relevant to this proceeding.  
26 The New Mexico Commission found that region-wide requests "appear reasonably related to  
27 assessing the demands that may be placed on U S WEST for effective competition in the local  
28

1 market in New Mexico, and that is the focus of this Section 271 inquiry." *In re Investigation*  
2 *Concerning U S WEST Communications, Inc. 's Compliance with Section 271 of the*  
3 *Telecommunications Act of 1996*, New Mexico Corporation Commission, Docket No. 97-1096-  
4 TC, Order Relating to Outstanding discovery Motions (Sept. 21, 1998) ("New Mexico Order") at  
5 ¶71. The Montana Commission likewise required parties to provide responses to various data  
6 requests relating to "the U S WEST region." *In re Investigation Concerning U S WEST*  
7 *Communications, Inc. 's Compliance with Section 271(c) of the Telecommunications Act of 1996*,  
8 Montana Public Service Commission, Docket No. D97.5.87, Notice of Commission Action on  
9 Discovery Objections (June 26, 1998) (Montana Order) at ¶2. These decisions are consistent  
10 with the decisions of the FCC, which has recognized that "in situations where [the BOC]  
11 provides access to a particular checklist item through a region-wide process, such as its OSS, we  
12 will consider both region-wide and state specific evidence in our evaluation of that checklist  
13 item. BellSouth Louisiana II Order at ¶56. The region-wide requests made by U S WEST are  
14 relevant and constitute proper discovery.

15 **C. U S WEST Is Entitled To Discover Information About What Is Truly**  
16 **Necessary To Open The Local Exchange Markets In Arizona.**  
17

18 U S WEST seeks information about the actual requirements and demands of competitors  
19 in Arizona. This means information relating both to the specific needs of the intervenors'  
20 systems and processes and, more broadly, information about their likely demand for  
21 interconnection and access to UNEs in the local exchange market in Arizona. There should be  
22 no dispute that this kind of information is discoverable in this proceeding.

23 General information about interconnection and access requirements is relevant for several  
24 reasons. As discussed above, not only has the FCC asked the states to develop a record  
25 regarding the "public interest" -- and, more specifically, the current and anticipated state of

1 competition in each affected state -- but the FCC specifically requested information about  
2 “reasonably foreseeable demand.” *See, e.g.,* Ameritech Michigan Order at ¶¶110 & 138;  
3 BellSouth Louisiana II Order at ¶¶54 & 165. The very nature of reasonably foreseeable demand  
4 requires an inquiry into the forecasting and planning of the CLECs.

5 The FCC is not alone, of course, in its determination of the relevance of this kind of  
6 information. Special Master Van Pelt, a retired United States District Court Judge, similarly  
7 explained why the information sought by U S WEST is not only discoverable, but directly  
8 relevant and admissible in Section 271 proceedings:

9 U S WEST cannot prove Section 271(c) compliance in the state of  
10 Nebraska unless it has information from the intervenors respecting OSS  
11 system needs and the status or potential status of competition. Although  
12 U S WEST has a primary obligation to open its markets and put systems in  
13 place that will allow competition if it wishes to enter the long-distance  
14 market, what intervenors . . . plan to do is relevant. This is particularly  
15 true if these intervenors have no interest in entering the Nebraska market  
16 at any time soon. . . . [I]t is necessary for the FCC to look at the status of  
17 competition in each state to determine what the competitors are really  
18 planning to do and whether the OSS obligations will be satisfied. The  
19 OSS system needs of AT&T may be different from those of Aliant,  
20 McLeod, Sprint and the others. For the above reasons, the Special Master  
21 believes that all of the requests for information are reasonably calculated  
22 to lead to the discovery of relevant and admissible evidence.

23 *In re U S WEST Communications, Inc.'s Filing of its Notice of Intention to File Section 271(c)*  
24 *Application with the FCC, Nebraska Public Service Commission, Application No. C-1830,*  
25 *Progression Order No. 9 (Dec. 4, 1998).* What Judge Van Pelt said in Nebraska is equally true  
26 here: what the intervenors plan to do is directly relevant to this proceeding.

27 The intervenors reject Judge Van Pelt's reasoning and try desperately to distinguish his  
28 decision. Sprint asserts that Judge Van Pelt issued this broad decision because he was unfamiliar  
29 with telecommunications issues and wanted to err on the side of discovery. The actual language  
30 of the opinion belies this assertion. Judge Van Pelt concluded that the discovery sought –  
31 discovery virtually identical to the Data Requests at issue here – was appropriate because it was

1 “reasonably calculated to lead to the discovery of relevant and admissible evidence.” *Id.* MCI  
2 takes a slightly different approach and says that the Nebraska Commission did not affirm all of  
3 Judge Van Pelt’s order. MCI Response at 7. While that is technically true, the implication is  
4 misleading. Judge Van Pelt overruled a portion of the Nebraska Commission’s procedural order  
5 because it prevented U S WEST from serving discovery upon parties that did not file testimony.  
6 Judge Van Pelt determined that this portion of the order violated U S WEST’s due process rights.  
7 The full commission reinstated its Procedural Order, but it sustained and thereby agreed with  
8 every aspect of Judge Van Pelt’s discovery rulings. Thus, these decisions are not only those of a  
9 retired District Court Judge well versed in managing discovery disputes -- the only judge to  
10 review U S WEST’s discovery to date -- but also the full Nebraska Commission.

11 Instead, intervenors cite decisions of the New Mexico and Montana<sup>3</sup> Commissions, which  
12 they assert reject both U S WEST’s Data Requests and the reasoning of Judge Van Pelt. They  
13 argue that New Mexico and Montana were right and that Nebraska was wrong. *See, e.g.*,  
14 AT&T’s Response at 5-8; NextLink’s Response at 4-7; Sprint’s Response at 2-5. The intervenors  
15 are mistaken. They overstate the differences between the Montana and New Mexico  
16 Commissions and the Nebraska Special Master. They also overstate the extent to which the  
17 decisions of the Montana and New Mexico Commissions support the positions they take in this  
18 proceeding.

19  
20 For example, AT&T (and others) assert that the information U S WEST seeks is not  
21 subject to discovery because it is proprietary. AT&T’s Response at 5 (the data requests “seek  
22 proprietary information about internal practices and business plans of AT&T”); ACI’s Response

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<sup>3</sup> U S WEST brought a claim against the Montana PSC claiming that its discovery decisions were tantamount to due process violation. At hearing, both AT&T and the PSC lawyer asserted that U S WEST did not have the ability to protest a due process violation to the Montana courts. The Montana Judge never reached the merits of the case, but dismissed the action because, under Montana law, U S WEST had not timely filed the petition for review. Notably, the judge’s written opinion ended by stating that “[t]he Court has to admit that if U S WEST came to it in June or July of 1998 with these same concerns, a different result may have obtained.” Montana Decision at 6. Sprint and MCI assert that the Montana Judge “summarily dismissed” the appeal. Sprint Response at 4; MCI response at 7. This is an unfair characterization and is wholly misleading. Any implication that the Montana Court decided the merits of U S WEST’s due process claim is simply inaccurate.

1 at 11. However, the Montana and New Mexico orders reject this very argument. The New  
2 Mexico Commission noted that, given the protective order filed in that proceeding, AT&T's  
3 objections "have no merit." New Mexico Order at ¶69. Similarly, the Montana PSC stated that  
4 "parties are required to submit information they consider 'proprietary.'" Montana Order at 3.  
5 The FCC, too, has rejected the suggestion that the claim of "proprietary" information should  
6 prevent the state from developing a complete record. Ameritech Michigan Order at ¶34.  
7 U S WEST has already entered into confidentiality agreements with most of the intervenors, and  
8 it is willing to do so with them all. In addition, U S WEST plans to submit a Protective Order for  
9 entry in this proceeding. Thus, there is no basis for objecting to discovery on grounds that the  
10 information sought is "proprietary."

11 Nor can the intervenors legitimately object to the discovery of information relating to  
12 "reasonably foreseeable demand" for interconnection and unbundled access. For example, ELI  
13 contends, in its response to Data Request 17, that information relating to "projected demand" is  
14 irrelevant. ACI acknowledges the relevance of foreseeable demand but says that Data Requests  
15 seeking that information are "premature." ACI Opp. at 4-5. The New Mexico Commission,  
16 however, soundly rejected this argument, holding that the CLECs must respond to requests  
17 relating to reasonably foreseeable demand. New Mexico Order ¶71. Judge Van Pelt also held  
18 that what the intervenors "plan to do" is relevant.

19 This is not to suggest that Judge Van Pelt and the New Mexico and Montana  
20 Commissions agree about everything. While Judge Van Pelt ruled that the intervenors' "OSS  
21 system needs" are relevant, the Montana and New Mexico Commissions both held that certain  
22 information about CLECs' systems is not relevant.<sup>4</sup> However, under Arizona standards of the

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<sup>4</sup> Even this formulation may overstate the disagreement, however. The New Mexico Commission ordered production of information "regarding direct interfaces between U S WEST and a CLEC," information "on the type

1 scope of discovery, the information sought is relevant. To the extent that the intervenors here, or  
2 any party before the FCC, raises concerns about the ability of U S WEST's systems and  
3 processes to handle the demand placed upon those systems by new entrants, the information  
4 sought is directly relevant. The FCC has repeatedly indicated that it will examine the BOC's  
5 ability to handle the CLECs' reasonably foreseeable demands, particularly OSS demands.  
6 U S WEST is entitled to discover what the CLECs' systems require in order to establish that  
7 those requirements can be met.

8 The New Mexico and Montana Commissions held that the CLECs' internal systems are  
9 not relevant because they concluded that those systems are not "acceptable to serve as  
10 benchmarks" for U S WEST's performance. This concern is based upon a misapprehension,  
11 however. U S WEST does not seek to use information about intervenors' OSSs as a  
12 "benchmark" for its own performance. Rather, the information is needed to show that the  
13 CLECs' requirements can be met -- a purpose that the New Mexico Commission itself endorses.  
14 New Mexico Order at ¶70. Secondly, under the FCC's decisions, the information is relevant to  
15 the question of whether U S WEST's systems affect the CLECs' competitive position.

16 For these reasons, the intervenors' contentions that their needs in Arizona are irrelevant --  
17 and that the decisions of the New Mexico and Montana Commissions support their position -- are  
18 misguided.

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of OSS used by the CLEC to place orders with ILECs," and "certain information regarding their OSS interface needs that may impact directly upon U S WEST." New Mexico Order at ¶¶59, 70, and 74.

1                   **D. U S WEST's 41 Data Requests Seek Information Reasonably**  
2                   **Calculated To Lead To The Discovery Of Admissible Evidence.**

3  
4                   **1.                   Operation Support System Issues (Data Requests 18-25**  
5                   **and 34) Are Central To The Case.**

6  
7                   The FCC, in the now vacated Rule 319, defined OSS as an unbundled network element.

8                   As a result, the FCC determined that ILECs such as U S WEST must provide nondiscriminatory  
9                   access to OSS for preordering, ordering, provisioning, maintenance/repair and billing for both  
10                  resale and UNEs. First Report and Order at ¶¶517-518; BellSouth Louisiana II Order at ¶¶81 &  
11                  145.

12                  U S WEST provides nondiscriminatory access to the requisite OSSs through two  
13                  different methods. First, U S WEST has created an EDI, or electronic interface, so that a  
14                  CLEC's internal systems can interact directly with U S WEST's systems. Second, U S WEST  
15                  provides a human-to-computer interface called "IMA," which offers inexpensive access to  
16                  U S WEST's systems through a graphical user interface. Each of these interfaces support a  
17                  number of capabilities. The relevant question in this proceeding is which capabilities must  
18                  U S WEST's IMA and EDI interfaces support in order to meet Arizona's current and projected  
19                  demands.

20                  Intervenors claim that U S WEST must develop the capability to support everything:  
21                  every system, every UNE, every conceivable combination even if no intervenor in the state needs  
22                  the functionality. AT&T Response at 10 (requires "fully electronic computer-to computer  
23                  interfaces"); MCI Response at 20-21 ("need access to all UNEs, access to combined UNEs, and  
24                  true electronic flow through"). Again, intervenors miss the fundamental objective of both  
25                  Section 271 and U S WEST's discovery. The purpose of Section 271 is to open a state's local  
26                  exchange market to competition, not to force U S WEST to develop systems and processes that

1 no one needs or plans to use. Consistent with the FCC's decisions, U S WEST's Section 271  
2 obligation is to provide the systems and capabilities that CLECs actually need, now and in the  
3 foreseeable future, in order to compete. In fact, the FCC encouraged BOCs to develop evidence  
4 to validate their positions and indicated it will seriously consider such filings. BellSouth  
5 Louisiana II Order at ¶59 ("While this and prior orders identify certain types of information we  
6 would find helpful in our review of Section 271 applications, we reiterate that we remain open to  
7 approving an application based on other types of evidence if a BOC can persuade us that such  
8 evidence demonstrates nondiscriminatory treatment and other aspects of the statutory  
9 requirements."); *see id.* at n. 11.

10 U S WEST's discovery seeks to gather evidence to uncover the OSS capability that  
11 competitors in fact need. In order to do so, U S WEST must determine the necessary capabilities  
12 of its IMA and EDI interfaces. AT&T and MCI have both already asserted in this proceeding  
13 that an electronic interface is the only system that should be deemed adequate. AT&T Response  
14 at 10; MCI Response at 20. Both companies assert that a human-to-computer interface such as  
15 IMA is necessarily discriminatory. However, an EDI interface only works if (a) the CLEC  
16 possesses its own internal systems for supporting the requested services and (b) takes the time  
17 and expense to develop its side of the EDI interface. Many of the CLECs have failed to expend  
18 the time and resources -- potentially millions of dollars -- to perform this work. McLeod, a  
19 CLEC that is not even a party to this proceeding, is the only entity actively working with  
20 U S WEST to develop such an interface, and its effort is limited to the support of Centrex resale.

21 Thus, the fundamental question is: What OSS capabilities do CLECs truly need in the  
22 state of Arizona? CLECs without systems or systems capabilities must develop their own  
23 systems before they can connect their systems to U S WEST's EDI interface. Therefore, the

1 capabilities of intervenors' internal systems are relevant showing whether the CLECs will need  
2 (at least for a substantial period of time) to rely on U S WEST's IMA system. Data Requests 18  
3 and 19 seek such information. Similarly, if an intervenor is unwilling to work with U S WEST  
4 to develop its side of an EDI interface, it too will have to rely on the IMA interface. Data  
5 Request 34 seeks this information. On the other hand, if an intervenor is willing to develop its  
6 side of the EDI interface, but only as to certain capabilities, such development will help to define  
7 the capability that U S WEST's EDI system requires. Data Request 34 seeks this information as  
8 well.

9 Intervenor such as AT&T and MCIW assert that they need systems to place them at  
10 direct parity with what U S WEST provides to itself; therefore, they contend that only electronic  
11 interfaces comply with the requirements of Section 271. MCIW Response at 20-21 & 25;  
12 AT&T Response at 10. They say that they expect U S WEST to provide OSS access identical to  
13 that which U S WEST provides to itself. In reality, however, they want more. MCIW candidly  
14 admits that it wants access to each UNE, both individually and in combination. MCIW Response  
15 at 21. The FCC itself recognizes that BOCs such as U S WEST do not have systems that support  
16 the ordering/provisioning of UNEs. As a result, as Sprint acknowledges, these UNEs do not  
17 require parity; instead access must be provided such that "an efficient competitor has a  
18 meaningful opportunity to compete." Sprint Response at 9; BellSouth Louisiana II Order at ¶87.  
19 What systems are "necessary" under the law may very well depend on CLEC needs and  
20 demands.

21 Although AT&T and MCIW allege that they need access to certain, specific functions,  
22 the FCC recognizes that such unsubstantiated allegations cannot form the basis for denying a  
23 Section 271 application. BellSouth Louisiana II Order at ¶¶57 & 286. The FCC also encourages

1 BOCs to develop evidence to show that such assertions by intervenors are without merit.  
2 BellSouth Louisiana II Order at ¶200 (“We advise BellSouth to respond, in future applications,  
3 with verifiable information refuting competitive LEC allegations.”). That is exactly what  
4 U S WEST seeks to do. U S WEST has the right to challenge the accuracy of intervenors’  
5 unsupported claim that they need access to everything. For example, if no intervenor in  
6 U S WEST’s region needs access to unbundled switching, substantial OSS capability to support  
7 it may be unnecessary. Evidence about intervenors’ real needs and intentions – *i.e.*, their  
8 reasonably foreseeable demand – is key therefore an appropriate area of discovery.

9 In order to combat this argument, intervenors such as AT&T assert that they are unable to  
10 compete vigorously in Arizona because U S WEST’s OSSs are lacking. AT&T Responses to  
11 Data Requests 17 & 33. U S WEST should be allowed to challenge this assertion as well.  
12 U S WEST has asked the intervenors to describe and provide internal documents concerning the  
13 OSS capabilities they need in Arizona and how, if at all, U S WEST’s systems are lacking. Data  
14 Requests 22 & 25. U S WEST also asks whether any ILEC is adequately providing the OSS  
15 functionality that intervenors need and use. Data Request 23. After obtaining this information,  
16 U S WEST can compare its capabilities to determine what functional differences, if any, exist.  
17 Should intervenors state that no ILEC provides adequate functionality, the commission may  
18 conclude that no matter what an ILEC does to provide OSS functionality, intervenors will never  
19 concede that ILECs have done enough. To determine whether foreseeable demand can be met,  
20 U S WEST asks intervenors to identify the volumes and types of orders they place, both with  
21 U S WEST and with other ILECs. Data Request 24. The information is relevant to the question  
22 of whether U S WEST’s systems are, in fact, adequate for the CLECs’ needs and to determine  
23 the types of orders that U S WEST may expect to receive in the future.

1 Finally, U S WEST seeks information from intervenors about the errors that they have  
2 caused while submitting OSS orders to U S WEST's systems. Data Request 21. Several  
3 intervenors object to this request. The FCC specifically recognized the importance of this data:

4 BellSouth adjusts its flow through data upward to account for competing carriers'  
5 errors based on its own analysis of the error type and party at fault but provides no  
6 evidentiary support for its conclusion. . . . We do not hold a BOC accountable  
7 for flow-through problems that are attributable to competing carriers' errors. . . .  
8 In this application, BellSouth again fails to provide supporting data or  
9 documentation to substantiate its conclusions. . . .

10  
11 BellSouth Louisiana II Order at ¶111. U S WEST seeks to avoid this deficiency, and therefore  
12 requests all information in intervenors' possession about such errors.

13 **2. Intervenor's Internal Documents About Checklist Items**  
14 **As Well As Their Projected Demand For Each Checklist Item (Data**  
15 **Requests 1-17, 32, 33, 35, 36 & 41) Are Central To The Case.**  
16

17 Intervenor continues to refuse to answer, without legitimate justification, U S WEST's  
18 requests for information and documents regarding how well U S WEST provisions checklist  
19 items, as well as documents relating to their projected and foreseeable demand for these checklist  
20 items. Pursuant to clearly established FCC authority, both of these topics are relevant to this  
21 case and therefore constitute appropriate subjects for discovery.

22 First, Data Requests 1 and 3-14 ask for information and documents regarding the manner  
23 in which U S WEST furnishes 11 of the 14 checklist items. These relate directly to the ability of  
24 U S WEST to deliver the checklist item as well as the quality of that provisioning, both of which  
25 are obvious 271 issues. BellSouth Louisiana II Order at ¶¶54, 57 & 198; Ameritech Michigan  
26 Order ¶110. Several intervenors (*e.g.*, MCIW) do not object to these requests and recognize their  
27 relevance; however, U S WEST has yet to receive a single internal document from any  
28 intervenor. Without these materials, U S WEST will be deprived of the opportunity to

1 adequately prepare its case, and discovery will have failed to achieve its essential purpose – to  
2 narrow and define issues in dispute at an early stage and to prevent trial by ambush.

3 Second, requests 2, 15-17, 32, 33 and 35 seek information and documents to determine  
4 projected and reasonably foreseeable demand for certain checklist items or key network  
5 elements.<sup>5</sup> Again, these are manifestly crucial parts of a 271 case. Time and again, the FCC has  
6 declared that the applicant must establish it is prepared to meet both current and “reasonably  
7 foreseeable demand” for checklist items. BellSouth Louisiana II Order ¶¶54, 144 & 165-66;  
8 Ameritech Michigan Order ¶137; BellSouth South Carolina Order ¶144 & 202. As a result,  
9 Judge Van Pelt ruled that U S WEST was entitled to know “what the competitors are really  
10 planning to do.” Again, without such information, the purpose of discovery will be thwarted and  
11 U S WEST will be deprived of its due process rights.

12 Despite the unmistakable justifications for the foregoing requests, the intervenors refuse  
13 to fully respond to them. Indeed, although U S WEST has been referred to certain external  
14 documents, such as correspondence regarding interconnection matters, prefiled testimony in  
15 other cases, and a reciprocal compensation complaint, U S WEST has not received a single  
16 internal document from even one intervenor in response to any of these requests. Moreover, no  
17 intervenor has stated in its responses that it has searched for information and documents and  
18 provided all it has. This raises the inference that either such searches have not taken place or that

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<sup>5</sup> Several intervenors assert that this information is irrelevant here because it is relevant to a pending rulemaking before the FCC concerning the network elements that U S WEST must unbundle and make available under section 251(c)(3) of the Act. Just because the information is relevant there does not mean it is irrelevant here. To the extent that intervenors obtain network elements from other sources, that directly affects the projected demand for checklist items from U S WEST. In addition, the information would provide additional support that U S WEST’s pricing in its SGAT is appropriate. Here both Sprint and AT&T make U S WEST’s point. They both argue that U S WEST must make checklist items available at TELRIC rates under section 251(d)(1) even though the statutory provision at issue does not expressly so state. AT&T Response at 14; Sprint Response at 8. Given the clear propensity of intervenors to take issue with U S WEST’s prices in its SGAT, it is only appropriate to let U S WEST establish that the checklist items fail to meet the “necessary” and “impair” standards required for unbundling under Section 251(c)(3) of the Act. This is the only way that U S WEST will be able to challenge intervenors’ assertions.

1 they have taken place and responsive documents have been willfully withheld. U S WEST  
2 appreciates that some responsive information has been provided, but respectfully submits that  
3 discovery without internal documents misses the point. The most relevant information, both  
4 good and bad, often can only be found in internal documents. Intervenors may wish to pick and  
5 choose what they disclose during discovery, but selective production only serves to make a  
6 mockery of the discovery process. Intervenors should be compelled to provide U S WEST with  
7 responses to its requests regarding their concerns about and projected demand for checklist items  
8 and various network elements, including OSS.

9                   **3. Information In Intervenors' Possession About Specific**  
10                   **Performance Indicators (Data Requests 26-31) Are Central To The**  
11                   **Case.**  
12

13           U S WEST also propounds discovery relating to the manner in which the intervenors use  
14 certain performance indicators provided by U S WEST and, in certain circumstances, the internal  
15 performance results of facilities-based providers. Data Requests 26-31. Every intervenor objects  
16 to providing information relating to the internal performance of its business operations, however,  
17 decrying that U S WEST's application should focus solely on its own performance and has  
18 nothing to do with the requirements of the CLEC's operations. In response to requests 26  
19 through 31, for example, AT&T boldly asserts that "U S WEST fail[s] to understand  
20 nondiscriminatory access, as it is imposed on U S WEST by the Act." AT&T Response at 15.  
21 Many other intervenors parrot AT&T's response. Yet such a myopic view of the role of  
22 performance measurements reflects a true misunderstanding of the requirements of Section 271  
23 and of the underlying purpose of performance measurements. Incanting the mantra of "we get  
24 what you get" does not resolve all issues in a 271 proceeding.

1 Data Request 31, for example, asks the Intervenors whether they measure the frequency  
2 with which their representatives contact local exchange customers to notify them about order  
3 rejection notices, firm order confirmation notices, completion notices, and jeopardy notices.  
4 With respect to each of these functionalities, the FCC found in BellSouth's second Louisiana  
5 application that the timeliness of these notices went directly to the ability of new entrants to  
6 compete effectively. BellSouth Louisiana II Order at para. 117. It is to this very premise that  
7 U S WEST's discovery requests regarding internal business operations reach. In what timeline,  
8 if at all, must these functionalities reach CLECs operating in Arizona to allow them to compete?

9 In this context, the intervals at which the CLEC provides notices to its end user customers  
10 are relevant to the potential competitive impact of U S WEST's notice intervals. If, for example,  
11 the CLEC's procedures in contacting local exchange customers about order rejection, firm order  
12 confirmation, completion and jeopardy of services are not affected by the intervals provided by  
13 U S WEST for each notification, than U S WEST may demonstrate that its processes and  
14 procedures meet the Act's requirements.

15 An intervenors use of "completion notifications" is illustrative. U S WEST informs  
16 CLECs of order completions every business day via an overnight batch process. This is exactly  
17 the same overnight batch process that is used to notify U S WEST's systems of order  
18 completions. CLECs, however, have clamored that they require "real-time" completion  
19 notifications. The FCC has thus required BellSouth to demonstrate in its next Section 271 filing  
20 through performance measurements that "it provides competing carriers with order completion  
21 notices in a timely and accurate manner." BellSouth Louisiana II Order at ¶ 130 Information  
22 that an intervenor's business processes would not utilize a completion notification until the next

1 day would be relevant and admissible evidence that U S WEST has provided the intervenor such  
2 notification in a timely and accurate manner.

3 Data Request 26 asks the Intervenors to provide information regarding provisioning  
4 commitments made to customers, including the average, anticipated time interval for installing  
5 facilities-based local telecommunications service and the average, anticipated amount of time the  
6 customer will be out of service to allow for a change of carriers through a loop cut-over. Data  
7 Request 26 also asks whether the commitments made vary depending upon whether the  
8 intervenor uses facilities provided by U S WEST or by some other source.

9 These questions relate directly to the potential competitive effect on the CLEC of  
10 U S WEST's provisioning intervals. The intervenors cannot argue here that U S WEST can  
11 merely compare what it does for itself to what it does for a CLEC and therefore rely solely on  
12 U S WEST data – U S WEST does not provide unbundled network elements to itself, as the FCC  
13 reasoned in its First Report and Order:

14 . . . because section 251(c)(3) includes the terms “just” and “reasonable,” this duty  
15 encompasses more than the obligation to treat carriers equally. Interpreting these terms in  
16 light of the 1996 Act’s goal of promoting local exchange competition, and the benefits  
17 inherent in such competition, we conclude that these terms require incumbent LECs to  
18 provide unbundled elements under terms and conditions that would provide an efficient  
19 competitor with a meaningful opportunity to compete.  
20

21 Local Competition First Report and Order, 11 FCC Rcd at 15660. *See also* BellSouth Louisiana  
22 II Order at para. 198 (“Because the provisioning of unbundled local loops has no retail analogue,  
23 BellSouth must demonstrate that it provides unbundled loops in a manner that offers an efficient  
24 carrier a meaningful opportunity to compete”). Clearly, a comparison of the time in which it  
25 takes for a facility-based provider to provide service with and without elements from U S WEST  
26 provides a comparison to determine whether an efficient competitor is allowed a meaningful  
27 opportunity to compete. If a CLEC’s provisioning intervals are equal or longer when it provides

1 service using entirely its own facilities than when it purchases some facilities from U S WEST,  
2 U S WEST's intervals clearly provide that CLEC a meaningful opportunity to compete.

3 Data Request 27 seeks information regarding presentations and marketing efforts used by  
4 the Intervenor's sales representatives in discussions with local exchange customers or in mass  
5 marketing within U S WEST's region. The FCC's BellSouth Louisiana II Order at ¶¶ 105, 127,  
6 states that the customer's perspective is a relevant consideration for issues such as how long it  
7 takes for a new service to be installed. Information regarding the representations made by the  
8 CLECs to their customers is directly relevant to that perspective since it may show that the  
9 Intervenor's cannot possibly be disadvantaged by U S WEST's provisioning intervals if their  
10 representations to their customers regarding provisioning commitments are greater than what  
11 U S WEST currently provides, U S WEST's provisioning intervals cannot affect the customer's  
12 view of the service received.

13 U S WEST also seeks information as to whether the intervenors track the time per call  
14 that their local service representatives spend on the telephone with customers to promote local  
15 telecommunications services and arrange for the provisioning of services. Data Request 28.  
16 This information relates to the potential competitive effect of U S WEST's ordering processes,  
17 and thus relates to the question of U S WEST's provision of nondiscriminatory access to its  
18 OSSs. In the provision of OSSs, the FCC holds that "[f]or the OSS functions that have no retail  
19 analogue (such as ordering and provisioning of unbundled network elements), a BOC must offer  
20 access sufficient to allow an efficient competitor a meaningful opportunity to compete."  
21 BellSouth Louisiana II Order at ¶ 87. The FCC recognizes that the competitive impact of  
22 U S WEST's processes may depend upon the CLEC's processes. Thus, the FCC speaks of how  
23 the ordering process appears to the customer: "To the customer, the new entrant may appear to

1 be a less efficient and responsive service provider than its competitor." BellSouth Louisiana II  
2 Order at ¶ 105 (emphasis added). Conversely, where U S WEST's processes cannot, because of  
3 the nature of the CLECs' processes, affect the customer's perception of his or her service, those  
4 processes cannot place the CLEC at a competitive disadvantage.

5 Similarly, information about the hours of operation of the intervenors' local exchange  
6 units within U S WEST's territory allows for the kind of comparative analysis the FCC seeks,  
7 BellSouth Louisiana II Order at ¶¶ 105, 127-28, because it is relevant to the determination of the  
8 competing carriers' - and their customers' - expectations. Data Request 29. If the CLECs' hours  
9 are equal to or shorter than U S WEST's, the length of U S WEST's hours cannot affect either the  
10 CLEC customer or the competitive advantage of the CLECs. Once again, it is the manner in  
11 which CLECs utilize the systems – not a comparison of what U S WEST provides to the CLEC  
12 as compared to what it provides to itself – that is important for U S WEST's proof.

13 Finally, U S WEST seeks the comparative percentages of customer commitments met for  
14 provisioning and repairs, the percentages of held orders, the percentages of network blocking  
15 experienced by the intervenors, and the average repair intervals experienced. Data Request 30.  
16 AT&T in its response, however, seizes on U S WEST's request for the percentages of network  
17 blockage experienced by the intervenors internal trunk blockage and reasons that, because the  
18 FCC when seeking additional statistical information from BellSouth in its second Louisiana  
19 decision did not request CLEC data, U S WEST is not entitled to CLEC data regarding their  
20 internal trunk blockage here. Initially, the FCC in its second Louisiana order stated: "As we  
21 underscore below, however, we remain open to approving an application based on types of  
22 evidence other than those we have suggested in our prior orders if a BOC can persuade us that  
23 such evidence satisfies the statutory requirements." BellSouth Louisiana Order at n. 11.

1 In particular, the FCC in its 271 Orders compares U S WEST's internal trunk blockage to  
2 the blockage of interconnection trunks. The fundamental difference between the process for  
3 provisioning U S WEST's internal trunks and that of interconnection trunks, however, mandates  
4 further analysis: U S WEST has absolute control of the provisioning of its internal trunks while  
5 the provisioning of interconnection trunks requires active, ongoing, joint planning and  
6 forecasting by both U S WEST and CLECs in each interconnection arrangement. The FCC  
7 recognized such a distinction in its Notice of Proposed Rulemaking for Performance  
8 Measurements at paragraph 51. Hence, an equally valid comparison to determine whether  
9 U S WEST is providing interconnection equal in quality to that which it provides itself is to  
10 compare the blockage of the CLEC's internal trunks to the blockage on interconnection trunks; a  
11 high blockage on the CLEC's internal trunks may very well demonstrate an issue with the  
12 forecasting and provisioning by the CLEC rather than any fault by U S WEST.

13 As is amply demonstrated here, information relating to the internal business practices and  
14 performance of the CLECs is critical to U S WEST's application before the FCC. Undoubtedly,  
15 the intervenors are the only source of such information and therefore this Commission should  
16 compel them to provide it.

17 **4. Intervenor's Entry Plans (Data Requests 37-40) Are**  
18 **Central To The Case.**

19 U S WEST propounds questions about intervenors' entry plans and changes in  
20 competition as a result of U S WEST's entry into the interLATA market. Data Requests 37-40.  
21 Some intervenors assert that this information is proprietary. Others, such as ACI and MCI, claim  
22 that the public interest inquiry is not in dispute before this Commission. ACI Response at 18;  
23 MCI Response at 37. As explained above, the FCC has asked the Commission to develop a  
24 record on public interest. Moreover, there can be no question that the information is relevant.  
25

1 The FCC specifically asked each of the state commissions to develop a record concerning the  
2 state of local competition in the state. Michigan Ameritech Order at ¶34. In addition, the  
3 Commission issued an “Attachment A” to its May 27, 1997 Order, which seeks the very  
4 information that intervenors now assert is irrelevant. Question 3 of Attachment A asks:

5 Whether [intervenors] are providing business exchange service, residential  
6 exchange service, business exchange access service, or residential exchange  
7 access service (identifying special or switched access). If the competitor is not  
8 providing any of these services, does it plan to? When?  
9

10 Similarly, Question 5 asks:

11 (a) The number of access lines in Arizona that are served by U S WEST’s  
12 competitors. . . .; (c) The scope of the geographic areas for which the competitors’  
13 services are available; (d) The number and types of customers for which the  
14 competitors’ services are available; (e) The extent to which each competitor is  
15 using its own facilities to provide service or is using unbundled or resold services  
16 obtained from U S WEST; (f) A description of the competitors’ facilities in  
17 operation in U S WEST’s service area; (g) Whether the competitor is currently  
18 expanding its facilities and when the expansion is expected to be completed.  
19

20 These questions are virtually identical to U S WEST Data Request 37. U S WEST is as  
21 interested as the Commission in the answers to these fundamental questions.

22 Information about when intervenors plan to compete, how intervenors plan to compete,  
23 and whether intervenors plan to offer ubiquitous service throughout U S WEST’s territory in  
24 Arizona is also relevant to the public interest inquiry. *See* Data Request 38; *see also* Question 10  
25 to ACC’s Attachment A. The FCC has stated that it has broad discretion to identify and weigh  
26 all relevant factors in determining whether BOC entry is in the public interest. *BellSouth*  
27 *Louisiana II* at ¶362. According to U S WEST’s pre-filed testimony, approximately two-thirds  
28 of all households would prefer that one company provide all of their telecommunications needs.  
29 *Harris Direct* at p. 52. Right now, unlike U S WEST, intervenors can offer these desirable  
30 packages to customers. Of course, that means customers in many areas unsupported by

1 intervenors are left without the ability to obtain what a large percentage of them want. The only  
2 company that may be willing to offer these customers these packages is U S WEST. Thus,  
3 information describing the scope of the areas in Arizona that intervenors plan to serve is relevant  
4 to the public interest inquiry.

5 This information is also relevant because the public interest inquiry “should consider  
6 whether approval of a section 271 application will foster competition in all relevant  
7 telecommunications markets (including the relevant local exchange market), rather than just the  
8 in-region, interLATA market.” BellSouth Louisiana II at ¶361. U S WEST’s direct testimony  
9 reflects on the Connecticut experience, where AT&T and MCI entered the local exchange market  
10 and competed because SNET, the state’s ILEC, obtained interLATA authority. Harris Direct at  
11 58. Thus, evidence about how intervenors changed their local entry strategy in order to compete  
12 with a full service ILEC is relevant to the public interest inquiry as well. Data Request 39.

13 Information about intervenor plans to limit their focus to certain customers is also  
14 relevant. See Attachment A, Question 5(d). Such information further establishes that intervenors  
15 are cherry-picking, not because of any alleged deficiencies in ILECs’ systems and processes, but  
16 for purely economic reasons. See Data Request 38. This further supports U S WEST’s direct  
17 testimony, which asserts that intervenors will continue to snub residential markets and will  
18 ignore rural markets altogether. The only thing that may prompt a change is, as is described  
19 above, U S WEST’s entry into the interLATA market. This information is all central to the  
20 public interest inquiry.

21 Finally, intervenors justifiably consider this information confidential and proprietary.  
22 U S WEST has entered into confidentiality agreements with virtually every intervenor and is  
23 willing to do so with all of them. Some parties have insisted that this is not enough; they want a

1 full Protective Order signed by the Hearing Division. U S WEST has no objection to entry of  
2 such an Order and is preparing a Motion for Protective Order for signature. U S WEST does not  
3 seek this information in order to gain a tactical advantage, as some intervenors suggest. To the  
4 contrary, it only seeks this information for use in this proceeding. Every state commission that  
5 has considered this argument to date has determined that a Protective Order is adequate to protect  
6 competitive information. This Commission should find likewise.

7 **III. CONCLUSION**

8 U S WEST seeks information from intervenors that will directly support its Section 271  
9 filing. The intervenors object and refuse to produce virtually all of the requested data, claiming  
10 that it is not relevant and that U S WEST has the burden of proof. U S WEST submits that the  
11 real reason intervenors object is because the information will undermine their objections to  
12 U S WEST's application and establish that its local exchange markets are open to competition.  
13 Of course, this is not a legitimate basis to withhold discovery. Discovery is supposed to be an  
14 aid, not an obstacle, to the truth-seeking process.

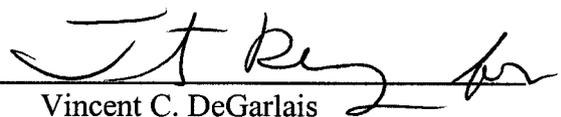
15 Finally, intervenors assert that U S WEST already possesses all of the information that it  
16 needs. This ignores the fundamental concept that information that helps your opposition is more  
17 probative than information in your possession that supports your own case. If any case warrants  
18 complete discovery, it is a Section 271 case. Opening the Arizona interLATA market to  
19 U S WEST will fundamentally change the marketplace by fostering competition at every level of  
20 service. Given the importance of this docket and the huge amount of money involved – \$1.05  
21 billion per year – full and fair discovery is essential. U S WEST respectfully requests that the  
22 Commission grant U S WEST's motion and compel intervenors to fully respond to all 41 of its  
23 Data Requests.

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DATED this 31st day of March, 1999.

Respectfully submitted,

U S WEST COMMUNICATIONS, INC.

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## **CERTIFICATE OF SERVICE**

**ORIGINAL and 10 copies of the foregoing hand-delivered  
for filing this 31<sup>st</sup> day of March, 1999, at:**

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A handwritten signature in black ink, appearing to read "J. S. Kelly", is written over a horizontal line. The signature is fluid and cursive.