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BEFORE THE ARIZONA CORPORATION COMMISSION

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ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

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JAMES M. IRVIN
Chairman
TONY WEST
Commissioner
CARL J. KUNASEK
Commissioner

ORIGINAL

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DOCKETED BY [Signature]

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
U S WEST'S MOTION FOR
EXTENSION OF TIME TO RESPOND
TO COMMENTS

U S WEST respectfully submits this Motion for Clarification of the Commission's March 2, 1999 Order to set a schedule for briefing and deciding motions to compel promptly which is necessary to achieve the 90-day timeframe for this matter.

INTRODUCTION

U S WEST hereby moves the Commission for an Order clarifying its March 2, 1999 Procedural Order to ensure that motions to compel discovery are heard and decided in a timely manner. Clearly, that is the intent of the present Procedural Order, which states that "in the alternative to filing a written motion to compel discovery, any party seeking discovery may telephonically contact the Commission's hearing Division" and a "hearing will be convened as soon as practicable." U S WEST supports all parties' ability to raise discrete issues telephonically. Although an informal telephonic procedure is adequate for most discovery disputes, U S WEST's experience in

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1 271 dockets is that intervenors object to virtually every
2 question arguing, *inter alia*, that because U S WEST has the
3 burden of proof, it is not entitled to traditional discovery.
4 Without discussing the many fallacies with this argument, the
5 sheer volume of data requests that are objected to virtually
6 mandate written motions to compel. Thus, U S WEST seeks a
7 schedule that will facilitate prompt dispositions of written
8 motions as well.

9 U S WEST therefore requests that the Commission modify its
10 procedural schedule to set forth detailed timeframes within which
11 to make, respond, reply and decide written motions to compel.
12 This tracks with the existing plan to dispose of discovery
13 disputes promptly and to maintain the Commission's plan of
14 reaching decision within 90 days of U S WEST updating its
15 Application. The schedule proposed by U S WEST follows:

- 16 • The discovering party shall have 3 business days after the
17 10 day response period set forth in the existing Order¹ to
18 serve a motion to compel, with a certification that it has
attempted to informally resolve the matter with the
responding party.
- 19 • The responding party shall have 3 business days after
20 receipt of the motion, the responding party shall file and
serve a response.
- 21 • The discovering party shall have 2 business days after
22 receipt of the response to file a reply.
- 23 • There shall be a hearing 2 business days after the reply.

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¹ Objections and written responses must be served by fax and overnight
26 delivery. The same procedure should apply to the filing and serving
of all pleadings and briefs regarding motions to compel.

- 1 • The Hearing Division shall issue an order within 3 business
2 days of the hearing.²
3 • The responding party shall have 5 business days to comply
4 with the Order.

4 **DISCUSSION**

5 U S WEST's proposal is both necessary and reasonable. It is
6 necessary because prior proceedings reveal that there will be
7 many disputes requiring written motions to compel and those
8 motions need to be resolved extremely quickly in order to
9 conclude this proceeding in the 90 days allotted. The proposed
10 schedule is reasonable, albeit truncated, because the issues that
11 will arise are relatively clear and unambiguous given the state
12 of the law on section 271.

13 The Commission will have a mere 90 days to decide this
14 matter after U S WEST supplements its Application, which will
15 occur imminently. The magnitude of discovery requests and
16 objections that will issue will threaten the 90 day time limit
17 unless appropriate procedures are in place. In Montana, the
18 parties collectively issued 2,043 discovery requests.³ Despite
19 the fact that U S WEST received far more discovery requests than
20

21 ² The order shall be delivered to the parties to the dispute by fax and
22 mail. All other parties shall receive the order by mail only.

23 ³ 665 were from the several intervenors, and 1,378 were from U S WEST
24 to the several intervenors. The absolute number of U S WEST requests
25 may be somewhat misleading; that number is largely made up of several
26 sets of identical discovery requests, one of which was sent to each of
the several intervenors (with a few exceptions). Thus, the actual
number of substantively separate U S WEST discovery requests that any
particular intervenor received was a small fraction of 1,378, but the
number substantively different requests made of U S WEST was a much
higher number -- 665.

1 any other party, the intervenors⁴ objected to a much higher
2 percentage of discovery requests than U S WEST did. The
3 intervenors objected to 88% of U S WEST's discovery requests,
4 while U S WEST objected to only 19% of the intervenors' requests.
5 Substantial briefing on these objections followed, and the
6 Montana Commission took long periods of time to rule on
7 objections. This process caused substantial delay in the
8 proceeding; in fact a hearing is yet to occur. There will be a
9 similar result here if this Commission does not learn from the
10 Montana experience and adopt the proposed schedule.

11 In Nebraska, the Commission adopted a procedural schedule
12 that included almost identical timeframes to that described
13 above. (Attached hereto as Exhibit A.) The Special Master who
14 oversaw the discovery process used those dates to manage the
15 process, and discovery moved promptly as a result. Even though
16 the case was filed three months after Montana, the case has
17 already been tried and a decision is imminent. Thus, the parties
18 have positive experience using the very timelines that U S WEST
19 is now proposing.

20 **CONCLUSION**

21 For all of the foregoing reasons, U S WEST respectfully
22 requests that the Commission grant this Motion for Clarification
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25 ⁴ Four of the 10 intervenors in the Montana proceeding are present in
26 this case - AT&T, MCI, TCG and Sprint. Thus, the Montana experience
will be a good predictor of the parties' discovery behavior in this
proceeding.

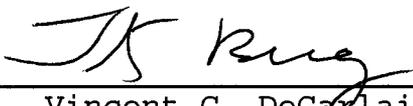
1 and enter the proposed schedule for motions to compel as a
2 procedural order in this case.

3 RESPECTFULLY SUBMITTED this 4th day of March, 1999.

4 U S WEST COMMUNICATIONS, INC.

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ORIGINAL and ten copies of
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17

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COPY of the foregoing hand
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SECRETARY'S R. LORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

IN THE MATTER OF U S WEST) Application No. C-1830
COMMUNICATIONS, INC., FILING)
OF ITS NOTICE OF INTENTION)
TO FILE SECTION 271(c)) PROCEDURAL ORDER
APPLICATION WITH THE FCC)
AND REQUEST FOR COMMISSION)
TO VERIFY U S WEST)
COMPLIANCE WITH SECTION 271(c)) Entered: June 30, 1998

BY THE COMMISSION:

This matter came before the Nebraska Public Service Commission (Commission) upon US West Communications, Inc.'s Motion for Procedural Order in this application. Pursuant to 47 U.S.C. §271, U.S. West Communications, a Bell operating company is authorized to provide interLATA service originating in Nebraska if it receives approval from the Federal Communications Commission (FCC). As part of its review of a §271 application, the FCC must consult with the U.S. Attorney General, and the appropriate state commission. Prior to the initiation of this docket, the Commission entered a procedural policy in Application C-1540 to effect the efficient processing of an eventual §271 application in Nebraska. In light of US West's actual §271 application in this docket, the Commission has reexamined the timelines set forth in C-1540, and believes that that original procedural schedule should be modified as set forth herein.

Procedural Timeline

The following filing dates and other deadlines will be utilized in this docket:

- July 6 - Discovery requests from all intervenors
- *July 13 - US West's objections to discovery requests
- *July 16 - US West's response to discovery requests
- Intervenor motions to compel based upon US West's objections
- *July 20 - US West's response to motion to compel (by 12:00 p.m.)
- Oral/written objections to discovery
- July 21 - Oral argument/discussion on discovery
- July 27 - Deadline for intervention in proceeding
- July 30 - Intervenor responsive briefs to Application (optional)
- Prefiled testimony due
- Aug 10 - Discovery requests from US West
- *Aug 17 - Intervenor objections to discovery requests
- *Aug 20 - Intervenor response to discovery requests
- US West motion to compel based upon Intervenor's objections

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- * Aug 24 - Intervenor response to motion to compel (by 12:00 p.m.)
 - Oral/written objections to discovery
- Aug 25 - Oral argument/discussion on discovery
- Sept 3 - US West rebuttal testimony
- Sept 14 - 25 - Hearing
- Oct 13 - Post-hearing briefs due
- Oct 30 - Commission issues Order

Service

For those items marked above by an asterisk (*), service will be via facsimile and mail. All other items shall be served via overnight mail or hand delivery.

Discovery

As was established in C-1540, parties are strongly urged to present only focused discovery requests. Each data request shall be limited to 75 items, with each subpart being considered one item.

Parties

All parties of record in Application C-1540 are automatically made parties of record in this proceeding. Otherwise, any party has the right to intervene in the proceeding within the timeframes and to the extent authorized by Commission Rules.

Filing of Documents

As was established in C-1540, in addition to filing hard copies of documents, parties should also make electronic filings whenever possible. The Commission specifically requests that electronic filings be made of all briefs, prefiled testimony, and like documents. General correspondence between parties need not be filed in an electronic format. Parties shall also file any additional documents in electronic format that the Commission may request. All electronically filed documents created with word processing software are to be filed in either Microsoft Word Version 6.0 or earlier, or WordPerfect 6.1, or earlier. Any documents created with spreadsheet software are to be filed in Lotus Release 5. Electronic filings may be made on 3 1/4 inch IBM formatted diskettes or compact disks.

ORDER

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the procedures and schedule set forth herein is approved for Application No. C-1830.

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

Application No. C-1830

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MADE AND ENTERED at Lincoln, Nebraska, this 30th day of June, 1998.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

//s//Anne C. Boyle
//s//Lowell C. Johnson
//s//Rod Johnson


Chairman

ATTEST:


Executive Director