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BEFORE THE ARIZONA CORPORATION COMMISSION

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JIM IRVIN  
Chairman  
TONY WEST  
Commissioner  
CARL J. KUNASEK  
Commissioner

Arizona Corporation Commission

DOCKETED

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Docket No. T-00000B-97-0238

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

REPLY OF U S WEST TO  
COMMISSION STAFF'S RESPONSE  
TO U S WEST'S PROPOSED  
PROCEDURAL ORDER

U S WEST Communications, Inc. ("U S WEST") respectfully submits this Reply to the 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. In response to the Commission Staff's filing, U S WEST states as follows:

1. U S WEST agrees with the Commission Staff that U S WEST's application should not be dismissed and that U S WEST is entitled to full discovery.

U S WEST appreciates that the Commission Staff has acknowledged that the Intervenors' Motion to Dismiss is without merit and should be denied. U S WEST also appreciates that the Commission Staff has recognized that U S WEST should have the right to conduct full discovery in this matter and that that discovery should begin before U S WEST files its direct testimony.

As U S WEST has stated before, it needs to conduct discovery before it files direct testimony. Much of the relevant information in this case is in the possession of the Intervenors. For example, the FCC has indicated that a 271 applicant must establish that it can provision checklist items in quantities that competitors may reasonably demand. See *FCC Order on BellSouth's Louisiana II Application*, ¶ 54. The FCC also looks to whether an applicant's OSS

1 systems are “designed to accommodate both current demand and projected demand of competing  
2 carriers.” *FCC Order on Ameritech’ Michigan 271 Application*, ¶ 137. To develop its case,  
3 U S WEST must conduct discovery on, among other things, the projected demand of the  
4 Intervenors for each checklist item.

5 U S WEST issued discovery to Intervenors on February 19, 1999. The Intervenors have  
6 not yet responded, despite being obligated to do so under the previous procedural order.  
7 Intervenors should be ordered to respond within four business days.

8 2. U S WEST’s proposed procedural order would not shift the burden of proof.

9 U S WEST disagrees with the Commission Staff’s recommendation that U S WEST be  
10 ordered to file testimony before the Intervenors. The Commission Staff bases its  
11 recommendation solely on its mistaken belief that ordering the parties to file testimony  
12 concurrently will shift the burden of proof in this case. That is not the case. The burden of proof  
13 is not contingent on the order that testimony is filed. If U S WEST’s proposed procedural  
14 schedule is adopted, U S WEST will still have the burden of proof. None of its proposals would  
15 change that.

16 U S WEST’s proposed procedural order is based upon its experience in 271 proceedings  
17 in other states and is designed to avoid problems that arose in those proceedings. In those  
18 proceedings, U S WEST filed direct testimony, the intervenors filed rebuttal testimony and  
19 U S WEST filed rebuttal. Each phase was followed by a discovery period. The result of that  
20 lengthy process was that significant changes to the evidence had occurred between the time that  
21 the application was filed and the time of the hearing.

22 U S WEST is attempting to avoid those problems in this proceeding. It has proposed a  
23 schedule which allows the parties to obtain relevant general discovery first, and then file  
24 testimony. This is a reasonable process which would eliminate the problem of U S WEST’s  
25 direct testimony being out of date by the time of the hearing.

26

1           3.     U S WEST must be allowed to introduce new evidence when conditions change  
2                   or when new issues are raised.

3           The Commission Staff recommends that U S WEST be ordered to file in its direct  
4 testimony all of the information it intends to file with the FCC. If that recommendation is  
5 adopted, the procedural order must make clear that U S WEST is not precluded from later  
6 introducing new evidence in this proceeding or before the FCC.

7           U S WEST has always intended to include in its direct testimony all of the information it  
8 currently intends to file with the FCC. However, it cannot know at this point what evidence will  
9 eventually be filed with the FCC. The record cannot be frozen at the time that U S WEST files  
10 its direct testimony. This proceeding will take several months to complete, and the FCC will  
11 take an additional 90 days to issue an order. The competitive landscape in Arizona will  
12 significantly change in that time, and U S WEST's systems will have evolved. In addition, U S  
13 WEST will have several months of additional performance measure results to report. To the  
14 extent that the facts change, U S WEST must be allowed to include the changed circumstances in  
15 its FCC filing. In addition, the intervenors in 271 cases continue to raise new issues and to make  
16 new arguments. U S WEST must be allowed to include in its later filings and testimony  
17 additional information to address new concerns and arguments raised by the Intervenors. The  
18 Intervenors have recognized this. In a recent oral argument in the appeal of U S WEST's 271  
19 case in Montana, AT&T admitted that U S WEST cannot be bound to file the same evidence  
20 with the FCC that it filed in written testimony in the state proceeding.

21           4.     U S WEST is submitting an alternative procedural order.

22           U S WEST firmly believes that its original proposed order should be entered. If,  
23 however, U S WEST is ordered to file its direct testimony first, U S WEST recommends that it  
24 file testimony on March 24, rather than March 30. U S WEST has prepared and submits an  
25 alternative procedural order, which should be used if Commission Staff's proposal is accepted.

26

1 For all of the foregoing reasons, U S WEST respectfully requests that the Commission  
2 grant U S WEST's Motion for Immediate Implementation of Procedural Order.

3 DATED this 2<sup>nd</sup> day of March, 1999.

4 Respectfully submitted,

5 U S WEST COMMUNICATIONS, INC.

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21 ORIGINAL and ten copies of  
22 the foregoing filed this 2<sup>nd</sup> day  
23 of March, 1999, with:

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COPY of the foregoing hand  
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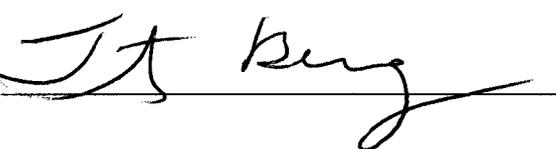
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