

COVER SHEET



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ARIZONA CORPORATION COMMISSION  
DOCKET CONTROL CENTER

CASE/COMPANY NAME: In the matter  
of USWEST Communications, Inc.'s Compliance  
with §271 of the Telecommunications Act of 1996  
D/B/A or RESPONDENT: \_\_\_\_\_

DOCKET NO. U 11000-97-238  
5 20 AM '99  
Arizona Corporation Commission  
DOCKETED  
MAY 25 1999  
DOCUMENT CONTROL

NATURE OF ACTION OR DESCRIPTION OF DOCUMENT

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Please mark the item that describes the nature of the case/filing:

01 UTILITIES - NEW APPLICATIONS

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|--------------------------|--|--------------------------|---|
| <input type="checkbox"/> | NEW CC&N   | <input type="checkbox"/> | MAIN EXTENSION                                    |
| <input type="checkbox"/> | RATES  | <input type="checkbox"/> | CONTRACT/AGREEMENTS                               |
| <input type="checkbox"/> | INTERIM RATES                                      | <input type="checkbox"/> | COMPLAINT (Formal)                                |
| <input type="checkbox"/> | CANCELLATION OF CC&N                               | <input type="checkbox"/> | RULE VARIANCE/WAIVER REQUEST                      |
| <input type="checkbox"/> | DELETION OF CC&N (TERRITORY)                       | <input type="checkbox"/> | SITING COMMITTEE CASE                             |
| <input type="checkbox"/> | EXTENSION OF CC&N (TERRITORY)                      | <input type="checkbox"/> | SMALL WATER COMPANY -SURCHARGE (Senate Bill 1252) |
| <input type="checkbox"/> | TARIFF - NEW (NEXT OPEN MEETING)                   | <input type="checkbox"/> | SALE OF ASSETS & TRANSFER OF OWNERSHIP            |
| <input type="checkbox"/> | REQUEST FOR ARBITRATION<br>(Telecommunication Act) | <input type="checkbox"/> | SALE OF ASSETS & CANCELLATION OF CC&N             |
| <input type="checkbox"/> | FULLY OR PARTIALLY ARBITRATED                      | <input type="checkbox"/> | FUEL ADJUSTER/PGA                                 |
| <input type="checkbox"/> | INTERCONNECTION AGREEMENT<br>(Telecom. Act.)       | <input type="checkbox"/> | MERGER  |
| <input type="checkbox"/> | VOLUNTARY INTERCONNECTION                          | <input type="checkbox"/> | FINANCING   |
| <input type="checkbox"/> | AGREEMENT (Telecom. Act)                           | <input type="checkbox"/> | MISCELLANEOUS<br>Specify _____                    |

02 UTILITIES - REVISIONS/AMENDMENTS TO  
PENDING OR APPROVED MATTERS

- |                          |                  |                          |                    |
|--------------------------|------------------|--------------------------|--------------------|
| <input type="checkbox"/> | APPLICATION      | <input type="checkbox"/> | TARIFF             |
| <input type="checkbox"/> | COMPANY          | <input type="checkbox"/> | PROMOTIONAL        |
| <input type="checkbox"/> | DOCKET NO. _____ | <input type="checkbox"/> | DECISION NO. _____ |
|                          |                  | <input type="checkbox"/> | DOCKET NO. _____   |
|                          |                  | <input type="checkbox"/> | COMPLIANCE         |
|                          |                  | <input type="checkbox"/> | DECISION NO. _____ |
|                          |                  | <input type="checkbox"/> | DOCKET NO. _____   |

SECURITIES or MISCELLANEOUS FILINGS

- |                          |                                 |                                     |   |
|--------------------------|---------------------------------|-------------------------------------|---|
| <input type="checkbox"/> | 04 AFFIDAVIT                    | <input type="checkbox"/>            | 29 STIPULATION  |
| <input type="checkbox"/> | 12 EXCEPTIONS                   | <input type="checkbox"/>            | 38 NOTICE OF INTENT<br>(Only notification of future action/no action necessary) |
| <input type="checkbox"/> | 18 REQUEST FOR INTERVENTION     | <input type="checkbox"/>            | 43 PETITION   |
| <input type="checkbox"/> | 48 REQUEST FOR HEARING          | <input type="checkbox"/>            | 46 NOTICE OF LIMITED APPEARANCE   |
| <input type="checkbox"/> | 24 OPPOSITION                   | <input checked="" type="checkbox"/> | 39 OTHER  |
| <input type="checkbox"/> | 50 COMPLIANCE ITEM FOR APPROVAL |                                     | Specify <u>Motion to Compel discovery responses</u>                             |
| <input type="checkbox"/> | 32 TESTIMONY                    |                                     |   |
| <input type="checkbox"/> | 47 COMMENTS                     |                                     |   |

05/24/99  
Date

Callagher & Kennedy, P.A. - Todd C. Wiley  
Print Name of Applicant/Company/Contact person/Respondent/Atty.  
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BEFORE THE ARIZONA CORPORATION COMMISSION

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

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

) **DOCKET NO. U-0000-97-238**  
) **MOTION OF ACI, ELI, AND**  
) **NEXTLINK ARIZONA, INC. TO**  
) **COMPEL RESPONSES TO**  
) **DISCOVERY FROM US WEST**  
) **COMMUNICATIONS, INC.**

ACI, Electric Lightwave, Inc., and NEXTLINK Arizona, Inc. (collectively "Joint Intervenors") move to compel U S WEST Communications, Inc.'s ("U S WEST") response to discovery, and in support, submit the following:

**I. INTRODUCTION.**

On April 16, 1999, Joint Intervenors served their first set of data requests on U S WEST. U S WEST then filed its objections to the Joint Intervenors' first set of data requests on or about April 23, 1999. On April 25, 1999, U S WEST then served its first substantive responses to the data requests ("Initial Response"). The Initial Response was followed by five supplemental responses, the first served on May 8, 1999, the second on May 12, 1999, the third on May 15, 1999, the fourth on May 17, 1999 and the fifth on May 19, 1999. Joint Intervenors served a total of 67 data requests upon U S WEST. To date, U S WEST has filed some substantive response to 63 of those 67 data requests, but

has failed to provide answers to the remaining four with no promises as to when those remaining requests would be answered.<sup>1</sup>

The data requests at issue in this motion relate primarily to the following subjects: collocation, trunking, affiliate transactions, unbundled network elements, local loops, number portability, cost information for collocation and network elements and studies pertaining to the COSMIC and MDF frames.

On May 7, 1999, ELI responded by letter to the initial objections with a brief description of data it sought from U S WEST (attached as Exhibit A). On May 12, 1999, Joint Intervenors and U S WEST then met and conferred regarding only the data requests which were the subject of the Initial Response. Hence, this motion is limited to consideration of the adequacy of U S WEST's answers given in the Initial Response. During the meet and confer session, U S WEST stated that with respect to a substantial number of the data requests in the Initial Response that it would either provide additional information and/or follow up with Joint Intervenors again to determine whether or how U S WEST would supplement its response. In many instances, U S WEST stated it would report to Joint Intervenors by the end of the week, i.e., on or before May 14, 1999. Joint Intervenors immediately documented the sum and substance of the meet and confer session by letter to U S WEST on May 13, 1999 (attached as Exhibit B). However, U S WEST did not speak with Joint Intervenors regarding a follow-up to the meet and confer session until Wednesday, May 19, 1999. At an informal session held by telephone with counsel for ELI, U S WEST stated it would either provide additional information or

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<sup>1</sup> AEN-38, 43 and 44.

follow up again with Joint Intervenors on whether it could provide further substantive responsive data. U S WEST sought to excuse any delay on its recently announced merger with Global Crossing. However, as of the date of the filing of this motion, U S WEST has not fulfilled any of the promises or representations made to Joint Intervenors either at the meet and confer session or subsequently in conversation with counsel for ELI.

Notwithstanding the efforts of Joint Intervenors to obtain cooperation from U S WEST, U S WEST has provided incomplete or non-responsive answers, even though it has stated it will provide additional information and it has interposed objections to certain other data requests upon which it intends to stand but that are otherwise without merit. Moreover, U S WEST has chosen to give piecemeal and serial responses to Joint Intervenors' data requests. U S WEST has failed to keep its promises regarding discovery to Joint Intervenors in informal meet and confer sessions. Thus, Joint Intervenors have no choice but to file a motion to compel at this time. To delay further would jeopardize their ability to meet Commission deadlines for the filing of testimony. Moreover, Intervenors need the information requested to analyze U S WEST's Section 271 application. For these reasons, the Hearing Examiner should compel U S WEST to provide complete and substantive responses to the data requests within three business days of the order resolving this motion.<sup>2</sup>

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<sup>2</sup> A position chart summarizing the data requests by the subject headings in this motion is attached as Exhibit C.

## II. ARGUMENT.

### A. Collocation.

In data requests 20, 31, and 34, Joint Intervenors seek specific information from U S WEST regarding collocation. In data request 20, U S WEST is asked to list central offices in Arizona where it anticipates it will be unable to accommodate physical collocation. U S WEST is further asked to list the amount of space that is currently being used for collocation and that could be used in the future for collocation. Alternatively, U S WEST is asked to identify those central offices for which it will not be able to accommodate a request for physical collocation and whether it can accommodate virtual or cageless collocation. U S WEST objects on grounds that the request exceeds the FCC's recent order in its docket styled *In the Matters of Deployment of Wireline Services Offering Advanced Telecommunications Capability*, FCC 98-48, First Report and Order, March 18, 1999 ("Collocation Order"). U S WEST claims that because that order requires U S WEST to maintain a publicly available document posted on the Internet indicating that collocation space in a particular office is not available discharges its obligation to answer data request 20.

U S WEST's reliance on the Collocation Order is without merit. First, there is nothing in that order that provides that placement of data on a website concerning the availability of physical collocation space is a valid substitute to answering data requests in this state Section 271 proceeding.

Second, the very information Joint Intervenors seek in data request 20 is similar in substance to the information that the FCC in fact ordered incumbent LECs,

including U S WEST, to produce to requesting carriers regarding the availability of collocation space. This FCC reporting requirement is in addition to the duty to post data on the Internet. Specifically, in paragraph 58 of Collocation Order, the FCC stated:

We also adopt our tentative conclusion that an incumbent LEC must submit to a requesting carrier within ten days of the submission of a request a report indicating the incumbent LECs available collocation space in a particular LEC premises. This report must specify the amount of collocation space available at each requested premises, the number of collocators and any modifications in the use of the space since the last report. The report must also include measures that the incumbent LEC is taking to make additional space available for collocation.

¶58, Collocation Order.

Data request 20 specifically asks U S WEST to identify space currently being used and that could be used in the future for collocation. Hence, U S WEST's refusal to answer this question in fact runs afoul of the Collocation Order. Third, U S WEST has failed to post any of the data on its publicly available web page, notwithstanding a representation in its response that it would do so.

In data request 31, U S WEST is asked to provide information concerning the percentage of its central offices in Arizona and region-wide that have space available to accommodate DS0 and DS1 spot frame or ICDFs. Again, U S WEST objects on grounds that the request exceeds the scope of the Collocation Order. Moreover, U S WEST objects that it is not required to provide information on a region-wide basis. Both of these objections are without merit. For the reasons already stated, U S WEST's refusal to answer this data request is contrary to the Collocation Order. Moreover,

U S WEST's collocation activity outside Arizona may assist the Commission in evaluating whether U S WEST satisfies the requirements of checklist item 1 of the Section 271 14-point checklist.

Finally, in data request 34, U S WEST is asked to provide a range of information regarding spare COSMIC/MDF capacity and the availability of vacant floor space that could accommodate COSMIC/MDF growth. U S WEST objects once again on grounds that the data request exceeds the scope of the Collocation Order. For the reasons already stated, this data request is proper and U S WEST should be compelled to answer it.

**B. Trunking.**

In data requests 3, 4, 7, 8, 9, 10, 11, and 14, U S WEST is asked to provide a range of information concerning trunks, trunk capacity and select provisioning interval data for interconnection trunking orders. In each of these data requests, U S WEST is asked to provide disaggregated data, either according to specific trunk groups or offices. However, the information actually provided by U S WEST is gross aggregate data. Data provided in such a format precludes Joint Intervenors from evaluating or calculating the level or grade of any discrimination. The disaggregated data is available to U S WEST. Much of the information, if not all of it, can be calculated from trunk reports generated by U S WEST each month. When this concern was brought to the attention of U S WEST at the May 12, 1999 meet and confer session, with respect to all of these data requests, except data request 9, U S WEST said it would inquire further and report back to Joint Intervenors.

On May 18, 1999, U S WEST stated that it would provide additional information with respect to data requests 3, 4, and 10. However it has not yet done so. Further, U S WEST stated that it was still evaluating a supplemental response to data requests 7, 11, and 14. However, U S WEST has yet to supplement those data requests. As to data request 8, U S WEST stated it could not disaggregate the data lower than on a per-state basis. This response is clearly unacceptable because the data provided in response to data request 8 was invariably compiled based upon data disaggregated on a level lower than a state-wide basis. For that reason, U S WEST should be ordered to provide the underlying data upon which it calculated the percentages provided in response to data request 8. Regarding data request 4, U S WEST stated that it would provide updated information responsive to the data request. Again, U S WEST has yet to do so.

Finally, U S WEST stated that it would stand on its response to data request 9. In that request, the Joint Intervenors asked U S WEST to state their spare tandem switch capacity and end office switch capacity for CLEC interconnection trunks. U S WEST claims providing this information is unduly burdensome and that it does not classify spare trunk capacity separately from other types of trunks. However, at a minimum, U S WEST should be required to provide spare capacity for all trunks regardless of type. It would not be unduly burdensome or difficult for U S WEST to provide such data and it would be helpful to the Commission in evaluating the extent of any discrimination CLECs suffer at the hands of U S WEST.

**C. Affiliate Transactions.**

In data requests 12, 16, 46, and 63, U S WEST is asked to provide information regarding whether any U S WEST affiliates, subsidiaries or business units, including U S WEST !nterprise, interconnect equipment or facilities to U S WEST facilities or equipment in Arizona, locate facilities or equipment on U S WEST premises or in U S WEST central offices, purchase network elements from U S WEST or whether U S WEST provides access to poles, conduits or right-of-ways to such affiliates or business units. U S WEST provided some information in response to these data requests, but does not state whether it provides such facilities or services to U S WEST !nterprise. U S WEST explained at the meet and confer session that U S WEST !nterprise is not a separate legal entity but stated that it would provide supplemental information responsive to these data requests for U S WEST !nterprise. In addition to providing responsive data, U S WEST should also substantiate its claim that U S WEST !nterprise is not a separate legal entity by providing a definition for distinct affiliates as compared with business units, such as U S WEST !nterprise.

**D. Unbundled Network Elements.**

In data request 29, U S WEST is asked how U S WEST intends to provision combinations of unbundled elements in light of the United States Supreme Court decision in *Iowa Utilities Board* and whether it intends to place restrictions on the use of combinations of network elements. U S WEST's response to this data request is at best evasive. Rather than provide a direct answer, it simply states that it will maintain "the status quo and continue to provide those UNEs identified in the interconnection

agreements.” This answer does not constitute a direct response of any kind to the question asked. Moreover, U S WEST does not interpose any substantive objection to this data request. For that reason alone, it should be ordered to provide a direct and complete response to the data request.

In data request 36, U S WEST is asked to identify each network element presently offered, whether it has been requested by a CLEC, its price terms and conditions, whether those price terms and conditions are contained in a contract or tariff, and the quantity of each element currently provisioned. In response, U S WEST stated that it will provide “access to all the unbundled elements identified in the vacated FCC Rule 319,” but does not otherwise provide any detailed information responsive to the specific data sought in the request. Again, U S WEST does not interpose any substantive objection to this data request and, therefore, should be ordered to answer it fully.

In data request 37, U S WEST is asked whether there are any unbundled network element combinations that it will provide on an unseparated basis and then to identify such combinations. Again, U S WEST does not provide a meaningful response to this request. Moreover, it does not interpose any substantive objection. It simply states that “it is the responsibility of the CLEC to combine any units purchased from U S WEST.” While that may be U S WEST’s position, it does not provide an answer to the data request. U S WEST should be ordered to answer this data request in full.

**E. Local Loops.**

In data request 51, U S WEST is asked to state the total number of unbundled local loops it has provisioned in Arizona and to state how many of the loops

are two-wire analog loops, four-wire analog loops, two-wire loops conditioned to transmit digital signals, four-wire loops conditioned to transmit digital signals, ISDN basic rate loops, ISDN primary rate loops, T1 loops, PBX trunk loops, loops provisioned for XDSL and any other loop category. U S WEST does not provide any data responsive to this request because it claims it has not experienced a business need to track the local loops that it has provisioned in the manner specified.

This answer is disingenuous at best. In a response to another data request, U S WEST states that it has only received 1700 loop orders in Arizona. In subsequent discussions with U S WEST, Joint Intervenors asked U S WEST to provide them with the 1700 orders so that Joint Intervenors could categorize the orders on their own.

U S WEST has stated that it would take the request under advisement. Later, U S WEST stated that it is not sure whether it has the information. This assertion is incredible.

U S WEST must have either the orders or other documents upon which it relied to provide the total number of loop orders. U S WEST should be ordered to provide the information responsive to the data request or, alternatively, provide Joint Intervenors with copies of the orders for the Arizona loops.

In data request 40, U S WEST is asked to describe the method by which a CLEC can gain access to an unbundled loop provisioned from a remote switch without being collocated at that switch. U S WEST provides a perfunctory three-sentence description of how a CLEC will be permitted access to such loops. This is hardly an adequate description of the complex method necessary to have access to such loops. U S WEST stated at the meet and confer session that it would not provide any additional

information responsive to this data request--even though U S WEST did not interpose a single substantive objection to this data request. Accordingly, it should be required to provide a complete and detailed description of the method by which a CLEC would gain access to an unbundled loop provisioned from a remote switch.

**F. Number Portability.**

In data requests 59 and 60, U S WEST is asked to identify information regarding orders for interim local number portability. U S WEST has provided information for the period July 1998 through January 1999, but has not provided any information for the period after January 1999 responsive to either of these data requests. At the meet and confer session and thereafter, U S WEST stated it would not provide any data for the period after January of 1999 until it filed its rebuttal testimony. This is not a valid objection nor does U S WEST have any basis whatsoever to withhold this information until it files its rebuttal testimony. This effort to 'hide the ball' until late in the game effectively deprives Joint Intervenors of any opportunity to evaluate or use such information in connection with its direct testimony. Once U S WEST files its rebuttal testimony, Joint Intervenors will have no opportunity after that time to provide further surreply or surrebuttal testimony. U S WEST should be ordered to provide data responsive to this request for the period after January 1999 to date.

**G. Cost Data.**

In data requests 21 and 26, U S WEST is asked to provide cost and price information with respect to physical and virtual collocation (21) and network elements (26). U S WEST objects to this information because it is duplicative of information

produced in this Commission's cost docket. Again, this objection has no merit. The fact that U S WEST has produced information in another docket does not excuse its obligation to produce it in this docket. Several of the parties of record in this proceeding were not parties to the cost docket. The foregoing notwithstanding, in the spirit of compromise, Joint Intervenors asked U S WEST (in follow-up discussions) to identify the list of the network elements, indicate the nature or name of the cost study and if there was no cost study to at least identify the name of the docket to which the network element relates. U S WEST refused to provide any such information stating it would stand on its answer. U S WEST should be ordered to provide full and complete answers to data requests 21 and 26.

**H. Studies Concerning the COSMIC and MDF Frames.**

In data request 33, U S WEST is asked to provide data comparing the reliability of the COSMIC-type frame to the MDF-type frame. In response, U S WEST states that the last known studies of such frames were conducted prior to the divestiture of AT&T. Notwithstanding having the knowledge that such studies indeed exist, U S WEST formally objected to their production on grounds that such frames have proven to be extremely reliable and therefore U S WEST has not experienced a business need to replicate these studies. U S WEST also claims that due to their age, the relevancy of these studies is questionable.

These are not valid reasons to withhold the production of the information. These frames are still in use and if in fact the last-known studies predated divestiture that is hardly a sufficient reason to withhold their production. The Joint Intervenors are

entitled to any information that would allow them to evaluate the comparative quality and reliability of such frames. In informal discussions regarding this data request, U S WEST stated that it would in fact provide these studies if they were still available. U S WEST has failed to do so as of the time of the filing of this motion. It should be ordered to produce these studies.

**I. Other Data Requests.**

In data request 15, U S WEST is asked to describe its policy on accepting orders for interconnection trunks, and specifically whether it will accept interconnection orders when facilities are not available between a CLEC switch and a U S WEST switch. The answer U S WEST has provided is not fully responsive because U S WEST did not state whether it would accept an interconnection order if it has not yet made a collocation facility assignment due to lack of the completion of a T3 facility. U S WEST stated at the meet and confer session and again at an informal consultation with counsel for the Joint Intervenors that it would evaluate this concern and then follow up with Joint Intervenors. U S WEST has not yet done so.

In data request 13, U S WEST is asked to identify points on its network that interconnection has been requested by a CLEC and whether the request was granted or declined. If the request was declined, U S WEST was asked to state the reason. U S WEST does not provide any information regarding whether a CLEC request for interconnection has been declined and if so the reason the request was declined. U S WEST objects to this data request on grounds that to the extent a CLEC is concerned

about denial of the request for interconnection they should be able to put forth their own evidence on such matters.

This is not a legitimate objection. For purposes of evaluating U S WEST's compliance with Section 271, the Joint Intervenors are not limited to seeking information that might otherwise be in its possession or control concerning its individual experiences with U S WEST, if any. It is entitled to evaluate and consider evidence regarding U S WEST's activities on the subject of interconnection with respect to any competing local exchange carrier in its region. Notwithstanding this objection, U S WEST has stated that it would inquire as to whether it could provide documents or information concerning declined requests for interconnection. U S WEST has failed to do so.

In data request 39, U S WEST is asked to state separately the number of unbundled network elements identified in the request provisioned by U S WEST to all CLECs in Arizona for the month of February 1996 to present. With respect to unbundled switch ports, U S WEST states that "unique service arrangements were installed per an interconnection agreement in 1997." However, U S WEST does not provide any information regarding that so-called unique service arrangement. It further states that such a unique service arrangement was entered into with respect to unbundled databases and signaling. U S WEST was subsequently asked to provide information regarding these unique service arrangements. On two occasions, U S WEST has since stated that it would in fact provide such information. However, it has failed to do so as of the date of the filing of this motion.

In data request 56, U S WEST is asked to provide responses and documents produced by the company in any discovery propounded in a civil action styled *Electric Lightwave, Inc. v. U S WEST*, United States District Court, Western District of Washington, Case No. C-97-01073. U S WEST objects to this data request on grounds that it is unduly burdensome, seeks the production of documents protected by the attorney-client privilege, the work-product doctrine, the self-evaluation privilege and is otherwise neither relevant nor likely to lead to the discovery of admissible evidence. These perfunctory objections should be overruled. This proceeding and the discovery produced in that matter relates directly to U S WEST's policies concerning interconnection. Information provided by U S WEST in that proceeding is directly relevant to the issues before this Commission as to U S WEST's compliance with Section 271.

U S WEST's objections that the documents are protected by the attorney-client privilege, the work-product doctrine and the self-evaluation privilege are not validly interposed. U S WEST has failed to produce a privilege log identifying the subject of the information and the author(s) of any documents or information which it claims are protected by these privileges. Absent a privilege log as well as the submission of these ostensibly protected data *in camera*, there is no way to reasonably determine whether any of the information is protected by these privileges. For this reason, U S WEST should be required to produce all the documents to the Commission for an *in camera* inspection for evaluation of the application of these privileges.

**III. CONCLUSION.**

For the foregoing reasons, the Commission should overrule U S WEST's objections and order U S WEST to provide complete and fully responsive answers to the specific data requests identified in this motion within three business days of the order resolving this motion.

RESPECTFULLY SUBMITTED this 24 day of May, 1999.

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Original and ten (10) copies filed  
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Copy of the foregoing hand delivered  
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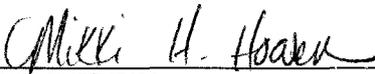
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10407-0007/747492

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May 7, 1999

## VIA FACSIMILE AND U.S. MAIL

Charles W. Steese, Esq.  
U S WEST, Inc.  
1801 California Street  
Suite 5100  
Denver, Colorado 80202

Re: In the Matter of U S WEST Communications, Inc.'s Compliance with Section 271 of the Telecommunications Act of 1996, Arizona Corporation Commission Docket No. T-00000B-97-0238

Dear Mr. Steese:

With this letter, I set forth ELI's problems and issues with U S WEST's responses to ACI's, ELI's and Nextlink's joint first set of Data Requests. This letter sets the framework for a meet-and-confer session between ELI and U S WEST. I expect that a meet-and-confer session will be scheduled sometime next week. I encourage you to consider the following issues as soon as possible to avoid the need for any motions to compel.

To start, by my count U S WEST answered 24 of these Data Requests by indicating that U S WEST is in the process of compiling appropriate information and will provide information and documents as soon as that compilation is completed. U S WEST took that position on Data Request Nos. 2, 10, 17, 20, 23-25, 26-27, 30, 32, 35, 38, 43-44, 48-49, 52-55, 57, 65 and 67. At this juncture, ELI simply requests that U S WEST expedite those answers as soon as possible. Please provide U S WEST's responses by early next week.

Charles W. Steese, Esq.  
May 7, 1999  
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Below I raise a number of issues related to some of U S WEST's specific responses. This letter is not intended to raise each and every problem with U S WEST's discovery responses. Rather, this letter is ELI's good faith effort to resolve any discovery disputes pertaining to some of U S WEST's responses.

U S WEST's response to Data Request No. 4 is not complete. U S WEST is obligated to provide data and information from July 1, 1998 to the present. Please do so as soon as possible.

Next, U S WEST provides little, if any, response to Data Request No. 7. U S WEST failed to provide any information concerning "the percent of U S WEST's local traffic that is directly connected between end offices versus that which is connected to tandem switches." In other words, what is being asked for by ELI is the percent of U S WEST traffic which completes over trunks between end offices versus the percent of traffic completed over tandem trunks. The two percentages should add up to 100%. U S WEST can easily answer that question based upon calculations from monthly trunk reports.

Likewise, U S WEST's responses to Data Request Nos. 8 and 9 are non-responsive. In its responses, U S WEST must provide specific information concerning blocking at the switch level and with individual trunks. But U S WEST provides only broad, aggregate information. The same holds true for U S WEST's responses to Data Request No. 11. To comply with that request, U S WEST must provide information according to trunk groups and offices.

Next, U S WEST's responses to Data Request Nos. 12, 16, 46 and 63 appear incomplete. U S WEST must explain exactly how it defined affiliate and/or subsidiary for purposes of its responses. It appears U S WEST has not addressed !nterprise. ELI is informed and believes that !nterprise operates in Arizona. U S WEST must provide information concerning the operation of !nterprise or other U S WEST affiliates/subsidiaries providing services in Arizona.

U S WEST's response to Data Request No. 13 is non-responsive. U S WEST provides no information concerning any declined requests for interconnection. Likewise, U S WEST's responses to Data Request Nos. 14 and 15 are non-responsive. In response to Data Request No. 14, U S WEST must provide information at the trunk order level, not broad, aggregate data. U S WEST also must provide all order information sought in that request. Those points also apply to U S WEST's response to Data Request No. 15. With respect to that request, U S WEST must answer the following question: If a Connecting Facility Agreement (CFA) is not available due to the lack of completion of the T3 facility, will U S WEST accept and process ASR orders?

Charles W. Steese, Esq.  
May 7, 1999  
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U S WEST's responses to Data Request Nos. 21 and 26 are inadequate. U S WEST's generic references to the Cost Docket do not respond to these requests.

U S WEST's responses to Data Request Nos. 31 and 33 are inadequate and non-responsive. U S WEST must provide complete test results, test plans, and any other documentation or materials relating to testing. U S WEST provides nothing more than an outline of the tests and no specific information. Further, U S WEST must provide any and all studies "conducted prior to divestiture by AT&T and participating BOCs." U S WEST cites no basis for contending such studies are irrelevant or immaterial.

U S WEST refuses to answer Data Request No. 34 altogether. With that request, ELI requests that U S WEST answer the following questions: Does the SPOT frame, ICDF, or intermediate frame used for interconnection of traffic or UNEs take up floor space in a central office? If so, how much floor space do those frames require? Information responsive to that data request should be readily available to U S WEST.

U S WEST's response to Data Request No. 37 is non-responsive. It is technically infeasible for U S WEST to provide unbundled switching without providing unbundled signaling as a combined element. U S WEST also must provide unbundled switching in combination with unbundled shared transport. As such, U S WEST must explain how CLECs are supposed to satisfy those combinations and how U S WEST proposes to unbundle those elements in the first place, if the current U S WEST answer to Data Request No. 37 is to remain valid. U S WEST's general and vague responses set forth in its response to Data Request No. 37 are inadequate.

With respect to Data Request No. 39, U S WEST's answer refers to "Unique Service Arrangements." Accordingly, U S WEST must provide details and specifics concerning such "Unique Service Arrangements." Specifically, U S WEST must provide a description of the arrangement and any and all diagrams. U S WEST need not identify any entities involved.

U S WEST's response to Data Request No. 51 is non-responsive. ELI believes U S WEST prices unbundled local loops differently for each of the loop types mentioned in that request. As such, U S WEST is obligated to provide any and all information concerning the loops specified in Data Request No. 51.

Next, U S WEST's response to Data Request No. 56 is non-responsive. For the most part, discovery in the antitrust case was non-state-specific. As such, U S WEST should have no problem providing such information. Even further, Arizona is mentioned specifically in the antitrust complaint. As such, documents and discovery produced in the antitrust case bears on this Arizona § 271 proceeding. U S WEST must comply with Data Request No. 56.

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May 7, 1999  
Page 4

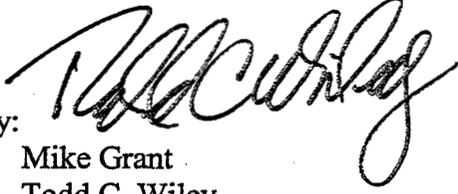
In response to Data Request Nos. 59 and 60, U S WEST provides no information from January 1999 to the present. ELI requests that U S WEST provide any and all such information.

Please give us a call to discuss these issues.

Very truly yours,

GALLAGHER & KENNEDY, P.A.

By:

  
Mike Grant  
Todd C. Wiley

TCW:mhh  
10407-0008/743260

**B**

# GALLAGHER & KENNEDY

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May 13, 1999

## VIA FACSIMILE AND U.S. MAIL

Charles W. Steese, Esq.  
U S WEST, Inc.  
1801 California Street  
Suite 5100  
Denver, Colorado 80202

Re: In the Matter of U S WEST Communications, Inc.'s Compliance with Section 271 of the Telecommunications Act of 1996, Arizona Corporation Commission Docket No. T-00000B-97-0238

Dear Chuck:

This letter simply documents the "meet & confer" session yesterday with U S WEST, ELI, Nextlink and ACI regarding ACI/ELI/Nextlink's First Set of Data Requests to U S WEST. This letter is offered jointly by ELI, ACI and Nextlink ("We").

To start, ACI, ELI and Nextlink haven't had a chance to review U S WEST's responses to the various Data Requests that U S WEST answered by stating it was in the process of compiling information. We reserve all rights regarding those Data Requests. Obviously, we'll have to schedule another meet & confer session with you to discuss those requests.

According to my notes, U S WEST stands by its objections and will provide no further responses to Data Request Nos. 13, 20, 21, 26, 29, 31, 34, 36, 37, 40, and 56. As such, ACI/Nextlink/ELI will have no choice but to file appropriate motions to compel on those requests.

Charles W. Steese, Esq.

May 13, 1999

Page 2

Next, we addressed U S WEST's answers to Data Request Nos. 12, 16, 46 and 63 regarding data and information about U S WEST's "affiliates, subsidiaries or business units." You've agreed to make further inquiries concerning Interprise and explain exactly how U S WEST defines affiliate, subsidiary and/or business unit for purposes of its responses. You also agreed to fully explain U S WEST's rationale for its responses to these requests. On that note, we are concerned that U S WEST excludes Interprise from its responses because it uses a different interpretation or reading of certain terms in these responses than intended by the CLECs (e.g., "interconnection"). We also requested that U S WEST provide information concerning the operation of Interprise in Arizona. You've agreed to respond on those issues by the end of this week.

During the call, we raised several problems with U S WEST's responses to Data Request Nos. 3, 4, 7, 8, 9, 10, 11, 14, 15. Specifically, we asked U S WEST to provide specific information concerning blocking and provisioning information at the switch level and with individual trunk detail. To date, U S WEST has provided only broad, aggregate information. To comply with those requests, U S WEST must provide specific information according to trunk groups and offices, and provide information at the DS1 trunk order level--not broad, aggregate data. You've agreed to look into whether U S WEST can provide that information and will let us know by the end of the week.

You've also agreed to check out whether U S WEST can provide any documents and/or information concerning any and all declined requests for interconnection as sought in Data Request No. 13. That request goes beyond interconnection requests on U S WEST's "bona fide" request forms. We requested documents and/or information regarding any and all requests for interconnection in Arizona by any CLEC which were denied by U S WEST.

With respect to Data Request No. 15, you will check into whether U S WEST will accept and process ASR orders if a T3 facility is under construction and/or incomplete such that a CFA has not been assigned; and, whether U S WEST will process trunk orders when a T3 facility has been put in "hold" status. You also agreed to provide information concerning U S WEST's policies on that issue. And you've agreed to check into Data Request No. 25 regarding CLEC cost allocation. Again, we will expect answers from you by the end of the week.

We requested that U S WEST provide any and all studies "conducted prior to divestiture by AT&T and participating BOCs" as noted in U S WEST's response to Data Request No. 33. You've agreed to inquire as to whether U S WEST can make those studies available. Please let us know by the end of the week whether those studies are available, and, if so, provide them to us.

With respect to Data Request No. 39, we asked U S WEST's to provide details and specifics concerning any and all "Unique Service Arrangements" referred to in U S WEST's

Charles W. Steese, Esq.  
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response. Again, U S WEST may redact out names for confidentiality reasons. You will get back to us by the end of the week.

On Data Request 51, we asked for all loop orders placed with U S WEST (and any and all accompanying documents). You've agreed to make further inquiries on that issue and determine whether that information is maintained by U S WEST regarding each kind of loop. We believe U S WEST prices unbundled local loops differently for each of the loop types mentioned in that request. As such, U S WEST is obligated to provide any and all information concerning the loops specified in Data Request No. 51.

On Data Request Nos. 59 and 60, you explained that U S WEST can't provide any additional data and/or information after January 1999, but that U S WEST will provide such data and/or information with its rebuttal testimony. Again, I ask that U S WEST provide that information as soon as possible.

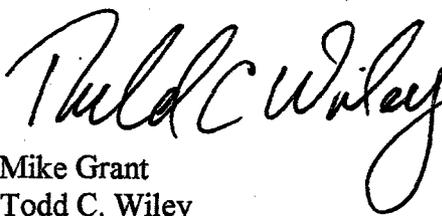
Finally, I asked you to check out all of the issues raised in my May 7, 1999 letter to you and, if not covered by the call yesterday, to let ELI know U S WEST's position on each of the issues.

If this letter doesn't reflect your understanding of our "meet & confer" session, please let us know immediately.

We appreciate your consideration and cooperation.

Very truly yours,

GALLAGHER & KENNEDY, P.A.

By:   
Mike Grant  
Todd C. Wiley

TCW:mhh  
cc: Greg Diamond (via fax)  
Dan Waggoner (via fax)  
10407-0008/744920

C

**POSITION CHART FOR  
DATA REQUESTS IN  
ACI/ELI/NEXTLINK MOTION TO COMPEL**

<u>SUBJECT/DATA REQUESTS</u>	<u>JOINT INTERVENOR POSITION</u>	<u>U S WEST RESPONSE</u>
A. Collocation – 20, 31 & 34	Request for specific information regarding central offices unable to accommodate physical collocation. Identify virtual or cageless alternatives. COSMIC/MDF capacity.  Certain data requested must be produced under FCC Collocation Order.	Contends data requests exceed scope of FCC Collocation Order.
B. Trunking - 3, 4, 7, 8, 9, 10, 11 & 14	Request for information on trunks, trunk capacity and provisioning interval data.  Disaggregated data required to be produced to evaluate extent of discrimination.  Compromise on 9: produce spare capacity for all trunks, regardless of type.	U S WEST to inquire on all but No. 9. No additional data provided to date.  Will not produce data responsive to No. 9; unduly burdensome--rejected compromise.
C. Affiliate Transactions - 12, 16, 46 & 63	Request for information on U S WEST Enterprise, a U S WEST Business unit.	U S WEST to supplement. No additional data provided to date.
D. Unbundled Network Elements -- 29, 36, 37	Request for plans to provision combinations of unbundled network elements (UNEs) after <i>Iowa Utilities Board</i> . Request for identification of each network element presently offered and associated data (price, terms etc.) Request for UNE combinations-- U S WEST will provide on unseparated basis.	No substantive objections given.
E. Local Loops – 40 & 51	Request to describe method to access unbundled loop from remote switch. Request to identify #s of unbundled loops provisioned for various forms of loops.	No substantive objection. Answers given are incomplete.
F. Number Portability – 59 & 60	Request for information on orders for INLP.	Answer incomplete. No data after 1/99. Data to be provided at filing of rebuttal testimony.

**SUBJECT/DATA REQUESTS**

**JOINT INTERVENOR POSITION**

**U S WEST RESPONSE**

G. Cost Data – 21 & 26

Request for cost data for physical and virtual collocation and network elements.

Objects on grounds request is duplicative. Rejected compromise proposal.

Compromise: ID network elements, ID cost study or, if none, ID docket.

H. COSMIC/MDF Studies – 33

Request for studies of the Cosmic and MDF frames. Frames in use. Any studies are relevant.

Claims studies were done pre-divestiture. No studies provided.

I. Other Data Requests - 13, 15 39 and 56

See motion for discussion of Data Request Nos. 13, 15 and 39.

Despite certain objections, U S WEST stated it would produce additional data and/or inquire on whether to provide additional data (except 56). No additional information provided.

56 – Request for documents produced in *ELI v. U S WEST*

Contends documents are privileged. No privilege log produced.