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BEFORE THE ARIZONA CORPORATION COMMISSION

AZ CORP COMMISSION

JIM IRVIN
Chairman
TONY WEST
Commissioner
CARL J. KUNASEK
Commissioner

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

Docket No. T-00000B-97-0238
Arizona Corporation Commission

DOCKETED

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U S WEST REPLY TO THE RESPONSES BY INTERVENORS (JOINT INTERVENORS, RUCO, AND ELI) TO U S WEST'S MOTION TO RECONSIDER PROCEDURAL ORDER

U S WEST Communications, Inc. ("U S WEST") respectfully submits this reply to the following responses to U S WEST's Motion to Reconsider Procedural Order:

- Joint Intervenor's (AT&T Communications of the Mountain States, Inc., TCG Phoenix, Spring Communications Company, L.P., NEXTLINK, Arizona, Inc., MCI WorldCom, Inc., ACI Corp., and Electric Lightwave, Inc.), dated May 3, 1999;
ELI's Response, dated April 30, 1999; and
RUCO's Response, dated April 27, 1999 (collectively "Intervenors").

1 The Hearing Division, U S WEST, and the Intervenors reached a common understanding concerning the manner in which the records of two other dockets - the proceeding regarding U S WEST's application for cost recovery for OSS and the proceeding regarding wholesale service quality connection during a conference call on Friday, May 7, 1999. During this call Hearing Officer Rudibaugh confirmed and all parties agreed that the records for such dockets were consolidated with the record for this 271 proceeding for the sole purpose of allowing parties to introduce in this proceeding evidence filed in the other dockets. The purpose of such consolidation was not to consider the merits of such dockets in this proceeding. In light of this clarification, U S WEST withdraws the third element of its Motion to Reconsider Procedural Order, dated April 20, 1999.

1 **I. Argument**

2 A. The Commission should issue the compromise procedural order proposed by U S WEST
3 in its motion for reconsideration.

4 The Commission should issue the compromise procedural order proposed by U S WEST
5 in its motion for reconsideration, because it addresses the Intervenor's concerns; it more closely
6 corresponds to the Commission's first procedural order, Order 60218; and, most importantly, it
7 serves the interest of Arizona consumers by accelerating the potential advent of competition in
8 Arizona.

9 The Intervenors raise three concerns in response to U S WEST's request, none of which
10 is valid. While the Intervenors suggest that the procedural order should be upheld because it
11 offers a considered approach to the review of U S WEST's 271 application, they fail to point out
12 that U S WEST's proposed compromise schedule does too. The same can be said for
13 Intervenors' claim that due process considerations require the retention of the existing procedural
14 order. U S WEST's proposed schedule addresses any due process concerns. The Intervenors
15 also claim that U S WEST has failed to offer good cause for adopting its proposed alternative.
16 This claim is simply not true – the compromise schedule will accelerate the level of competition
17 and the deployment of advanced services in Arizona.

18 The compromise procedural order addresses the concerns raised by the Intervenors in
19 their replies to U S WEST's motion for reconsideration. The compromise offers an approach to
20 the review of U S WEST's 271 application that is no less considered than the approach detailed
21 in the existing procedural order. Though both schedules balance the need to provide all parties
22 with the time necessary to prepare their case, the strong possibility that the primary motive of a
23 significant number of Intervenors is to delay this proceeding by any means allowed for so long as
24 possible militates in favor of the schedule contained in the compromise procedural order.

25 The compromise procedural order more closely corresponds to the Commission's first
26 procedural order, Order 60218, than does the order issued by the Hearing Division on April 7,

1 1999. The compromise procedural order offers does not seriously threaten any party's right due
2 to process. Due process in this context of this proceeding refers to the notice and rights that
3 afford interested entities with an opportunity to express their respective opinions and concerns.
4 The compromise procedural order actually affords more time for Intervenors to pursue discovery,
5 draft testimony, and prepare for hearing than did the schedule promulgated by the Commission in
6 Order 60218. It does so, however, without sacrificing the Commission's commitment to consider
7 U S WEST's 271 application and issue an order in a timely fashion. The compromise procedural
8 order compresses the schedule without preventing any party from promulgating discovery and
9 preparing its case. As previously mentioned, the compromise procedural schedule merely serves
10 notice to all parties of the seriousness with which the Commission takes this proceeding. The
11 sooner this application goes to hearing, the sooner all Arizona ratepayers can benefit from the
12 advent of competition.

13 The Commission is presently positioned to establish the tone of the Arizona 271
14 proceeding. Adopting the compromise procedural order will set the tone for a constructive,
15 business-like inquiry into the status of competition in Arizona and U S WEST's role therein.
16 Given the rapid change in telecommunications and the size of Arizona's local and interLATA
17 markets, neither the Arizona consumer, CLECs that are committed to competing in Arizona, nor
18 U S WEST should be penalized by being held to a schedule that delays the advent of competition
19 and sends a suspect message to the parties participating in the Arizona 271 proceeding.

20 The compromise procedural schedule is one way the Commission can indicate to both
21 parties the seriousness with which it takes U S WEST's 271 application. The compromise
22 procedural schedule represents a practical alternative that appropriately balances the need for
23 discovery and pre-hearing preparation against the benefit derived from minimizing procedural
24 delays by Arizona consumers and companies interested in competition, such as U S WEST.

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1 B. The Commission should compel the Intervenors to completely respond to the limited
2 number of data requests identified by U S WEST in its motion for reconsideration.

3 The Commission should reconsider its decision to defer consideration of U S WEST's
4 pending data requests until after the Intervenors submit pre-filed testimony on June 25, 1999, and
5 compel the Intervenors to completely respond to the limited number of data requests identified
6 by U S WEST in its motion for reconsideration. The six questions U S WEST has identified for
7 Commission reconsideration (22, 23, 32, 33, 34, and 36) relate to a central issue of its 271
8 application. Namely, whether there is any truth to the Intervenors's claim that the inability of
9 U S WEST's OSS system to satisfy current and reasonably foreseeable future demand is a
10 significant reason they have chosen not to enter the local Arizona market. The six data requests
11 at issue seek to gather evidence to uncover the OSS capability that competitors in fact need.²

12 The selected data requests which U S WEST is asking the PSC to reconsider constitute
13 the "other types of evidence" referenced by the FCC in the 2nd Bell South Louisiana decision. 2nd
14 *BellSouth Louisiana* at fn 11. Since the FCC relies on state commissions to develop the factual
15 record, the task of recognizing and permitting discovery related to "other types of evidence" falls
16 upon them. The information sought in these data requests is necessary for the Commission to
17 develop a complete record.

18 The FCC has repeatedly indicated that it will examine the BOC's ability to handle the
19 CLECs' reasonably foreseeable demands, particularly OSS demands.

- 20
- An OSS system must be capable of satisfying both current and reasonably
21 foreseeable demand. *Ameritech Michigan Order* at ¶¶ 110, 138; *BellSouth*
22 *South Carolina Order* at ¶ 97.
 - In general, the BOCs must show that they can meet current and reasonably
23 projected demand regarding unbundled network elements. *See BellSouth*
Louisiana II Order at ¶¶ 54, 166.

24 ² Request No. 22 asks the Intervenors to identify the OSS interfaces necessary for them to enter the
25 market in Arizona; Request No. 23 asks the Intervenors to identify whether any LEC in the country is
26 providing an adequate interface; Request No. 32 asks the Intervenors to identify the number of local
service requests they are capable of issuing, by interface type; Requests No. 33 and 36 ask the
Intervenors to identify their projected order volume, by interface type in Arizona and in U S WEST's
region; and Request No. 34 asks whether the Intervenors will develop an EDI interface with U S WEST.

1 The FCC has also recognized that the reason CLECs have chosen not to use an interface would
2 be an issue in 271 proceedings. In the *Ameritech Michigan Order*, it declared:

3 As long as the BOC can demonstrate that the reason competing carriers are not
4 currently using a particular OSS function is because of the competing carriers'
5 business decisions, rather than the lack of the practical availability of the
6 necessary OSS functions, the Commission may consider carrier-to-carrier testing,
7 independent third-party testing, and internal testing, without commercial usage, as
8 evidence of commercial readiness.³

9 The selected data requests are directly relevant to U S WEST's ability to show that its
10 OSSs are capable of meeting the current and reasonably foreseeable demand that will be placed
11 upon them. Accordingly, the Commission should reconsider its decision to defer action for the
12 selected data requests and should order the Intervenors to answer and produce documents in
13 response to such data requests.

14 Responses to these data requests are particularly important to resolve the conflict between
15 some Intervenors' public statements and their advocacy in this case. For example, AT&T claims:

16 AT&T does not provide residential exchange service; however, AT&T intends to
17 provide residential exchange service once U S WEST has, among other things:
18 (1) fully developed real-time electronic operational support systems ("OSS") that
19 have flow through (as that term is defined by the FCC); . . .⁴

20 AT&T's position is inconsistent with its actions and public statements, which indicate that it has
21 chosen not to provision residential service in Arizona for business reasons, and not as a result of
22 alleged deficiencies in U S WEST's OSS. In 1996, Robert Allen, AT&T's chairman at the time,
23 declared:

24 It is logical that bees follow honey and banks are robbed because that's where the
25 money is, and our focus will be on concentrated markets in major cities with
26 concentrations of business customers.⁵

27 ³ Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as
28 amended, To Provide In-Region, InterLATA Services In Michigan, Memorandum Opinion and Order, 12
29 FCC Rcd 20543, ¶ 138 (1997) (*Ameritech Michigan Order*), writ of mandamus issued sub nom. *Iowa*
30 *Utils. Bd. v. FCC*, No. 96-3321 (8th Cir. Jan. 22, 1998).

31 ⁴ AT&T/TCG-Responses to Attachments A & B from Decision No. 60218, Question 3, April 20, 1999.

32 ⁵ Robert Allen, AT&T Chairman, *Newsday*, February 9, 1996.

1 Similarly, David Arneke, an AT&T spokesman, stated:

2 You go where the money is and work your way down the money chain from there.
3 You would recoup your investment really quickly.⁶

4 AT&T's position is also inconsistent with its recent acquisitions of cable companies, such as
5 TCI, Inc. and MediaOne, Inc., as vehicles for the provision of local telecommunications services.
6 AT&T's spending of over 100 billion dollars to acquire cable companies clearly suggests that
7 AT&T has decided to enter local markets in a manner that requires little reliance upon
8 U S WEST's facilities. This expenditure is not consistent with its suggestion that its eventual
9 market entry will overwhelm U S WEST's OSS system with demands for unbundled network
10 elements.

11 U S WEST is entitled to conduct discovery to determine which of AT&T's statements is
12 true, and responses to the selected data requests are central to that determination.

13 Contradictory comments such as these incite U S WEST to test the veracity of claims
14 disparaging the capacity and robustness of U S WEST's OSS system. The selected discovery
15 requested by U S WEST should be granted to force AT&T and other Intervenors to substantiate
16 such claims, if any. The absence of supporting detail for such claims suggests that they are
17 groundless.

18 Although AT&T and MCIW allege that they need access to certain, specific functions,
19 the FCC recognizes that such unsubstantiated allegations cannot form the basis for denying a
20 Section 271 application. *BellSouth Louisiana II Order* at ¶¶57 & 286. The FCC also encourages
21 BOCs to develop evidence to show that such assertions by the Intervenors are without merit.
22 *BellSouth Louisiana II Order* at ¶200 ("We advise BellSouth to respond, in future applications,
23 with verifiable information refuting competitive LEC allegations."). U S WEST, through its data
24 requests, is attempting to develop such evidence. Therefore, the Commission should compel the
25 Intervenors to completely respond to the selected data requests.

26 ⁶ David Arneke, AT&T spokesman, Triangle Business Journal – Raleigh, NC (June 21, 1996).

1 The FCC is not alone in recognizing the relevance of this kind of information. In the
2 Nebraska 271 proceeding, Special Master Van Pelt, a retired United States District Court Judge,
3 explained why the information sought by U S WEST is discoverable, relevant, and admissible in
4 Section 271 proceedings:

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

18 *In re U S WEST Communications, Inc.'s Filing of its Notice of Intention to File Section 271(c)*
19 *Application with the FCC, Nebraska Public Service Commission, Application No. C-1830,*
20 *Progression Order No. 9 (Dec. 4, 1998).*

21 **II. Conclusion**

22 For the foregoing reasons, U S WEST respectfully requests that the Hearing Division
23 reconsider the procedural order and issue the compromise procedural order attached as Exhibit A
24 to U S WEST's Motion to Reconsider Procedural Order. U S WEST also asks the Hearing
25 Division to order the Intervenor's to fully respond to U S WEST's Data Requests 22, 23, 32, 33,
26 34, and 36, including producing all relevant documents.

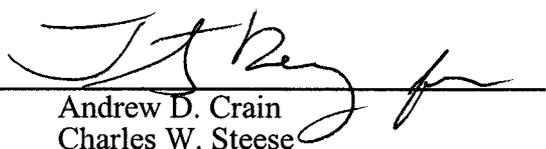
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DATED this 12th day of May, 1999.

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