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BEFORE THE ARIZONA CORPORATION COMMISSION

2 JIM IRVIN
Chairman
3 TONY WEST
Commissioner
4 CARL J. KUNASEK
Commissioner
5

AZ CORP COMMISSION
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Arizona Corporation Commission
DOCKETED

APR 20 1999

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Docket No. T-00000B-97-0238

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7 **IN THE MATTER OF THE U S WEST**
8 **COMMUNICATIONS, INC.'S**
9 **COMPLIANCE WITH SECTION 271 OF**
10 **THE TELECOMMUNICATIONS ACT OF**
11 **1996**

12
13 **U S WEST'S MOTION TO RECONSIDER PROCEDURAL ORDER**

14 U S WEST Communications, Inc. ("U S WEST") respectfully submits this motion to
15 reconsider the procedural order which was issued in this matter on April 7, 1999. That order set
16 a hearing to begin on August 11, 1999, in violation of the Commission's previous procedural
17 order, which contained a 90-day period from the date of filing to the issuance of an order.

18 **INTRODUCTION**

19 On May 27, 1997, the Commission issued Order 60218 in this docket, directing
20 U S WEST to give 90 days notice before it files a 271 application with the FCC for Arizona. In
21 that order, the Commission set a procedural schedule designed to result in a Commission order in
22 that 90-day period. That order provided that the Intervenors should file testimony 30 days after
23 U S WEST filed an application regarding a checklist item, and that U S WEST would have 15
24 days thereafter to file a reply.

25 On February 8, 1999, U S WEST filed its notice of intent to file a 271 application with
26 the FCC for the state of Arizona. Along with its application, U S WEST submitted a proposed
procedural order suggesting a hearing on June 4 and an order by June 21, 1999. On February 19,

1 U S WEST served upon each Intervenor 41 data requests.

2 The Intervenors filed a motion to dismiss U S WEST's application on the grounds that
3 U S WEST had not filed testimony. On March 2, the Hearing Division issued an order directing
4 U S WEST to file testimony, and U S WEST filed a complete application, including testimony,
5 on March 25.

6 Each of the Intervenors filed objections and responses to U S WEST's data requests.
7 With the exception of only a handful of data requests, the Intervenors either objected to
8 U S WEST's data requests or filed incomplete responses with no supporting documentation. On
9 March 16, U S WEST filed a motion to compel complete responses by the Intervenors.

10 The Hearing Division held a hearing on U S WEST's motion on April 2, 1999. On
11 April 7, the Hearing Division issued a procedural order. In that order, the Hearing Division did
12 not follow the Commission's direction in Order 60218.

13 The procedural order did not follow the schedule set forth in Order 60218. Instead of 30
14 days, the procedural order gives the Intervenors three months to file testimony. Instead of an
15 order being issued within 90 days, the hearing would not be held until August 11, almost 5
16 months after U S WEST filed its direct testimony. If the procedural order is followed, the
17 Commission is unlikely to issue an order until more than 6 months after U S WEST filed its
18 testimony.

19 The procedural order also provided that the record of two other dockets -- the proceeding
20 regarding U S WEST's application for cost recovery for OSS and the proceeding regarding
21 wholesale service quality -- would be consolidated as part of the overall record in this docket.
22 At the hearing, the Hearing Division deferred ruling on U S WEST's motion to compel.

23 **DISCUSSION**

24 1. **The Commission should issue an alternative, and shorter, procedural order.**

25 The sole intention of the Intervenors in this docket is to delay U S WEST's entry into the
26 Arizona long distance market. Once U S WEST obtains 271 relief, U S WEST will be able to

1 compete in the billion plus dollar per year interLATA market. Throughout this proceeding, the
2 Intervenor will raise every conceivable barrier, raise every conceivable issue, and make every
3 effort to delay the proceeding, if not stop it altogether; all in an effort to keep U S WEST out of
4 the interLATA market. The schedule set forth in the procedural order accomplishes that delay.

5 The major cause of the delay is the extension of time from 30 to 90 days for Intervenor
6 to file testimony. U S WEST proposes a compromise schedule, which is attached as Exhibit A.
7 The proposed compromise schedule will give Intervenor 60 days from the filing of U S WEST's
8 testimony to file their testimony. The compromise schedule proposed by U S WEST will result
9 in a hearing to begin on July 6 rather than August 11.

10 **2. The Commission should compel the Intervenor to completely respond to a limited**
11 **number of data requests.**

12 The Hearing Division deferred ruling on U S WEST's motion to compel. Six of those
13 requests are central to this case: Request No. 22, which asks the Intervenor to identify the OSS
14 interfaces necessary for them to enter the market in Arizona; Request No. 23, which asks the
15 Intervenor to identify whether any LEC in the country is providing an adequate interface;
16 Request No. 32, which asks the Intervenor to identify the number of local service requests they
17 are capable of issuing, by interface type; Requests No. 33 and 36, which asks the Intervenor to
18 identify their projected order volume, by interface type in Arizona and in U S WEST's region;
19 and Request No. 34, which asks whether the Intervenor will develop an EDI interface with
20 U S WEST.

21 In these requests, U S WEST seeks information about the actual OSS requirements and
22 demands of competitors in Arizona. However, prior FCC rulings indicate that an ILEC's
23 systems must be judged against the needs of CLECs, and that ILECs have only a responsibility
24 to build systems that CLECs will use.

25 The FCC has repeatedly indicated that it will examine the BOC's ability to handle the
26 CLECs' reasonably foreseeable demands, particularly OSS demands. U S WEST is entitled to

1 discover what the CLECs' systems require in order to establish that those requirements can be
2 met.

3 The FCC, in the now vacated Rule 319, defined OSS as an unbundled network element.
4 As a result, the FCC determined that ILECs such as U S WEST must provide nondiscriminatory
5 access to OSS for preordering, ordering, provisioning, maintenance/repair and billing for both
6 resale and UNEs. First Report and Order at ¶¶517-518; BellSouth Louisiana II Order at ¶¶81 &
7 145. U S WEST must establish that it has deployed necessary systems to provide access to OSS
8 functions, and it must show that the OSS functions and interfaces are operationally ready.
9 Ameritech Michigan Order at ¶ 136; BellSouth South Carolina Order at ¶ 96. For OSS functions
10 without a retail analog, U S WEST must show that it has given CLECs a "meaningful
11 opportunity to compete." Ameritech Michigan Order at ¶ 139; BellSouth South Carolina Order
12 at ¶ 98.

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

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

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

10 The six data requests at issue seek to gather evidence to uncover the OSS capability that
11 competitors in fact need. AT&T and MCI have both already asserted in this proceeding that an
12 electronic interface is the only system that should be deemed adequate. AT&T Response at 10;
13 MCI Response at 20. Both companies assert that a human-to-computer interface such as IMA is
14 necessarily discriminatory. However, an EDI interface only works if the CLEC takes the time
15 and expense to develop its side of the EDI interface. Many of the CLECs have failed to expend
16 the time and resources -- potentially millions of dollars -- to perform this work. McLeod, a
17 CLEC that is not even a party to this proceeding, is the only entity actively working with
18 U S WEST to develop such an interface, and its effort is limited to the support of Centrex resale.

19 Thus, the fundamental question is: What OSS capabilities do CLECs truly need in the
20 state of Arizona. If an Intervenor is unwilling to work with U S WEST to develop its side of an
21 EDI interface, it too will have to rely on the IMA interface. Data Request 34 seeks this
22 information. On the other hand, if an Intervenor is willing to develop its side of the EDI
23 interface, but only as to certain capabilities, such development will help to define the capability
24 that U S WEST's EDI system requires. Data Request 34 seeks this information as well.

25 Intervenor such as AT&T and MCIW assert that they need systems to place them at
26 direct parity with what U S WEST provides to itself; therefore, they contend that only electronic

1 interfaces comply with the requirements of Section 271. MCIW Response at 20-21 & 25;
2 AT&T Response at 10. They say that they expect U S WEST to provide OSS access identical to
3 that which U S WEST provides to itself. In reality, however, they want more. MCIW candidly
4 admits that it wants access to each UNE, both individually and in combination. MCIW Response
5 at 21. The FCC itself recognizes that BOCs such as U S WEST do not have systems that support
6 the ordering/provisioning of UNEs. As a result, as Sprint acknowledges, these UNEs do not
7 require parity; instead access must be provided such that “an efficient competitor has a
8 meaningful opportunity to compete.” Sprint Response at 9; BellSouth Louisiana II Order at ¶87.
9 What systems are “necessary” under the law will depend on CLEC needs and demands.

10 Although AT&T and MCIW allege that they need access to certain, specific functions,
11 the FCC recognizes that such unsubstantiated allegations cannot form the basis for denying a
12 Section 271 application. BellSouth Louisiana II Order at ¶¶57 & 286. The FCC also encourages
13 BOCs to develop evidence to show that such assertions by the Intervenors are without merit.
14 BellSouth Louisiana II Order at ¶200 (“We advise BellSouth to respond, in future applications,
15 with verifiable information refuting competitive LEC allegations.”). That is exactly what
16 U S WEST seeks to do. U S WEST has the right to challenge the accuracy of the Intervenors’
17 unsupported claim that they need access to everything. For example, if no CLEC in
18 U S WEST’s region needs access to unbundled switching, substantial OSS capability to support
19 it may be unnecessary. Evidence about the Intervenors’ real needs and intentions – *i.e.*, their
20 reasonably foreseeable demand – is key therefore an appropriate area of discovery.

21 In order to combat this argument, Intervenors such as AT&T assert that they are unable to
22 compete vigorously in Arizona because U S WEST’s OSSs are lacking. AT&T Responses to
23 Data Requests 17 & 33. U S WEST should be allowed to challenge this assertion as well.
24 U S WEST has asked the Intervenors to describe and provide internal documents concerning the
25 OSS capabilities they need in Arizona and how, if at all, U S WEST’s systems are lacking. Data
26 Request 22. U S WEST also asks whether any ILEC is adequately providing the OSS

1 functionality that Intervenor need and use. Data Request 23. After obtaining this information,
2 U S WEST can compare its capabilities to determine what functional differences, if any, exist.
3 Should Intervenor state that no ILEC provides adequate functionality, the Commission may
4 conclude that no matter what an ILEC does to provide OSS functionality, the Intervenor will
5 never concede that ILECs have done enough.

6 As noted above, the FCC states that U S WEST's OSSs must be capable of satisfying
7 both current and reasonably foreseeable demand. Ameritech Michigan Order at ¶¶ 110, 138;
8 BellSouth South Carolina Order at ¶ 97. Indeed, in general, the BOCs must show that they can
9 meet current and reasonably projected demand regarding unbundled network elements. See
10 BellSouth Louisiana II Order at ¶¶ 54, 166. All of the requested information is directly relevant
11 to U S WEST's ability to show that its OSSs are capable of meeting the current and reasonably
12 foreseeable demand that will be placed upon them. Accordingly, the requested data should be
13 provided.

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

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

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

5 **3. The records of other dockets should not be consolidated in this docket.**

6 The procedural order also provided that the record of two other dockets -- the proceeding
7 regarding U S WEST's application for cost recovery for OSS and the proceeding regarding
8 wholesale service quality -- will be consolidated as part of the overall record in this docket. That
9 decision should be reconsidered.

10 It is not clear what the result of the consolidation would be. It appears that the order
11 would merely allow the Commission to rely on the records of the other dockets in making a
12 determination in this docket. That decision would be a mistake. The records in the other dockets
13 are quite old, and would not provide proper guidance in this docket. For example, the hearing in
14 the OSS cost recovery docket took place almost two years ago. U S WEST has made a
15 tremendous number of updates and developments to its OSS since that time, and that record will
16 tell the Commission very little about the status of U S WEST's OSS.

17 If the intention of the procedural order is to consolidate the hearings and decisions in
18 those two dockets, the decision would be a serious mistake. Such a decision would hopelessly
19 complicate this proceeding, which is quite complex already. Such a decision would also make
20 the procedural order unworkable. For example, the cost models U S WEST submitted in the
21 OSS cost recovery docket are almost two years old. If the dockets are consolidated, U S WEST
22 may need to submit updated models in this docket. A hearing on cost models will needlessly
23 expand and delay this docket.

24 This docket should be limited to the issues raised by U S WEST's 271 application, and
25 that application should be judged on an up-to-date record to be developed in this docket.

26

1 **CONCLUSION**

2 For the foregoing reasons, U S WEST respectfully requests that the Hearing Division
3 reconsider the procedural order and issue U S WEST's compromise procedural order which is
4 attached as Exhibit A. U S WEST also requests that the Intervenor be ordered to respond fully
5 to U S WEST's Data Requests 22, 23, 32, 33, 34 and 36, including producing all relevant
6 documents. U S WEST also seeks reconsideration of the order consolidating other dockets into
7 this docket.

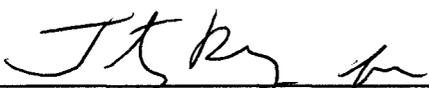
8 DATED this 20th day of April, 1999.

9 Respectfully submitted,

10 U S WEST COMMUNICATIONS, INC.

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12

By  _____

13

Andrew D. Craif
Charles Steese
Thomas M. Dethlefs
1801 California Street, Suite 5100
Denver, CO 80202
(303) 672-2948

14

15

16

FENNEMORE CRAIG, P.C.
Timothy Berg
3003 North Central Ave., Suite 2600
Phoenix, AZ 85012
(602) 916-5421

17

18

19

Attorneys for U S WEST
Communications, Inc.

20

21

22

23

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25

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1 I hereby certify that on this ^{20th} day of April, 1999, the original and ten copies of the
2 above and foregoing was filed with:

3 Docket Control
4 ARIZONA CORPORATION COMMISSION
5 1200 W. Washington St.
6 Phoenix, AZ 85007

7 I further certify that one copy of the above and foregoing was served via hand delivery
8 upon the following:

9 Maureen A. Scott
10 Legal Division
11 ARIZONA CORPORATION COMMISSION
12 1200 W. Washington St.
13 Phoenix, AZ 85007

14 Ray Williamson, Acting Director
15 Utilities Division
16 ARIZONA CORPORATION COMMISSION
17 1200 W. Washington St.
18 Phoenix, AZ 85007

19 Jerry Rudibaugh, Chief Hearing Officer
20 Hearing Division
21 ARIZONA CORPORATION COMMISSION
22 1200 W. Washington
23 Phoenix, AZ 85007

24 I further certify that one copy of the above and foregoing was served via first-class mail,
25 postage prepaid thereon and addressed to the following:

26 Joan S. Burke
Osborn Maledon, P.A.
2929 N. Central Ave., 21st Floor
PO Box 36379
Phoenix, AZ 85067-6379
AT&T and NEXTLINK

Thomas Campbell
Lewis & Roca
40 N. Central Ave.
Phoenix, AZ 85004
ACI Corp.

Thomas F. Dixon
Karen L. Clausen
MCI Telecommunications Corp.
707 17th Street # 3900
Denver, CO 80202

Stephen Gibelli
Residential Utility Consumer Office
2828 North Central Ave., Suite 1200
Phoenix, AZ 85004

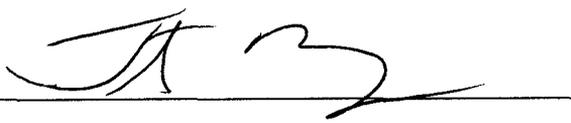
1 Michael M. Grant
Gallagher & Kennedy
2 2600 N. Central Ave.
Phoenix, AZ 85004-3020
3 Electric Lightwave. Inc
4 Joyce Hundley
U.S. Dept. of Justice
5 Antitrust Division
1401 H Street, NW, # 8000
6 Washington, DC 20530
7
8 Donald A. Low
Sprint Communications Company, LP
8140 Ward Parkway 5E
9 Kansas City, MO 64114
10
11 Barry Pineles
GST Telecom, Inc.
4001 Main Street
12 Vancouver, WA 98663
13
14 Richard S. Wolters
AT&T and TCG
1875 Lawrence Street # 1575
15 Denver, CO 80202

Raymond S. Heyman
Randall H. Warner
ROSHKA HEYMAN & DEWULF, PLC.
Two Arizona Center
400 North Street , Suite 1000
Phoenix, AZ 85004-3906
American Payphone Association (APA)

Andrew O. Isar
Telecommunications Resellers Association
4312 92nd Ave., NW
Gig Harbor, WA 98335

Michael Patten
Lex J. Smith
Brown & Bain
2901 N. Central Ave.
PO Box 400
Phoenix, AZ 85001-0400
Cox and e.spire

Daniel Waggoner
Davis, Wright & Tremaine
2600 Century Square
1501 Fourth Avenue
Seattle, WA 98101-1688
NEXTLINK Arizona, Inc

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Dated this ____ day of _____, 1999.

BY THE COMMISSION:

JIM IRVIN, Chairman

TONY WEST, Commissioner

CARL J. KUNASEK, Commissioner