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BEFORE THE ARIZONA CORPORATION COMMISSION

JUN 11 3 45 PM '99

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

DOCUMENT CONTROL
Docket No. T-00000B-97-0238

Arizona Corporation Commission

**U S WEST'S REPLY TO ELI'S RESPONSE TO U S WEST'S MOTION TO COMPEL
DATA REQUEST RESPONSES FROM ELI**

DOCKETED

JUN 11 1999

U S WEST Communications, Inc. ("U S WEST") submits this reply to ELI's Response to U S WEST's motion to compel supplemental responses to the Attachment A and B Data Requests.

I. INTRODUCTION

ELI is simply wrong that U S WEST is "attempt[ing] to bury ELI in an avalanche of discovery disputes and motions." ELI Response at 1. U S WEST moved to compel supplemental responses to a limited number of Attachment A and B Data Requests, after attempting to resolve this dispute informally, and primarily seeks further information where ELI makes allegations, but provides no support. U S WEST does not seek "every detail of ELI's internal business operations;" rather, U S WEST asks ELI to provide support for its answers. Contrary to ELI's conclusory assertions, to state simply "there is a problem" regarding U S WEST's record of providing a particular checklist item is not a full and complete answer under any reasonable interpretation of the Data Requests, the principles of discovery embodied in Arizona law, or notions of due process.

ELI makes much of its "more than 25 pages of narrative answers" and its production of "several hundred pages of materials" to U S WEST. ELI Response at 2. Those narrative responses, however, fail to address most of the Attachment B Data Requests and do not explain the allegations ELI raises. ELI's documents are equally inadequate. As the index to those

1 documents amply reveals, the documents relate to only three of the Attachment A Data Requests
2 and consist primarily of Commission decisions in other dockets, ELI's interconnection agreement
3 with U S WEST, a tariff, and documents relating to ELI's application for a Certificate of
4 Convenience and Necessity. ELI produced virtually no internal documents, and no documents
5 relating to the Attachment B Data Requests.

6 When the smoke and colorful adjectives are cleared away, ELI's essential objection to
7 U S WEST's motion to compel is that ELI simply does not believe U S WEST is entitled to
8 discovery at all. For example, ELI asserts that U S WEST "has everything it needs" relating to
9 its Section 271 application through U S WEST's own pre-filed testimony and ELI's eventual
10 submission of its testimony, claims that discovery "puts all the burdens on CLECs," ELI
11 Response at 4, and boldly proclaims that any response it provides, however vague, is good
12 enough.

13 ELI is wrong. The Hearing Officers ordered all of the parties to respond to the
14 Attachment A and B Data Requests now and produce documents relating to the Data Requests.
15 To the extent ELI raises an allegation or issue in its responses to these Data Requests, U S WEST
16 is certainly within bounds to request information that supports that response. This is neither a
17 "nefarious espionage operation" nor a "David versus Goliath" tactic, as ELI complains: it is
18 basic fairness and the routine, uncontroversial procedure for conducting discovery.

19 Accordingly, for the reasons set forth below and in U S WEST's motion to compel, the
20 Hearing Division should compel ELI to supplement its responses to the Attachment A and B
21 Data Requests.

22 **II. DISCUSSION**

23 **A. The Hearing Division should compel ELI to supplement its responses**
24 **to the Attachment A Data Requests at issue in U S WEST's motion to**
25 **compel.**

26 Data Request 3: ELI asserts that it need not provide any further response to this Data

1 Request beyond stating that it provides business exchange service and does not intend to provide
2 residential service. ELI Response at 5. ELI asserts that it is not relevant why ELI has chosen to
3 forego the residential market because that decision "doesn't bear on U S WEST's checklist
4 compliance." Id.

5 In its motion to compel, U S WEST seeks documents that relate to ELI's Data Request
6 responses, including documents that would indicate why ELI has chosen to forego the residential
7 market. U S WEST is not improperly expanding the Data Request: it only seeks documents
8 relating to ELI's response, as the Hearing Officers ordered the parties to produce. See Transcript
9 of April 2, 1999 at 67-68 ("Mr. Steese: . . . One caveat. To the extent the companies have
10 documents that relate to these documents [sic--should be Data Requests], they're supposed to
11 produce them as well. Even though [the Data Requests] don't specifically request documents, I
12 want to make sure these overlay with the request to documents, that they relate to matters of
13 concern. Hearing Officer Rudibaugh: Again, that is appropriate . . . ") (emphasis added).
14 Accordingly, ELI's written response to the Data Request does not discharge its discovery
15 obligations: ELI must also produce documents relating to the Data Request and its response.
16 Since ELI's response indicates that ELI has chosen to forego serving residential customers,
17 U S WEST is entitled to documents relating to that response.

18 In addition, it is irrelevant whether ELI's decision to forego serving residential customers
19 relates to U S WEST's checklist compliance. The Attachment A Data Requests are directed to
20 "general telecommunications market conditions in Arizona," and the Hearing Officers already
21 determined that information on this topic is relevant to this proceeding. See Transcript of April
22 2, 1999 at 63. ELI's decision to focus on business customers to the exclusion of residential
23 customers is obviously relevant to market conditions in Arizona. Furthermore, this information
24 is relevant to whether U S WEST meets the Track A requirements of Section 271, determining
25 ELI's reasonably foreseeable demand for checklist items and OSS access, and whether granting
26 U S WEST's application is in the public interest under Section 271(d)(3)(C). To be sure

1 U S WEST's compliance with the competitive checklist is an important issue in this proceeding.
2 It is not, however, the only issue.

3 Accordingly, the Hearing Division should compel ELI to supplement its response to Data
4 Request 3 to produce documents relating to the Data Request and ELI's response.

5 Data Request 5: ELI asserts that its written responses to Data Requests 5(b), (e), and (g)
6 are adequate and that U S WEST is attempting to get more information than that to which it is
7 entitled. U S WEST's motion to compel on this Data Request focuses primarily on ELI's failure
8 to produce any documents relating to its response. See U S WEST Motion to Compel at 5-6.
9 Again, the Hearing Officers ordered all parties to answer the Data Requests and produce
10 documents. Transcript of April 2, 1999 at 67-68. Thus, ELI's written responses, even if they
11 were adequate, alone are insufficient. ELI must produce documents that relate to this Data
12 Request as well. Accordingly, the Hearing Division should compel ELI to produce documents
13 relating to Data Requests 5(b) [loops and switches to which ELI is connected], Data Request 5(e)
14 [the extent to which ELI uses its own facilities or uses U S WEST unbundled network elements
15 ("UNEs")], and Data Request 5(g) [ELI's expansion plans] as well as documents related to ELI's
16 substantive responses to these data requests.

17 ELI states that its response to Data Request 5(e) -- that it intends to offer service "almost
18 exclusively" over its own facilities -- is adequate, and that it simply cannot understand why
19 U S WEST did not specify exactly what information it seeks. ELI Response at 7. However,
20 U S WEST did so in its meet-and-confer session with ELI. Furthermore, it is self-evident, as
21 U S WEST's motion states, that the information U S WEST seeks is the actual ELI facilities and
22 the actual U S WEST facilities ELI uses or intends to use to provide service and documents
23 related to that response. This is precisely what Data Request 5(e) asks.

24 ELI asserts that it has "no further documents in response to U S WEST's demands on
25 Request No. 3, 5(b), 5(e), and 5(g)." ELI Response at 8. However, ELI has yet to produce any
26 documents in response to these Data Requests and, appears to have adopted the erroneous

1 interpretation that it need not produce documents that relate to the Data Requests, as the Hearing
2 Officers ordered. Accordingly, the Hearing Division should compel ELI to broaden its net and
3 produce any and all documents relating to the Data Requests at issue.

4 **A. The Hearing Division should compel ELI to supplement its responses**
5 **to the Attachment B Data Requests at issue in U S WEST's motion to**
6 **compel.**

7 ELI objects that U S WEST is using discovery to "cross-examine" ELI on substantive
8 issues, and that ELI will present its opposition case in its pre-filed testimony. Thus, "at this stage
9 of the proceeding," ELI asserts, U S WEST is entitled to no information whatsoever regarding
10 the Attachment B Data Requests and ELI's substantive responses. Again, ELI is wrong. It must
11 provide discovery now regarding the issues in the Attachment B Data Requests, including
12 production of documents related to those requests.

13 Moreover, where ELI provides a substantive response to the requests, particularly where
14 it alleges deficient performance by U S WEST in its response, it must provide information and
15 produce related documents "at this stage of the proceeding." This is not "cross-examination;" it's
16 standard discovery practice. If ELI's interpretation of its discovery obligations was correct, there
17 would be no point in requiring the intervenors to respond to the Attachment A and B Data
18 Requests and produce related documents. The Hearing Officers established a two-stage
19 discovery process, and ELI's intent to submit pre-filed testimony does not exempt it from this
20 first stage.

21 U S WEST's motion to compel further responses to the Attachment B Data Requests is
22 straight-forward: where ELI has a complaint, U S WEST wants information relating to and
23 supporting that complaint. Likewise, where ELI states its position on U S WEST's ability to
24 provide a checklist item or its record in providing a checklist item, U S WEST wants documents
25 and information relating to that position. It is not "premature" to require ELI to produce
26 documents and information supporting or relating to its responses now. ELI Response at 9.

With respect to the specific Attachment B Data Requests, all of ELI's complaints ring

1 hollow. Regarding Data Request 2(d), ELI points to the testimony of Mr. Wood as the only
2 information it must produce regarding its alleged experience with IMA in 1997. Since ELI relies
3 on that testimony to explain its allegations, U S WEST is entitled to all documents underlying
4 that testimony and relating to the alleged deficiencies Mr. Wood discusses. Furthermore, to the
5 extent ELI has any other issue relating to U S WEST's record in providing unbundled network
6 elements (as Data Request 2(d) explicitly states) beyond the out-of-date IMA concerns in Mr.
7 Wood's 1997 testimony, ELI must produce that information now. There is no basis for
8 exempting ELI from responding to this important Data Request.

9 ELI further claims that its responses to Data Requests 3(a) and 4(d) are sufficient. In
10 response to Data Request 3(a), regarding whether ELI believes it has the same access to poles,
11 ducts and rights-of-way, ELI responded: "As to whether ELI's access is the same as
12 U S WEST's, ELI has had substantial difficulties obtaining access from U S WEST and,
13 therefore, abandoned its efforts. As a result, ELI doesn't believe it has the same access as
14 U S WEST." Exhibit 1 to U S WEST's Motion to Compel. Yet, ELI does not even identify the
15 alleged difficulties it experienced, whether these "difficulties" relate to access to poles or ducts or
16 rights-of-way, and why they allegedly forced ELI to "abandon its efforts." Although ELI claims
17 it has no documents whatsoever relating to this issue, the alleged severity of the alleged
18 difficulties ELI identifies undercuts that assertion. At a minimum, however, ELI must have
19 some information regarding the nature of the request for access and the nature of difficulties it
20 allegedly experienced and why these alleged difficulties led it to "abandon its efforts" to obtain
21 access. Although ELI claims (without any support or explanation) that U S WEST has all the
22 necessary information already, ELI Response at 9, U S WEST cannot investigate ELI's
23 "allegation" based on the cursory response ELI has provided. Indeed, it is unclear if ELI's
24 response even relates to alleged difficulties in Arizona.

25 ELI's response to Data Requests 4(d) is similarly deficient. In its opposition to
26 U S WEST's motion to compel, ELI does not defend this response so much as restate it and

1 conclude that "U S WEST is entitled to nothing else." ELI Response at 9. As set forth in
2 U S WEST's motion, the response is wholly inadequate. ELI asserts that U S WEST has made
3 ordering and provisioning unbundled loops so difficult that ELI has purchased special access
4 circuits. ELI does not even identify the difficulties it allegedly experienced in its Data Request
5 response or its response to U S WEST's motion to compel. Given the fact that ELI also asserts in
6 response to Data Request 2(f) that it has not even ordered unbundled loops in Arizona,
7 U S WEST is left totally in the dark regarding ELI's response and the basis for ELI's allegations.

8 The same problem infects ELI's responses to Data Request 5(d) and 6(d). In its
9 opposition, ELI restates its response to Data Request 5(d) and asserts that it has "nothing more to
10 add and no further documents." ELI Response at 10. However, as U S WEST set forth in detail
11 in its motion to compel, it is entirely unclear the basis for ELI's allegation that U S WEST denied
12 it dedicated transport, whether its alleged difficulties persist, or even if its complaints relate to
13 Arizona, since ELI also has not ordered unbundled transport in Arizona. See U S WEST Motion
14 to Compel at 11-12. With respect to Data Request 6(d), ELI did not respond regarding
15 unbundled switching at all, the topic of the Data Request. Regarding its response on
16 combinations, ELI did not provide any explanation of the "tortuous provisioning configurations"
17 for combinations, and no explanation for its pricing complaints.

18 The basic thrust of U S WEST's objections is uncontroversial: If ELI wants to allege
19 deficient performance on U S WEST's part, then basic fairness requires it to explain the basis of
20 its allegation and produce documents or information relating to it.

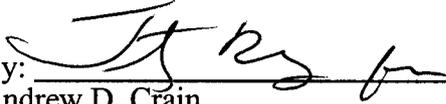
21 With respect to Data Request 10, U S WEST only asks that since ELI is using this
22 checklist item, it respond regarding U S WEST's record in providing it. Other Attachment B
23 Data Requests ask for this information, and ELI apparently has no qualms about identifying its
24 complaints. When the Attachment A and B Data Requests are directed to the intervenors,
25 information regarding U S WEST's record in providing checklist items is hardly unreasonable.

26

1 **III. CONCLUSION**

2 For the reasons set forth above and in U S WEST's motion to compel, the Hearing
3 Division should compel ELI to supplement its Data Request responses as set forth in
4 U S WEST's motion to compel and produce all documents relating to the Data Requests and
5 ELI's responses.

6 Respectfully submitted,

7
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