

Section 271 cases operate under a specific procedural framework:

U S WEST files its case in chief, ELI and other parties file their responsive testimony and U S WEST then submits its rebuttal case. U S WEST subverts that process by continually bombarding ELI and the other CLECs with discovery disputes. ELI has provided or U S WEST already possesses all of ELI's documents and materials in response to Attachments A and B. Unfortunately, U S WEST can't (or won't) believe that. The longer this case goes on, the more it becomes clear that U S WEST's full court discovery press is a thinly-veiled attempt to force ELI out of this case. U S WEST wants to turn this case into a war of attrition. U S WEST's motion should be denied.

II. ELI FULLY ANSWERED AND RESPONDED TO ATTACHMENTS A & B.

Contrary to U S WEST's arguments at page one of its motion, ELI did not "narrowly" interpret the questions in Attachments A and B. ELI restated each question as it applies to ELI. Then, ELI provided more than 25 pages of narrative answers to the questions and delivered several hundred pages of materials directly relevant to those questions and ELI's answers. ELI fully answered and responded to Attachments A and B.

Yet U S WEST isn't satisfied with ELI's responses. U S WEST, for example, claims that ELI didn't respond to the "overwhelming majority" of Attachment B requests. That claim is belied by ELI's answers. As to each question in Attachments A and B, ELI answered the question posed by each query. A perfect illustration is ELI's answer to Request 4(f) on Attachment B--ELI completely answered 4(f) by telling U S WEST that "ELI has not yet ordered unbundled loops from U S WEST." U S WEST

does not state any valid objections to ELI's responses. That's because U S WEST's motion is nothing more than an attempt to broaden the Attachment A and B requests.

What U S WEST really is upset about are the Attachment A and B questions themselves, not ELI's responses. U S WEST continues to argue with the Hearing Officers over their earlier discovery rulings. The Commission did not grant U S WEST's motion to compel further responses to its original data requests. Instead, the Commission ordered all parties to respond to specific questions posed by Attachments A and B. ELI did precisely that. Because it didn't like the discovery ruling, U S WEST now tries to use its motion to broaden the Attachment A and B questions and effectively reverse the earlier ruling. The Commission should block U S WEST's attempts to end-run that ruling.

Finally, U S WEST claims "it is difficult to conceive" that ELI doesn't maintain voluminous documents and files on all matters raised in U S WEST's motion.¹ ELI simply doesn't conduct its business that way. Unlike U S WEST, ELI doesn't devote extensive resources or manpower to maintaining elaborate internal business files. ELI doesn't have an army of paper pushers. ELI simply doesn't have any more documents responsive to a reasonable and appropriate interpretation of the questions posed in Attachments A and B. U S WEST can't compel what doesn't exist.

¹ As noted, many of the issues and arguments raised in U S WEST's motion go far beyond the Attachment A and B questions.

A. **U S WEST Has Access to Everything it Needs to Present its § 271 Case.**

U S WEST's "cookie cutter" motion presents a litany of stock due process arguments. U S WEST claims it won't receive a fair hearing unless ELI lets U S WEST examine every detail of ELI's internal business operations. U S WEST characterizes itself as the victim. That couldn't be farther from the truth. U S WEST has access to everything it needs to prove its § 271 case (if it can). U S WEST already filed its case-in-chief. U S WEST will be fully apprised of ELI's opposition case when ELI files its testimony. U S WEST continually attempts to force ELI to present its opposing case before testimony is due.

In effect, U S WEST tries to place the burden of proof on ELI to show U S WEST should be excluded from the long distance market. But it's U S WEST's burden of proof, not ELI's, to show checklist compliance:

Section 271 places on [U S WEST] the burden of proving that all of the requirements for authorization to provide in-region, interLATA services are satisfied. See Application of Ameritec, FCC Decision No. 97-298, ¶ 23 (August 19, 1997). The ultimate burden of proof with respect to factual issues remains at all time with [U S WEST]... Id.

U S WEST's strategy in § 271 cases is to push discovery in a way that puts all the burdens on CLECs. U S WEST's use of discovery and motions to compel in that manner violates principles of fairness, the public interest and § 271's statutory scheme.

B. U S WEST's Motion is Not Well Taken on the Specific Data Requests at Issue.

1. ELI Fully Answered and Responded to Attachment A.

At page 3 of its motion, U S WEST takes issue with ELI's response to Request No. 3 on Attachment A:

Request No. 3: Whether [ELI provides] business exchange service, residential exchange service, business exchange access service, or residential exchange access service [identifying special or switched access]. If [ELI] is not providing any of these services, does it plan to? When?

In response to Request No. 3, ELI stated it "currently provides business exchange service and business exchange access service in Arizona. ELI has no plans to provide residential service in Arizona."

ELI answered the question directly and completely. ELI fully responded to the specific question posed by Request No. 3. U S WEST's attempts to compel further answers to a question not asked--why ELI has chosen to serve only business customers--is not a proper basis for a motion to compel. U S WEST's added inquiry simply isn't relevant. ELI has no plans to provide residential service in Arizona because residential service isn't part of ELI's business. That issue doesn't bear on U S WEST's checklist compliance.

Further, U S WEST's claimed need for "details of ELI's plans to serve customers [in] this market" is a red herring. ELI provides quarterly forecasts to U S WEST in accordance with the ELI/U S WEST Interconnection Agreement.² ELI

² The ELI/U S WEST Interconnection Agreement requires each side to provide quarterly forecast information to each other:

attends business planning meetings and provides additional forecast information above and beyond its contract obligations. U S WEST already possesses ELI's forecast information. Particularly at this stage of this proceeding, that's all U S WEST needs.

Finally, again, this case isn't about ELI's internal business operations and plans. It's about non-discriminatory access to U S WEST's systems. U S WEST's "public interest" analysis strays far away from the proper scope of this § 271 case. U S WEST's discovery arguments and demands exceed the proper scope of this § 271 case by focusing on ELI's performance, internal capabilities and other business related issues. ELI's internal operations, business plans and dealings are not at issue. What matters is whether U S WEST currently meets the fourteen point checklist in Arizona. The appropriate "public interest" analysis focuses on the impact of U S WEST's entry into the long-distance market--not ELI's business plans.

U S WEST's demands on Request No. 5(b) are plagued by the same flaws:

Request No. 5(b): The number and location of U S WEST's switches that are connected to loops served by [ELI].

In response, ELI stated that it "has not yet ordered unbundled loops from U S WEST in Arizona." That is a complete, direct and adequate response. ELI went one step further and explained that when it begins ordering unbundled loops in Arizona, "the

Intercompany forecast information must be provided by the Parties to each other four times a year. The quarterly forecasts shall include forecasted requirements for each trunk group identified in Paragraph G(2) of this Section. In addition, the forecast shall include, for tandem-switched traffic, the quantity of tandem-switched traffic forecasted for each subtending end office.

See ELI/U S WEST Interconnection Agreement, ¶ VI(I)(2). Joint planning and forecasting meetings take place quarterly, as well. Id. at ¶ VI(I)(1).

initial configuration ELI will utilize for unbundled loops would connect them to ELI switches without transversing the U S WEST switch.” U S WEST’s attempt to get more data in response to Request No. 5(b), once again, boils down to an effort to compel answers to questions that weren’t asked or authorized. U S WEST is not entitled to anything else.

In response to Request No. 5(e), ELI told U S WEST that ELI services customers “almost exclusively” by ELI’s own facilities. U S WEST isn’t satisfied with that response. Following a meet and confer session, ELI asked U S WEST to specify exactly what further information U S WEST wanted in response to Request No. 5(e) so ELI could make specific inquiries. See May 21, 1999 letter from Todd Wiley to Chuck Steese (exhibit 1). U S WEST didn’t respond. Now, U S WEST claims it’s “entitled to know the extent to which [ELI] plans to use U S WEST unbundled elements and resold services.” On that issue, U S WEST’s motion should be denied for three reasons. First, that is not what Request No. 5(e) asks. Second, ELI fully answered Request No. 5(e). Third, ELI doesn’t have any other documents or information on that issue.

On Request No. 5(g), U S WEST wants to know “why ELI has no expansion plans.” But that is not what 5(g) asks, and, in any event, it is irrelevant to the issue of U S WEST’s current checklist compliance. U S WEST isn’t entitled to a dissertation on ELI’s underlying business plans and policies. Unfortunately, U S WEST treats discovery in this case as if it were a nefarious espionage operation. Irrespective of any unsupported motives U S WEST attributes to ELI, the fact of the matter is ELI has

completely responded to all Attachment A questions and ELI possesses no further documents in response to U S WEST's demands on Request Nos. 3, 5(b), 5(e) and 5(g).

2. ELI Also Fully Answered and Responded to Attachment B.

ELI also answered and responded to Attachment B questions to the best of its ability. The arguments and facts noted above apply equally to U S WEST's Attachment B complaints. ELI satisfied its discovery obligations in response to Attachment B.

For all intents and purposes, U S WEST uses its motion to either argue its case or cross-examine ELI on specific substantive issues. That's not what Attachment B is intended to do. ELI will detail its opposition case in its upcoming testimony filing. At this juncture, U S WEST's discovery demands exceed both the scope of the questions asked in Attachment B and the proper scope of this § 271 case. A simple review of U S WEST's discovery demands highlights what's really at the heart of U S WEST's motion.

In response to Request No. 2(a), ELI explained "what network elements are offered [to ELI] by U S WEST." ELI also noted that U S WEST's SGAT filing calls into question U S WEST's future provisioning of network elements "if the U S WEST interpretation of expected FCC rules so allows." U S WEST is entitled to nothing more at this stage of the case. ELI responded completely to a simple and straightforward question and disclosed its reading of U S WEST's SGAT. ELI has nothing more to offer at this time on that issue.

U S WEST next demands that ELI supplement its response to Request No. 2(d) by analyzing U S WEST's OSS EDI interface, explaining ELI's answers and corroborating ELI's responses. Those demands are beyond the scope of Request No. 2(d) and are premature, oppressive and unreasonable. The same holds true for U S WEST's demands in Data Request Nos. 3, 4(d), 5, 6 and 10.

As noted in ELI's answer to Request No. 2(d), ELI's initial experience with U S WEST's IMA was so bad (as detailed in Mr. Woods' testimony) that ELI simply abandoned its attempts to use the IMA. U S WEST argues (at pages 8-9 of its motion) that it has improved the IMA since late 1997. U S WEST may have or it may not have. But that argument (right or wrong) doesn't change the fact that ELI hasn't used U S WEST's IMA since then and has nothing more to add to its response.

Similarly, ELI answered Request No. 3(a) by highlighting its initial difficulties obtaining access to U S WEST's poles, ducts and rights-of-way. As a result, ELI abandoned its efforts to access U S WEST's poles, ducts and rights-of-way. Because of those difficulties, ELI obviously doesn't have the same access as U S WEST. ELI did not retain any documents on those difficulties. ELI fully and completely responded to Request No. 3(a) and has nothing more to add. Even further, U S WEST already "possesses the necessary information regarding a comparison of U S WEST's and ELI's access to poles, ducts and rights of way" as stated in ELI's response.

U S WEST's complaints regarding ELI's responses to Request Nos. 4(d), 5, 6 and 10 are undercut by the same fatal flaws. In response to Request No. 4(d), ELI stated that U S WEST's record in responding to ELI's requests for access to unbundled

elements has been marred by difficulties. Specifically, “ELI has been forced to order special access circuits instead of unbundled loops to reach many of its customers in Arizona.” Again, ELI answered the question posed by Request No. 4(d). ELI has no further documents in response to that question and U S WEST is entitled to nothing else.

In response to Request No. 5(d), ELI emphasized that U S WEST’s track record in responding to ELI’s requests for access to unbundled transport also has been marred by problems: “U S WEST initially restricted the definition of dedicated transport so that it did not include trunking between U S WEST switches and ELI switches. For these reasons, trunks which should have been ordered as unbundled transport have been ordered as Local Interconnect Service, which is more expensive.” ELI has nothing more to add and no further documents.

The same holds true for Request No. 6(d). There, ELI elaborated on U S WEST’s record in providing ELI access to unbundled switching. ELI directly and completely answered the question by highlighting problems with U S WEST’s responsiveness to ELI’s requests for access--specifically, “U S WEST has not offered to provide combinations of elements...and has done so only through tortuous provisioning configurations.” Also, “U S WEST’s current SGAT offers unbundled local switching and shared transport at high rates which make unbundled switching unattractive.”

In no uncertain terms, ELI answered each of these Attachment B questions fully and completely. U S WEST, however, attempts to argue the merits of the various substantive issues in its motion to compel and ignores the specific question asked in each request. A perfect example is Request No. 10(a):

Request No. 10(a): [Has ELI] requested to purchase such database and signaling services from U S WEST?

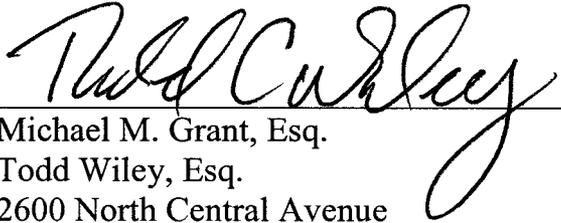
ELI answered that question by detailing what signaling and database services ELI has requested from U S WEST. ELI fully responded to that question. Unhappy with the limited scope of the request, U S WEST also wants to know whether ELI's experience was satisfactory. That, however, is not what Request No. 10(a) asked. And for good reason--under the § 271 framework, U S WEST will have ample opportunity to review ELI's complaints and problems with U S WEST's system when ELI files its testimony. ELI has fulfilled its disclosure obligations and answered the questions presented in Attachment B. U S WEST is entitled to nothing more.

III. CONCLUSION.

The § 271 case before this Commission is about U S WEST's system and ELI's access to it. It's not about discovery for the sake of discovery. It's not about forcing ELI to provide its opposition testimony before it's due. And it's not about imposing every discovery burden imaginable on the other party. ELI has fulfilled its discovery obligations. The Commission should deny U S WEST's motion to compel.

RESPECTFULLY SUBMITTED this 8th day of June, 1999.

GALLAGHER & KENNEDY, P.A.

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May 21, 1999

VIA FACSIMILE AND FEDERAL EXPRESS

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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 follows up on our meet-and-confer meeting concerning ELI's responses to Attachments A and B. With respect to Data Request Nos. 3(a), 5(b), 5(g), 7, 9 and 10 on Attachment A, ELI has no further documents or answers besides those already provided to U S WEST. With respect to Data Requests Nos. 2(a), 2(d), 4(d), 6(d), 7(i)(C), 8(b), 10(a), 10(b) and 14(g) on Attachment B, ELI has no additional documents or materials other than those already provided to U S WEST. In response to Data Request No. 2(d), ELI directs U S WEST to the testimony from the 1997 Arizona hearings and proceedings.

On Data Request 5(c), I'm still in the process of tracking down maps detailing ELI's service area. If I obtain any additional materials, I will forward them to you as soon as possible.

On ELI's response to Data Request 5(e), the terms "almost exclusively" are fairly clear. It is difficult to further clarify that answer. U S WEST needs to specify exactly what information it seeks.

Charles W. Steese, Esq.
May 21, 1999
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In response to your additional inquiries concerning Data Request No. 5(h) on Attachment A and Data Request 11 on Attachment B, ELI will provide additional spreadsheet and data information relied on by ELI with its testimony. With this letter, ELI provides the following additional documents and data compiled to date:

1. Trouble Reports re number portability, including trouble ticket reports;
2. Summary of Arizona circuit orders.

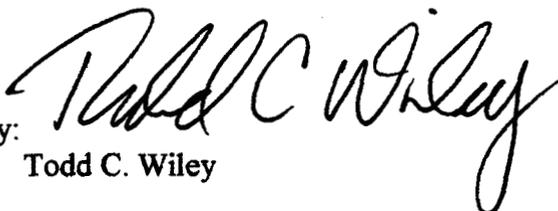
It bears emphasis that ELI continues to collect and check data. These documents respond to your inquiries regarding these Data Requests. Further, ELI is continuing to check the accuracy of this data and information. Many of ELI's data requests to U S WEST are designed to refine and develop this information and data. We hope U S WEST will fully and completely respond to ELI's discovery. Under these circumstances, these documents are preliminary.

On a final note, many of U S WEST's additional inquiries and demands require special investigation and are, therefore, inappropriate.

Please call if you have any questions or comments.

Very truly yours,

GALLAGHER & KENNEDY, P.A.

By: 
Todd C. Wiley

TCW:mhh
Enclosures

cc: Maureen Scott, Esq. (w/encls.)
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