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BEFORE THE ARIZONA CORPORATION COMMISSION  
DOCUMENT CONTROL

CARL J. KUNASEK  
Chairman,

TONY WEST,  
Commissioner

JIM IRVIN,  
Commissioner

In the matter of US West  
Communications, Inc.'s Compliance  
With Section 271 of the  
Telecommunications Act of 1996

Docket #U-0000-97-238

OPPOSITION OF ACI CORP. TO  
US WEST COMMUNICATIONS, INC.'S  
MOTION TO COMPEL RESPONSES TO  
DATA REQUESTS FROM ACI CORP.

ACI Corp. ("ACI") submits the following response and opposition to move to compel U S WEST Communications, Inc.'s ("U S WEST") motion to compel answers to its Data Requests attached as Amendments A and B, and in support, submit the following:

I. INTRODUCTION

On April 2, 1999, U S WEST was ordered by a panel of three hearing officers appointed by the Arizona Corporation Commission (the "Commission") in the above-captioned case to withdraw its initial data requests. In lieu of these, the hearing officers asked each of the parties to provide answers to the questions on Attachments A and B from the Commission's May 27, 1997 Procedural Order. On April 20, 1999, ACI served its responses and several documents on the Commission and U S WEST ("Initial Response").

Arizona Corporation Commission  
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1 On May 12, 1999, ACI and U S WEST then met and conferred regarding the data requests  
2 which were the subject of Attachments A & B. During the meet and confer session, ACI stated  
3 that with respect to certain of the data requests in the Initial Response that it would either provide  
4 additional information and/or clarify its response. On May 21, ACI sent clarifications to its  
5 previous responses to U S WEST. On May 28, 1999, ACI produced a file folder's worth of  
6 additional documents to U S WEST. U S WEST filed a Motion to Compel Responses upon ACI  
7 on or about May 27, 1999. For the following reasons, the Hearing Examiner should deny U S  
8 WEST's motion to compel.

9 **ARGUMENT**

10 **A. Attachment A Data Requests Have Been Answered to the Best of ACI's**  
11 **Ability, and are a U S WEST "Fishing Expedition."**

12 In Data Request 3, U S WEST seeks specific information from ACI regarding when it  
13 plans to provide business or residential exchange services in Arizona. U S WEST claims that this  
14 information is necessary for it to be able to gauge demand for unbundled network elements  
15 ("UNEs") and other services that will be purchased by new competitors such as ACI. This is as  
16 specious as its claim that this information is necessary to determine if U S WEST's section 271  
17 application is in the "public interest." U S WEST has decided to once again pursue its "scorched  
18 earth" policy of discovery, treating this proceeding as an opportunity to engage in a fishing  
19 expedition to ferret out potential new entrants' business plans. Not only does U S WEST seek to  
20 place an onerous document search burden upon ACI, it also seeks to place the burden on ACI and  
21 others to show that U S WEST should not enter the long distance market.

22 The information U S WEST seeks is irrelevant. U S WEST and only U S WEST has the  
23 burden of proving compliance with section 271. Its obligation under the Telecommunications Act  
24 of 1996 is to show that it, U S WEST, is *presently* ready to furnish each checklist item in the  
25 quantities that competitors may reasonably demand. For U S WEST to attempt to shift the burden  
26 to ACI to prove that its requests are or will be reasonable is not only disingenuous, but also

1 pointless. ACI has only just now begun to focus on service in the State of Arizona, and so even if  
2 its operations were the proper analytical framework for this proceeding (which it is not), U S  
3 WEST could not expect to receive particularly voluminous document productions. ACI's own  
4 application for a Certificate of Convenience and Necessity to provide local services in Arizona  
5 has not even been granted yet, with a hearing scheduled for later this month, and ACI currently  
6 has only made collocation requests to U S WEST. ACI has not ordered any other interconnection,  
7 UNEs or resale services from U S WEST, nor is ACI yet serving any customers in the State of  
8 Arizona. Consequently, all of the information responsive to this request can only deal with  
9 collocation at this time.

10 U S WEST continues the fishing expedition in Data Request 5, in which it seeks eight  
11 separate fields of information about ACI's future plans. Since ACI has just started its planned  
12 expansion into Arizona, ACI cannot be expected to have very much in the way of information  
13 regarding, *e.g.*, "the number...of customers for which the competitors' services are available," or  
14 "the number and location of U S West's switches that are served by U S West's competitor's."  
15 ACI has, however, in its production to U S WEST of April 20, 1999, and its supplemental  
16 production of May 28, 1999, provided what ACI does have with respect to this particular data  
17 request. ACI has provided detailed collocation request information to U S WEST outlining the  
18 central offices in which ACI is interested in providing its services from. The fact that a new  
19 entrant such as ACI does not have the resources that might be expected from an incumbent like U  
20 S WEST, such as an extensive planning department, and a resultant written business plan specific  
21 to Arizona expansion, should not come as a surprise to U S WEST.

22 **B. Attachment B Data Requests Have Been Answered to the Best of ACI's**  
23 **Ability Given ACI's Business in Arizona.**

24 For Attachment B data requests 3 through 8 and 10 through 14, U S WEST expresses  
25 dismay that ACI has produced little or nothing in the way of responsive documentation, claiming  
26 that this information sought goes "to the very heart of this proceeding." The simple fact is that

1 given its business in Arizona, ACI can never expect to have very much to respond to on a number  
2 of the section 271 checklist items. U S WEST can only be too aware of this given what it surely  
3 knows of ACI's service and its business, and so its protestations of unfair deprivation of "due  
4 process" ring hollow. For the Commission's benefit, though, ACI's business plan is as follows.  
5 ACI intends to provide services that meet the growing needs of consumers for high-speed data  
6 services. ACI will provide services to support corporate offices and telecommuting by employees  
7 of ACI's business customers. The Company relies on a combination of resale and facilities-based  
8 services to meet the pent-up demand for high-speed data services and serve telecommuters' needs.  
9 ACI intends to be a market leader in providing high quality innovative services that meet  
10 customer needs with a focus on ease-of-use and customer service. ACI intends to provide its high-  
11 speed data services through the deployment of digital subscriber lines ("DSL"). DSL technology  
12 allows a customer to send and receive high-bandwidth information over existing copper telephone  
13 lines. ACI will purchase unbundled network elements, including loops, and collocate equipment  
14 in central offices. ACI also plans to construct its own facilities to provide facilities-based data  
15 services, some of which will be collocated in central offices and some of which will be placed in  
16 ACI's own metro service centers. In addition, ACI will lease additional facilities to connect the  
17 facilities in its metro service centers with the unbundled loops that it will purchase from  
18 incumbent local exchange carriers.

19 For purposes of this proceeding, what this means is that ACI has very limited concern  
20 with, and very little documentation of, matters relating to checklist items such as "poles, conduits,  
21 and attachments", or "nondiscriminatory access to 911 and E911 services", or "local dialing  
22 parity." When ACI is up and running, only collocation, transport, loop provisioning and some  
23 limited OSS needs will be its focus.

24 Since ACI is not up and running, the only one of these four matters that ACI can have any  
25 substantive and responsive material is the first one that it must deal with, collocation. These  
26

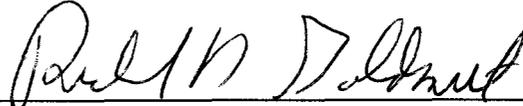
1 materials have been provided to U S WEST; ACI has even surrendered sensitive internal  
2 documents such as its collocation logs.

3  
4 **III. CONCLUSION**

5 For the foregoing reasons, the Commission should deny U S WEST's Motion to  
6 Compel.

7 Respectfully submitted this 7th day of June 1999.

8  
9 LEWIS AND ROCA

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23 ORIGINAL and ten (10) copies of the  
24 Foregoing filed this 7th day of June, 1999,  
25 With:

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