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BEFORE THE ARIZONA CORPORATION COMMISSION

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AZ CORP COMMISSION

JUN 1 4 45 PM '99

T-000000-97-238

Docket No. U-0000-97-238

DOCUMENT CONTROL

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

**U S WEST'S MOTION TO COMPEL RESPONSES FROM ELI TO DATA  
REQUESTS**

U S WEST moves the Hearing Division of the Arizona Corporation Commission to  
compel Electric Lightwave Inc. ("ELI") to respond to the Attachment A and B Data  
Requests.

Arizona Corporation Commission

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**I. INTRODUCTION**

In response to the Attachment A Data Requests, ELI provided U S WEST with partial responses to some data requests and some correspondence related to its responses. Virtually no internal documents relating to its responses were produced. With respect to the Attachment B Data Requests, ELI did not respond to the overwhelming majority of those requests, claiming that it has no relevant information.

After meet and confer sessions with U S WEST, ELI generally maintains that it has no further information responsive to any of the Data Requests in Attachments A and B. It appears that ELI has interpreted the Data Requests narrowly to justify its failure to produce materials related to the issues in the Data Requests. In light of ELI's presence in this market and the fact that ELI has already produced some scattered correspondence relating to topics in the Data Requests, it is difficult to conceive that ELI has no further information in response to any of these Data Requests.

The discussion section that follows addresses each deficient response ELI has provided. To conserve space, U S WEST has not repeated the Data Requests in this

memorandum. For the Hearing Division's convenience, ELI's Responses to the Attachment A and B Data Requests are attached as Exhibit 1. Prior to filing this motion, U S WEST conferred with counsel for ELI but was unable to narrow the disputed issues. ELI's response to U S WEST's requests for additional information is attached as Exhibit 2.

## **II. DISCUSSION**

### **A. Arizona Law Contains Broad Discovery Obligations**

Arizona law sets forth a "strong, clearly defined policy of encouraging full, fair, open disclosure of all relevant, material evidence in a case." Hannah v. General Motors Corp., 969 F. Supp. 554, 559 (D. Ariz. 1996). Accordingly, Rule 26 of the Arizona Rules of Civil Procedure provides that parties may obtain discovery "regarding any matter, not privileged, which is relevant to the subject matter involved." Ariz. R. Civ. P. 26(b)(1) (1998).

State courts have repeatedly held that discovery rules are to be "broadly and liberally construed." Industrial Comm. v. Superior Court, 122 Ariz. 374, 375 (1979); Cornet Stores v. Superior Court, 108 Ariz. 84, 86 (1972); U-Totem Store v. Walker, 142 Ariz. 549, 552 (Ct. App. 1984). Evidence need not be admissible in order to be discovered -- it need only be "reasonably calculated to lead to the discovery of admissible evidence." Ariz. R. Civ. P. 26(b)(1). See also Porter v. Superior Court, 144 Ariz. 346, 348 (1985). U-Totem Store, 142 Ariz. at 554. In short, "discovery should provide a party access to anything that is evidence in his case." Cornet Stores, 108 Ariz. at 87.

These broad discovery rules are critical to the administration of justice. They "provide a wide vehicle by which one party may be fairly apprised of the other's case and be prepared to meet it if he can." Kott v. City of Phoenix, 158 Ariz. 415, 418 (1988). They "identify[] the issues, promote justice, provide a more efficient and speedy disposition of cases, avoid surprise, and prevent the trial of a lawsuit from becoming a 'guessing game.'" Industrial Comm., 122 Ariz. at 375; Cornet Stores, 108 Ariz. at 86; U-Totem Store, 142 Ariz. at 552.

With these basic and familiar notions of fairness in mind, the Hearing Division should order ELI to supplement its discovery responses.

**B. ELI Has Failed To Adequately Respond To Several "Attachment A" Data Requests**

Data Request 3: ELI asserts that it currently provides business exchange service and business exchange access service, but has no intent to provide residential exchange service. ELI has produced only two documents relating to these assertions: ELI's Schedule of General Regulations for Exchange Services, Arizona CC Tariff No. 1 and a cover letter transmitting that tariff. It has produced no internal documents and no documents relating to its decision to serve only business customers.

ELI should be compelled to produce all documents relating to its response, including documents that address why ELI has chosen to serve only business customers and is not planning to provide residential services. U S WEST is entitled to know the details of ELI's plans to serve customers this market. ELI's intentions are relevant to a host of critical issues in this proceeding, including the extent of competition in the residential and business markets, the extent to which ELI intends to offer facilities-based competition, and ELI's reasonably foreseeable demands for access to collocation, operational support systems ("OSS") and other checklist items.

The FCC has emphasized that U S WEST is not required to demonstrate that it provides all checklist items in quantities that meet exaggerated, hypothetical demands of CLECs that have no intention of serving Arizona consumers. Instead, U S WEST must establish that it is ready to furnish each checklist item in quantities that actual competitors may "reasonably" demand. Application of BellSouth Corp., BellSouth Telecomm., Inc., and BellSouth Long Distance, Inc. for Provision of In-Region, interLATA Services in Louisiana, CC Docket No. 98-121, Memorandum Opinion and Order ¶ 54 (rel. Oct. 13, 1998) ("Second BellSouth Louisiana Order"). ELI must produce documents and provide responses that

enable U S WEST to evaluate ELI's reasonably foreseeable demand for unbundled network elements ("UNEs") and services from U S WEST.

Moreover, where ELI intends to offer service and whom it intends to serve is important to determining whether granting U S WEST's application is in the public interest under Section 271(d)(3)(C). For example, if ELI intends to limit its service to urban areas, its decision to forego rural customers directly impacts on whether granting U S WEST's application will serve the public interest by bringing rural customers the benefits of "one stop shopping" that ELI has declined to offer them. Similarly, if ELI intends to serve only business customers, granting U S WEST's application would be in the public interest because U S WEST could immediately bring residential customers the benefits of bundled local and long distance service. Furthermore, where potential competitors like ELI choose to forego certain market segments, granting U S WEST's application serves the public interest by spurring these competitors to re-think their decisions in the face of competition from U S WEST. Accordingly, ELI's service plans weigh heavily in the public interest analysis. The Hearing Division should order ELI to supplement its response and produce all documents relating to its responses.

Data Request 5: ELI has not responded fully to subparts (b), (e) and (g).<sup>1</sup> Regarding Data Request 5(b), ELI asserts that it has not yet ordered unbundled loops from U S WEST, but when it does so it would connect U S WEST loops with ELI switches and may use U S WEST unbundled switching in combination with U S WEST unbundled loops and shared transport facilities. See Exhibit 1. ELI, however, produced no documents relating to this response even though the Hearing Division expressly required all parties to produce documents relating to their responses. Documents relating to ELI's responses to this Data

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<sup>1</sup> In Exhibit 2, ELI has agreed to provide U S WEST with facilities maps, but has not done so to date.

Request are particularly important because ELI provides no details regarding these alleged plans. For example, ELI does not indicate when it intends to order U S WEST unbundled loops, the quantity of loops it intends to order, and where it intends to order such loops. Likewise, ELI does not indicate whether it intends to use U S WEST's unbundled switching at all. As set forth above, discovery regarding ELI's intention, the timing of ELI's plans, where ELI intends to serve customers with U S WEST elements, and the extent to which ELI intends to utilize U S WEST elements is clearly relevant to determining the future state of competition in Arizona and the foreseeable demand for U S WEST's elements and services.

In response to Data Request 5(e), ELI asserts that it intends to serve customers "almost exclusively" over its own facilities. Exhibit 1. In meet and confer sessions, U S WEST requested that ELI supplement and clarify this response. ELI, however, responds that "the terms 'almost exclusively' are fairly clear," and it cannot supplement its response further. ELI's response is inadequate. In response to Data Request 5(b), ELI suggests that it intends to purchase several unbundled elements from U S WEST: unbundled loops, switching and shared transport. It provides no indication or documentation, however, regarding the details of this planned service. Thus, it is entirely unclear the extent to which ELI intends to use its own facilities and those of U S WEST. Since ELI is not serving customers solely over its own facilities, U S WEST is entitled to know the extent to which it plans to use U S WEST unbundled elements and resold services.

In response to Data Request 5(g), ELI states that it has no plans to expand its facilities at this time. U S WEST is entitled to documents relating to this response to assess the reasons why ELI has no expansion plans and the future geographic footprint of ELI's service area. Documents relating to this response are also necessary in light of ELI's assertion that it intends to serve customers with U S WEST' elements in the future.

As set forth above, the information U S WEST seeks is clearly relevant to determine the extent to which ELI truly intends to offer facilities-based service, ELI's reasonably

foreseeable demand for checklist items, see Second BellSouth Louisiana Order ¶ 54, and is critical to assessing the public interest component of granting U S WEST's application. For all these reasons, the Hearing Division should require ELI to supplement its response to each portion of this Data Request discussed above and produce documents relating to its responses.

C. **ELI Has Failed To Adequately Respond To Several "Attachment B" Data Requests**

As a global problem, ELI failed to produce documents to support its responses to the Attachment B Data Requests even though the Hearing Officers ordered the parties to produce documents relating to their discovery responses. U S WEST's motion, however, asks for documents as well as additional information related to a limited subset of the Attachment B Data Requests.

U S WEST's requests for supplemental information relate primarily to allegations ELI makes, but does not explain or support. The FCC has made clear that a BOC does not have to demonstrate perfect performance to attain Section 271 approval and that "mere unsupported allegations" will not defeat a BOC's prima facie case that it meets the competitive checklist requirements. Application of BellSouth Corp., BellSouth Telecomm., Inc., and BellSouth Long Distance, Inc. for Provision of In-Region, interLATA Services in Louisiana, CC Docket No. 98-121, Memorandum Opinion and Order ¶ 57 (rel. Oct. 13, 1998) ("Second BellSouth Louisiana Order"). In addition, fundamental notions of due process require that when a party raises allegations of deficient performance, U S WEST is entitled to full discovery regarding those allegations. As the United States Supreme Court has noted:

Certain principles have remained relatively immutable in our system of jurisprudence. One of these is that where governmental action seriously injures an individual, and the reasonableness depends on fact findings, the evidence used to prove the [party's] case must be disclosed . . . so that he has an opportunity to show it is untrue. While

this is important in the case of documentary evidence, it is even more important where the evidence of the individuals whose memory might be faulty or who, in fact, might be perjurers or persons motivated by malice, vindictiveness, intolerance, prejudice, or jealousy. . . . It has been spoken out not only in criminal cases, . . . but also in all types of cases where administrative and regulatory actions were under scrutiny.

Greene v. McElroy, 360 U. S. 474, 496 (1959) (emphasis added). Federal and state courts alike have held that the denial of basic discovery may lead to deprivation of a fair trial and a violation of due process. See, e.g., Shaklee Corp. v. Gunnell, 748 F.2d 548, 550 (10th Cir. 1984) (trial court's denial of discovery deprived defendants of a fair trial and constituted reversible error); Preston v. Montana Eighteenth Judicial Dist. Court, 282 Mont. 200, 936 P.2d 814, 1997 Mont. Lexis 64 (1997) (Denial of discovery would unfairly disadvantage plaintiff and defeat purpose of discovery); Wilson v. Department of Public Service Regulation, 260 Mont. 167, 858 P.2d 368, 1993 Mont. Lexis 252, (1993) (if an agency intends to take action that might deprive a party of a property right, the party is entitled to procedural due process, including the ability to discover information relevant to the case against them).

With the FCC Order and these notions of fundamental notions of due process in mind, the Hearing Division should compel ELI to supplement its discovery responses.

Data Request 2: In Response to Data Request 2(a), regarding the unbundled network elements U S WEST offers ELI, ELI recites provisions of the interconnection agreement between ELI and U S WEST and then states that U S WEST "may not provide all of these unbundled elements" based upon language in U S WEST's Arizona Statement of Generally Available Terms ("SGAT"). In the parties' meet and confer session, ELI stated that it had no further information to provide in response to this request. See Exhibit 2.

The Hearing Division should compel ELI to supplement its response. First, other than its interconnection agreement with U S WEST, ELI produced no documents related to this response. Second, ELI provides no explanation for its assertion that U S WEST may not

make the listed unbundled elements available to ELI because of language in its SGAT and produces no underlying materials supporting this assertion. Accordingly, the Hearing Division should compel ELI to supplement its response.

Similarly, in Response to Data Request 2(d), ELI states that "U S WEST has not made the ordering and provisioning of unbundled elements easy," Exhibit 1, and that ELI has rejected U S WEST's IMA interface. Id. To support this claim, ELI produced the 1997 testimony of Timothy R. Wood, which relates solely to U S WEST's IMA interface. Since that time, U S WEST's IMA interface has been dramatically enhanced. Thus, other than alleging that a two-year outdated version of IMA is deficient, ELI has raised no other issues regarding U S WEST's responsiveness to requests for unbundled elements. ELI has stated that it has no further information to provide in response to this request.

U S WEST is entitled to further discovery regarding ELI's allegations. ELI's statement that U S WEST has "not made ordering and provisioning of unbundled elements easy" is entirely vague. ELI does not provide any details of the purported problems with ordering and provisioning that ELI has experienced, nor does it explain the impact that U S WEST's alleged deficiencies on ELI's ability to provide service. ELI also does not provide any information regarding U S WEST's response to ELI's alleged problems. Lastly, ELI provides no information regarding its view of U S WEST's other OSS interface -- EDI.

Pointing to Mr. Wood's pre-filed testimony in another proceeding does not discharge ELI's discovery obligations. In fact, it raises far more questions regarding ELI's response than it answers. In particular, the testimony provided is seriously out of date. U S WEST's IMA and EDI interfaces have gone through a sea change since October 1997, the date of Mr. Wood's surrebuttal testimony. Because U S WEST's IMA interface now includes significant additional functionality, it is unclear whether ELI is still, in fact, experiencing difficulties using IMA and what those difficulties may be, given the changes to IMA since Mr. Wood filed his testimony. Further compounding the inadequacy of its response, ELI produced no

internal documents relating to its response or to the statements in Mr. Wood's testimony. Thus, it is impossible for U S WEST to evaluate and address the concerns ELI and Mr. Wood raise.

The Hearing Division should compel ELI to supplement its response regarding U S WEST's current record of responsiveness of ordering and provisioning unbundled network elements. Furthermore, ELI must provide information regarding its current experience using U S WEST's OSS interfaces. Finally, at a minimum, the Hearing Division should compel ELI to produce internal documents relating to ELI's use of IMA and the statements in Mr. Wood's testimony.

By its representations in Exhibit 2 that ELI has no additional documents or materials related to U S WEST's responsiveness in providing unbundled network elements, ELI represents that it has no further issues, complaints or concerns regarding U S WEST's compliance with this checklist item other than those issue raised in its original response and Mr. Wood's 1997 testimony. To the extent ELI intends to raise any other issue regarding U S WEST's record in providing UNEs, due process demands that it do so now. It is unfair to require U S WEST to defend itself against ELI's unrevealed allegations in the hearing on its application. By that point, U S WEST will be deprived of the information that could refute those allegations and will be forced to conduct its "discovery" during its cross-examination of ELI's witnesses.

Data Request 3: In response to Data Request 3(a), ELI claims that it has had "substantial difficulties obtaining access [to poles, ducts, and/or rights-of-way] from U S WEST," and "abandoned its efforts" as a result. ELI provides no information whatsoever about its alleged request(s), the nature of the "difficulties" ELI allegedly experienced, or the "efforts" it allegedly abandoned. More troublesome, it produced no documents relating to its alleged difficulties, the impact of these difficulties, or even relating to this request.

U S WEST is entitled to this information and all relevant documents to respond to ELI's allegations. As noted above, the FCC has made clear that "mere unsupported allegations" will not defeat a BOC's prima facie case that it meets the competitive checklist requirements. Second BellSouth Louisiana Order ¶ 57. ELI's response is so vague that it is unclear what difficulties and how many difficulties it has encountered, or even if its response relates to difficulties in Arizona. Without full, detailed information regarding ELI's allegations and alleged decision to "abandon[] its efforts" to seek access, including all internal documents relating to this issue, neither the Commission nor U S WEST can determine whether ELI's allegations are accurate and (if so) whether they constitute a "one-time" aberration. In short, ELI's response is precisely the type of unsupported allegation the FCC has rejected.

Finally, basic principles of due process require that U S WEST have detailed information and all documents relating to any allegations from intervenors of deficient performance. Without this type of information, U S WEST cannot adequately respond, nor can it challenge the credibility of ELI's assertions.

Data Request 4: In response to Data Request 4(d), ELI asserts that "U S WEST has made ordering and provisioning of unbundled loops difficult." Exhibit 1. ELI further asserts that it has been "forced" to use special access circuits instead of unbundled loops to reach its Arizona customers. Id. ELI, however, also asserts that it will "begin ordering" unbundled loops soon and "expects" to convert special access circuits into unbundled loops. Id. In response to U S WEST's request for supplemental information, ELI declared that it had none. See Exhibit 2. Given the circumstances, this assertion is impossible.

In response to Data Request 2(f), ELI states that it has not yet requested unbundled elements in Arizona to date. See Exhibit 1. In response to Data Request 4(c) and (f), ELI also asserts that it has not yet ordered unbundled loops. Thus, it is unclear what "difficulties" ELI has experienced in the ordering and provisioning of unbundled loops in Arizona, and

ELI's response in Data Request 4(d) provides no information, explanation or basis for that assertion. Furthermore, it is unclear why ELI has allegedly been "forced" to purchase special access circuits instead of unbundled loops and why it will soon begin ordering unbundled loops, given the difficulties it has alleged. At a minimum, more explanation is required here. How did U S WEST's processes for ordering loops "force" ELI to order special access trunks? The question is simply not answered. Similarly, ELI provides no information regarding its expectation to begin ordering unbundled loops, such as when it intends to purchase unbundled loops, the quantity of unbundled loops it intends to order, and where. This information is necessary, however, to determine when ELI will be using U S WEST unbundled loops and whether U S WEST can meet ELI's, along with other CLECs, reasonably foreseeable demand for unbundled loops. Second BellSouth Louisiana Order ¶ 54. Compounding the inadequacy of its response, ELI produced no documents whatsoever relating to this response. Thus, U S WEST cannot use documents to shed light on ELI's allegations.

As set forth above, basic notions of due process and fairness require ELI to inform U S WEST of its complaints and provide documents relating to them. The Hearing Division should compel ELI to supplement its response to this Data Request.

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Data Request 5: In response to Data Request 5(d), ELI asserts that "U S WEST has made ordering and provisioning of unbundled transport difficult." Exhibit 1. ELI further asserts that "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." Id. ELI produced no documents relating to this response and in response to U S WEST's request for supplemental information, ELI asserted that it had none.

As with its response to Data Request 4(d), ELI's response is ambiguous and inadequate. In response to Data Request 5(f), ELI asserts that it has not yet ordered unbundled transport in Arizona. Thus, it is unclear what "difficulties" ELI has experienced in

the ordering and provisioning of unbundled transport in Arizona or the basis for its assertion that U S WEST "initially" declined to provide dedicated transport (which ELI has not even requested) between U S WEST and ELI switches. Similarly, since ELI has not yet ordered unbundled transport, it is unclear upon what it bases its assertion that "trunks which should have been ordered as unbundled transport have been ordered as Local Interconnect Service . . . ." Exhibit 1. ELI's response to Data Request 5(d) provides no information, explanation or basis for these assertions. As with Data Request 4(d), ELI produced no documents whatsoever relating to this response from which U S WEST could supplement ELI's response.

As set forth above, basic notions of due process and fairness require ELI to inform U S WEST of its complaints with specificity and produce documents relating to them. U S WEST cannot investigate ELI's claims or respond to them without more information detailing the basis for the assertions and documents relating to them. The Hearing Division should compel ELI to supplement its response to this Data Request.

Data Request 6: Data Request 6 requests information regarding the provisioning of unbundled switching. In response to Data Request 6(d), ELI answers regarding U S WEST's record in providing combinations of network elements, not unbundled switching. See Exhibit 1. ELI asserts that unbundled switching "by itself, is only an attractive unbundled element in certain instances" and that U S WEST's Arizona SGAT prices unbundled switching at "unattractive" rates. Id. ELI produced no documents relating to its response.

ELI's answer is nonresponsive because it provides no information regarding U S WEST's record in providing unbundled switching. To the extent it is responsive, it is inadequate. ELI provides no details and no documents related to its assertions regarding (i) U S WEST's provisioning of combined network elements, (ii) the "attractiveness" of unbundled switching, and (iii) U S WEST's SGAT rates. As set forth above, basic notions of due process and fairness require ELI to identify its specific complaints with U S WEST's

record in providing this checklist item and produce all related documents. U S WEST is seriously hampered in investigating ELI's claims, responding to them, and assessing the impact of its allegations without more information detailing the basis for the assertions and documents relating to them. The Hearing Division should compel ELI to supplement its response to this Data Request.

Data Request 10: In response to Data Requests 10(a) and (b), ELI asserts that it has requested the ability to access U S WEST's signaling systems, call related data bases, and unbundled signaling. ELI further asserts that it uses U S WEST's call related databases and interconnects with U S WEST's signaling network. ELI, however, provides no information regarding U S WEST's record in providing signaling and access to call-related databases. To the extent ELI is accessing U S WEST's signaling databases and purchasing database and signaling services from U S WEST, ELI should provide information on its satisfaction or dissatisfaction with U S WEST's provision of this checklist item. To indicate only that U S WEST provides these services to ELI, without indicating whether U S WEST does so satisfactorily, is not particularly informative or useful. Certainly, to the extent ELI intends to dispute U S WEST's compliance with this checklist requirement, it must disclose its allegations, provide detailed information regarding them, and produce all documents relating to its allegations. Accordingly, the Hearing Division should compel ELI to supplement its response.

Data Request 11: In response to meet and confer sessions between the parties, ELI represents that it will provide additional documents in response to this Data Request. U S WEST reserves the right to move for further supplementation of ELI's response to Data Request 11 upon receipt of that information.

### **III. CONCLUSION**

U S WEST is entitled to full and detailed responses to the Attachment A and B Data Requests. Discovery is the time to flush out information relating to the topics covered in the

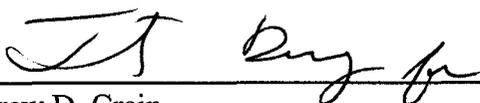
Data Requests, not at the hearing on U S WEST's application. Without detailed information in response to these requests, U S WEST is seriously hampered in investigating any claims or complaints that ELI raises and responding to them.

Equally important, U S WEST must receive all documents, especially internal documents, that relate to the issues in these Data Requests. Documents are necessary to provide this Commission with the full picture regarding ELI's participation in the Arizona market and its experience dealing with U S WEST.

Finally, where ELI alleges that U S WEST's performance is deficient, it must provide detailed information and documents relating to its assertions. ELI's responses to some Data Requests are so vague and ambiguous it is unclear whether the issues it raises are still applicable or relate to U S WEST's provision of services in this state. Where ELI does use a checklist item, the Hearing Division should require ELI to indicate U S WEST's record in providing the checklist item or ELI's satisfaction with U S WEST's provision of the item. To allow ELI to make unfettered allegations without being required to produce the materials underlying the allegations constitutes a due process violation.

Accordingly, the Hearing Division should compel ELI to supplement its Data Request responses as set forth above and produce all documents relating to its responses and supplemental responses.

Respectfully submitted,

By:  \_\_\_\_\_

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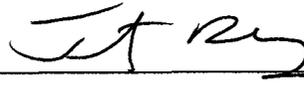
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**EXHIBIT 1****ELI RESPONSES  
(Attachments A and B from Decision No. 60218)****ATTACHMENT A  
General Telecommunications Market Conditions in Arizona**

- 1) Status of state commission proceedings [involving U S WEST] to implement the local competition provisions of the Telecommunications Act of 1996 ("1996 Act").

**RESPONSE:**

ELI interprets this question as requesting information concerning Arizona Corporation Commission proceedings involving U S WEST and ELI focusing on the local competition provisions of the 1996 Act. ELI provides the following status report on those cases.

1. In Docket No. T-01051B-0689, ELI filed a complaint against U S WEST for failure to abide by its reciprocal compensation obligations in U S WEST's interconnection agreement with ELI. Both parties recently filed dispositive motions currently pending before the Commission. As a party to that proceeding, U S WEST possesses documents on that issue. See Complaint and related pleadings in In the Matter of the Petition of Electric Lightwave, Inc. to Establish an Interconnection Agreement with U.S. WEST Communications, Docket No. T-01051B-98-0689.
  2. ELI and U S WEST also were parties to Quality of Service and Operational Support Systems proceedings. Those matters recently were consolidated in this § 271 proceeding. See April 7, 1999 Procedural Order. Again, U S WEST possesses documents on those issues.
  3. U S WEST recently appealed the Commission's order granting ELI a Certificate of Convenience and Necessity to provide competitive local exchange and interLATA telecommunications service in Arizona. See U.S. WEST v. Arizona Corporation Commission, et al., CA-CV 98-0672. ELI and the other appellees just filed their briefs.
- 2) [Has ELI] been certified by the state to provide:
- a) facilities based local exchange service,

**RESPONSE:**

Yes. On December 15, 1995, ELI filed its application for a Certificate of Convenience and Necessity to provide intrastate competitive telecommunications services in the State of Arizona (see attached). The application was docketed as Docket No. U-3054-95-503. On October 21, 1996, the Commission Utilities Division Staff issued its Staff Report (see attached). On January 16, 1997 Decision No. 59982 was issued granting ELI's application. On July 2, 1997

Decision No. 59982 was amended by Decision No. 60293 with corrections to the original decision. Decision No. 60293 simply modified the existing Decision by including interLATA toll service to the authority. As noted above, U S WEST appealed those Commission decisions.

- b) resold local exchange service,

**RESPONSE:**

Yes. See response to question 2(a) above.

- c) exchange access service.

**RESPONSE:**

Yes. See response to question 2(a) above.

- 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?

**RESPONSE:**

ELI currently provides business exchange service and business exchange access service in the State of Arizona. ELI has no plans at this time to provide residential service in Arizona. A copy of ELI's tariff is attached which describes the products and services ELI currently offers in Arizona.

- 4) [Has ELI requested]:

- a) interconnection from U S WEST,

**RESPONSE:**

Yes. On March 20, 1997, ELI and U S WEST entered into an interconnection agreement (see attached). On April 15, 1997 the agreement was filed with the Arizona Corporation Commission requesting approval. It was docketed as Docket No. U-3054-97-207, E-1051-97-207. On July 2, 1997 the agreement was approved pursuant to Decision No. 60300 (see attached). ELI has requested interconnection with U S WEST since that time and is currently operating under the provisions of that interconnection agreement.

- b) unbundled elements from U S WEST,

**RESPONSE:**

No. The terms of the interconnection agreement discussed in response to question 4(a) above allows for the provision of unbundled elements. To date ELI has not

requested unbundled elements pursuant to the terms of its interconnection agreement with U S WEST,

- c) the ability to resell U S WEST's services.

**RESPONSE:**

Yes. A resale discount was established as a result of the aforementioned interconnection agreement. ELI began reselling U S WEST services in July of 1997. The record in the electronic interface portion of consolidated Docket U-3021-96-448, U-3245-96-448, U-1051-96-448 details ELI's resale problems and experience with U S WEST. See attached testimony of Mr. Timothy Wood. At this time ELI does not have resale customers in the State of Arizona.

The date the requests were made and the extent to which U S WEST and [ELI] have entered into binding agreements, as well as copies of any such agreements.

**RESPONSE:**

See response to questions 4(a) and 4(c) above.

- 5) Access lines and loops

- a) The number of access lines in Arizona that are served by [ELI].

**RESPONSE:**

ELI's responses to question 5(a) are deemed confidential and proprietary. U S WEST has not executed an appropriate confidentiality and protective agreement in this § 271 case. ELI will not provide U S WEST with its responses to this question until an appropriate confidentiality and protective agreement is in place.

- b) The number and location of U S WEST's switches that are connected to loops served by [ELI].

**RESPONSE:**

ELI has not yet ordered unbundled loops from U S WEST in Arizona. When ELI begins ordering unbundled loops in Arizona, the initial configuration ELI will utilize for unbundled loops would connect them to ELI switches without transversing the U S WEST switch. ELI has not yet utilized U S WEST switches to terminate ELI-provided loops. This is an architecture that may be used in the future. The main use for U S WEST unbundled switching would be in combination with U S WEST unbundled loops and U S WEST unbundled shared transport.

- c) The scope of the geographic areas for which [ELI's] services are available.

**RESPONSE:**

ELI has authority to operate in the Arizona exchanges currently being served by U S WEST. ELI has customers in Phoenix, Scottsdale, Tempe, Fountain Hills and Chandler.

- d) The number and types of customers for which [ELI's] services are available.

**RESPONSE:**

ELI's responses to question 5(d) are deemed confidential and proprietary. U S WEST has not executed an appropriate confidentiality and protective agreement in this § 271 case. ELI will not provide U S WEST with its responses to this question until an appropriate confidentiality and protective agreement is in place.

- e) The extent to which [ELI] is using its own facilities to provide service or is using unbundled or resold services obtained from U S WEST.

**RESPONSE:**

ELI customers are serviced almost exclusively by our own facilities.

- f) A description of [ELI's] facilities in operation in U S WEST's service area.

**RESPONSE:**

In the State of Arizona, ELI has 393 route miles of fiber, one DMS 500 Switch, two Frame Relay Switches, one Internet Router and one ATM switch. The ELI equipment is located in Phoenix.

- g) Whether [ELI] is currently expanding its facilities and when the expansion is expected to be completed.

**RESPONSE:**

ELI has no plans to expand its facilities at this time.

- h) The average provisioning intervals and maintenance times for services U S WEST provides to [ELI] compared to those [U S WEST] provides to itself.

**RESPONSE:**

ELI is currently reviewing data for an analysis of orders placed with U S WEST for interconnection trunks in Arizona regarding provisioning intervals. ELI hasn't yet completed its final review. ELI's initial analysis indicates that U S WEST's average provisioning time is 62 calendar days. U S WEST possesses all such information and basic order data in the U S WEST EXACT and Wafa systems.

ELI lacks sufficient information for provisioning intervals and maintenance times U S WEST provides to itself at this time.

6) Access lines and switches

- a) The number of access lines [ELI] serves in Arizona.

**RESPONSE:**

See response to question no. 5 above.

- b) The number, type, and location of [ELI's] switches in Arizona.

**RESPONSE:**

See response to question no. 5 above.

- c) The number and types of customers for which [ELI's] services are available.

**RESPONSE:**

See response to question no. 5 above.

- d) The amount of revenues that [ELI] derived from Arizona in the most recent year, broken down by basic residential service, basic business service, intraLATA toll, access charges, and other services.

**RESPONSE:**

**ELI's responses to question 6(d) are deemed confidential and proprietary. U S WEST has not executed an appropriate confidentiality and protective agreement in this § 271 case. ELI will not provide U S WEST with its responses to this question until an appropriate confidentiality and protective agreement is in place.**

- 7) Any reports, studies, or analyses available, and within the past year, that contain data on market shares of U S WEST and local telephone service competitors, or compare volumes of traffic, revenues or facilities of the BOC and local competitors. Also, any evaluation of the likely entry, success or rate of growth of competitors or potential competitors. Proprietary information provided pursuant to this paragraph will be available pursuant to Protective Agreement, and will be disclosed only to the Commission, unless the parties can demonstrate compelling need for disclosure of information. Parties that file information designated as proprietary information are required to file a notice that generally describes what information is considered proprietary.

**RESPONSE:**

ELI has no such reports, studies or analysis and does not track this information.

- 8) A description of all complaints involving Arizona made to U S WEST, to the Arizona Corporation Commission, to the FCC, or other governmental authorities by [ELI and/or entities] that have requested and/or received interconnection.

**RESPONSE:**

ELI interprets this data request as focusing on formal complaints filed against U S WEST by ELI in Arizona. ELI has filed one formal complaint against U S WEST with the ACC. In Docket No. T-01051B-0689, ELI filed a complaint against U S WEST for failure to abide by its reciprocal compensation obligations in U S WEST's interconnection agreement with ELI. Both parties recently filed dispositive motions currently pending before the Commission. As a party to that proceeding, U S WEST possesses appropriate documents on that issue. See Complaint and related pleadings in *In the Matter of the Petition of Electric Lightwave, Inc. to Establish an Interconnection Agreement with U.S. WEST Communications*, Docket No. T-01051B-98-0689.

ELI does not record informal complaints to U S WEST. But ELI has almost daily contacts with a U S WEST account manager dedicated to solving provisioning and facilities issues, problems and complaints regarding ELI orders.

- 9) Information demonstrating that authorization of U S WEST to provide interLATA service will be carried out in accordance with Section 272 as required by Section 271(d)(3)(B).

**RESPONSE:**

Not applicable to ELI.

- 10) All evidence supporting U S WEST's assertion that U S WEST provision of interLATA service will be in the public interest as required under Section 271(d)(3)(C).

**RESPONSE:**

Other than U S WEST's Section 271 filing in this docket, ELI possesses no information or documents in response to question no. 10.

#739060 v1 - ELI Responses

**ELI RESPONSES TO U S WEST**  
**(Attachments A and B from Decision No. 60218)**

**ATTACHMENT B**  
**Information Directly Relevant to the Competitive Checklist**

- 1) Interconnection in accordance with requirements of Sections 251(c)(2) and 252(d)(1).

- a) What points are available [to ELI] for interconnection with U S WEST?

**RESPONSE:**

The interconnection agreement between U S WEST and ELI in Arizona specifies that interconnection shall be available at mid-span meet Points of Interface (POI), collocation (physical or virtual) and through the provision of an entrance facility.

- b) Do these points include physical collocation, virtual collocation or another form of collocation?

**RESPONSE:**

ELI is collocated in U S WEST offices in Arizona with both physical and virtual collocation arrangements.

- c) What is the pricing methodology used for interconnection?

**RESPONSE:**

U S WEST is in the best position to answer this question and possesses all the necessary information regarding U S WEST's pricing methodology for interconnection. Without waiving any such reservations, ELI responds as follows. The prices relied upon by U S WEST in its Exhibit A for interconnection and collocation are a mixture of prices based upon rates set by the Arizona Commission and rates developed by U S WEST. Some of the rates in U S WEST's Exhibit A are the rates set by the Arizona Commission cost proceeding #U-3021-96-448, Decision No. 60635. Other rates, such as the ICDF rates, power rates, cable racking rates, etc. were developed by U S WEST without the benefit of input from other parties. U S WEST implies that some of the rates which they developed are not TELRIC based. Also, U S WEST denotes many of the rates as "ICB" which apparently means that the cost basis is impossible to determine.

- d) [Has ELI] interconnected with U S WEST?

**RESPONSE:**

Yes. To date ELI has interconnected with U S WEST at end office switches and local tandem switches for EAS traffic and at U S WEST access tandem switches for toll calls.

- e) At what U S WEST switching equipment (central office, end office, tandem, etc.) [has ELI] interconnected and by what means for each office?

**RESPONSE:**

ELI's responses to question 1(e) are deemed confidential and proprietary. U S WEST has not executed an appropriate confidentiality and protective agreement in this § 271 case. ELI will not provide U S WEST with its responses to this question until an appropriate confidentiality and protective agreement is in place.

- 2) Nondiscriminatory access to network elements in accordance with the requirements of sections 251(c)(3) and 252(d)(1).

- a) What network elements are offered [to ELI] by U S WEST?

**RESPONSE:**

The ELI interconnection agreement with U S WEST in Arizona prescribes the following:

"USWC agrees to provide the following unbundled network elements which are addressed in more detail in later sections of this agreement: 1) local loop, 2) local and tandem switches (including all vertical switching features provided by such switches, 3) interoffice transmission facilities, 4) network interface devices, 5) signaling and call-related database facilities, 6) operations support systems functions, and 7) operator and directory assistance facilities."

See ELI/U S WEST Interconnection Agreement, ¶ XXXI(A)(1).  
U S WEST may not provide all of these unbundled elements given language in the U S WEST Arizona SGAT which states that U S WEST may discontinue providing some of these elements if the U S WEST interpretation of expected FCC rules so allows.

- b) What is the pricing methodology used for the elements?

**RESPONSE:**

See response to 1(c) above.

- c) What elements have been requested by [ELI] seeking interconnection and access?

**RESPONSE:**

ELI has requested access to all of the unbundled elements defined by the FCC through its interconnection agreement with U S WEST in Arizona.

- d) What is the record concerning U S WEST's responsiveness to such requests?

**RESPONSE:**

U S WEST has not made the ordering and provisioning of unbundled elements easy. The IMA interface was found unacceptable by ELI for ordering resale, let alone unbundled elements. See attached testimony of Mr. Wood.

- e) What elements have been actually sold to [ELI]?

**RESPONSE:**

None as of this date in Arizona.

- f) [Has ELI] requested elements?

**RESPONSE:**

Not in Arizona as of this date

- g) [Has ELI] actually purchased the elements?

**RESPONSE:**

Not in Arizona as of this date.

- h) [Is ELI] actually providing service utilizing, in part, elements purchased from U S WEST?

**RESPONSE:**

Not in Arizona as of this date.

- 3) Nondiscriminatory access to the poles, ducts, conduits and rights-of-way owned or controlled by the Bell operating company at just and reasonable rates in accordance with the requirements of Section 224.

- a) Do U S WEST and [ELI] have the same access to poles, ducts and rights-of-way?

**RESPONSE:**

U S WEST possesses the necessary information regarding a comparison of U S WEST's and ELI's access to poles, ducts, and rights-of-way. Without waiving such reservations, ELI responds as follows. The ELI interconnection agreement with U S WEST in Arizona gives ELI and U S WEST some reciprocal rights to access poles, ducts, conduits and rights-of-way. As to whether ELI's access is the same as U S WEST's, ELI had substantial difficulties obtaining access from U S WEST and, therefore, abandoned its efforts. As a result, ELI doesn't believe it has the same access as U S WEST.

- b) What price does U S WEST charge [ELI] and what is the pricing methodology for access to poles, ducts and rights-of-way?

**RESPONSE:**

See answer to 1(c) above. The six elements in U S WEST's Exhibit A for access to poles, ducts, and rights of way either have no cost support or are ICB.

- c) Concerning operation in Arizona, does U S WEST believe that they have a different legal status concerning access to rights of way than a competitive provider? If so, what is the justification for any such difference?

**RESPONSE:**

ELI does not believe that this question can be re-phrased logically to apply to ELI.

- 4) Local loop transmission from the central office to the customer's premises, unbundled from local switching or other services.
- a) What network elements are offered [to ELI] by U S WEST?

**RESPONSE:**

U S WEST is required to provide all types of unbundled loops to ELI in Arizona through ELI's interconnection contract.

- b) What is the pricing methodology used for the elements?

**RESPONSE:**

See answer to 1(c) above. Most of the rates in U S WEST Exhibit A appear to be based on Commission Decision No. 60635.

- c) What elements have been requested by [ELI] seeking interconnection and access?

**RESPONSE:**

ELI has requested access to all types of unbundled loops through its interconnection agreement in Arizona. ELI has not yet ordered unbundled loops from U S WEST in Arizona.

- d) What is the record concerning U S WEST's responsiveness to such requests?

**RESPONSE:**

U S WEST has made the ordering and provisioning of unbundled loops difficult. ELI has been forced to order special access circuits instead of unbundled loops to reach many of its customers in Arizona. These circuits are more expensive for ELI, as they are purchased out of the access tariffs. ELI will begin ordering unbundled loops in the near future. ELI also expects to convert circuits purchased as special access into unbundled loops.

- e) What elements have actually been sold to [ELI]?

**RESPONSE:**

None in Arizona as of this date.

- f) [Has ELI] requested elements?

**RESPONSE:**

ELI has requested the ability to order unbundled loops from U S WEST in contract language. ELI has not yet ordered unbundled loops from U S WEST.

- g) [Has ELI] actually purchased the elements?

**RESPONSE:**

Not in Arizona as of this date.

- h) [Is ELI] actually providing service utilizing, in part, elements purchased from U S WEST?

**RESPONSE:**

Not in Arizona as of this date..

- 5) Local transport from the trunk side of a wireline local exchange carrier switch unbundled from switching or other services.

- a) What network elements are offered [to ELI] by U S WEST?

**RESPONSE:**

U S WEST is obligated to provide unbundled transport to ELI through the interconnection agreement in Arizona.

- b) What is the pricing methodology used for the elements?

**RESPONSE:**

See answer to 1(c) above. The rates U S WEST presents in Section 6, Unbundled Dedicated Interoffice Transport, of U S WEST's Exhibit A appear to be a mixture of Commission approved rates, unverified rates and rates listed as ICB.

- c) What elements have been requested by [ELI] seeking interconnection and access?

**RESPONSE:**

ELI has requested, through its interconnection agreement in Arizona, that U S WEST provide unbundled transport in Arizona.

- d) What is the record concerning U S WEST's responsiveness to such requests?

**RESPONSE:**

U S WEST has made the ordering or provisioning of unbundled transport difficult. 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

- e) What elements have actually been sold to [ELI] seeking interconnection and access?

**RESPONSE:**

None in Arizona as of this date.

- f) [Has ELI] requested elements?

**RESPONSE:**

ELI has not yet ordered unbundled transport from U S WEST in Arizona.

- g) [Has ELI] actually purchased the elements?

**RESPONSE:**

Not in Arizona as of this date.

- h) [Is ELI] actually providing service utilizing, in part, elements purchased from U S WEST?

**RESPONSE:**

Not in Arizona as of this date.

- 6) Local switching unbundled from transport, local loop transmission, or other services.

- a) What network elements are offered [to ELI] by U S WEST?

**RESPONSE:**

U S WEST is obligated, through the interconnection agreement, to provide unbundled switching to ELI in Arizona.

- b) What is the pricing methodology used for the elements?

**RESPONSE:**

See answer to 1(c) above.

- c) What elements have been requested by [ELI] seeking interconnection and access?

**RESPONSE:**

ELI has requested the availability of unbundled switching through its interconnection agreement in Arizona.

- d) What is the record concerning U S WEST's responsiveness to such requests?

**RESPONSE:**

U S WEST has not offered to provide combinations of elements. Unbundled switching, by itself, is only an attractive unbundled element in certain instances. One of the most desirable uses of unbundled switching is

in combination with unbundled loops and shared transport. In the past, U S WEST has not offered this combination, or it has done so only through tortuous provisioning configurations. U S WEST's current SGAT offers unbundled local switching and shared transport at high rates which make unbundled switching unattractive.

- e) What elements have actually been sold to [ELI] seeking interconnection and access?

**RESPONSE:**

None in Arizona at this time.

- f) [Has ELI] requested elements?

**RESPONSE:**

Not in Arizona as of this date.

- g) [Has ELI] actually purchased the elements?

**RESPONSE:**

Not in Arizona at this time.

- h) [Is ELI] actually providing service utilizing, in part, elements purchased from U S WEST?

**RESPONSE:**

Not in Arizona at this time.

- 7) Nondiscriminatory access to 911 and E911 services, directory assistance services to allow the other carrier's customers to obtain telephone numbers, and operator call completion services.

(I) 911 and E911 services.

- a) Does U S WEST offer 911 or E911 services to new customers/providers?

**RESPONSE:**

U S WEST offers 911/E911 service for CLEC resale customers and connection to the E911 Selective Router for CLEC switches.

- b) [Has ELI] requested to purchase 911 and/or E911 services from U S WEST?

**RESPONSE:**

ELI has requested access to the U S WEST E911 selective router and trunking to that router.

- c) [Has ELI] purchased 911 or E911 service from U S WEST?

**RESPONSE:**

ELI is interconnecting to the U S WEST selective router for the purpose of interconnecting E911 calls.

- d) What are the prices and pricing methodology for 911 and E911 services?

**RESPONSE:**

See answer to 1(c) above. As stated in § 15.0 of U S WEST's Exhibit A, there is no charge for 911/E911 services.

(II) Directory assistance services.

- a) [Has ELI] requested to purchase directory assistance services from U S WEST?

**RESPONSE:**

ELI has requested the ability to use U S WEST directory assistance through its interconnection agreement.

- b) [Has ELI] purchased directory assistance services from U S WEST?

**RESPONSE:**

Not in Arizona at this time.

- c) What are the prices and pricing methodology for directory assistance services?

**RESPONSE:**

See answer to 1(c) above. The Commission established rate of \$0.28 per call for Regional Directory Assistance is used by U S WEST. Directory assistance service is available for resale at a discount of 18%.

(III) Operator services.

- a) [Has ELI] requested to purchase operator call completion services from U S WEST?

**RESPONSE:**

ELI has requested the ability to use U S WEST operator call completion services through its interconnection agreement with U S WEST.

- b) [Has ELI] purchased operator call completion services from U S WEST?

**RESPONSE:**

Not in Arizona at this time.

- c) What are the prices and pricing methodology for operator call completion services?

**RESPONSE:**

See answer to 1(c) above. U S WEST's SGAT does not list specific operator service rates. Rate elements for call related data bases are in general listed as ICB. Operator call completion services are listed for resale at the discount rate of 18%.

- 8) White pages directory listings for customers of the other carrier's telephone exchange service.

- a) [Has ELI] requested to include [its] customers in the listings of U S WEST?

**RESPONSE:**

Yes.

- b) [Are ELI's] customers included in the listings of U S WEST?

**RESPONSE:**

Yes.

- c) [Has ELI] chosen not to utilize inclusion of [its] customers in U S WEST's white pages listings?

**RESPONSE:**

No.

- 9) Until the date by which telecommunications numbering administration guidelines, plan, or rules are established, non-discriminatory access to telephone numbers for assignment to the other carrier's telephone exchange service customers. After that date, compliance with such guidelines, plan, or rules.

- a) Who is the number administrator for Arizona?

**RESPONSE:**

Lockheed Martin IMS.

- b) If U S WEST is the number administrator for Arizona, is there a date certain by which it will no longer perform that function?

**RESPONSE:**

Not applicable.

- 10) Nondiscriminatory access to databases and associated signaling necessary for call routing and completion.

- a) [Has ELI] requested to purchase such database and signaling services from U S WEST?

**RESPONSE:**

ELI has requested the ability to access U S WEST signaling for the interchange of traffic. ELI has also requested the ability to access call related databases. ELI has also requested the ability to purchase unbundled signaling from U S WEST through its interconnection agreement.

- b) [Has ELI] purchased such database and signaling services from U S WEST?

**RESPONSE:**

ELI uses U S WEST call related databases to aid in proper call disposition. ELI interconnects with the U S WEST signaling network to interchange traffic. ELI does not lease unbundled signaling from U S WEST.

- c) What are the prices and pricing methodology for such database and signaling services?

**RESPONSE:**

See answer to 1(c) above.

- 11) Until the date by which the Commission issues regulations pursuant to Section 251 to require number portability, interim telecommunications number portability through remote call forwarding, direct inward dialing trunks, or other comparable arrangements, with as little impairment of functioning, quality, reliability and convenience as possible, after that date, full compliance with such regulations.

- a) Is number portability being provided [to ELI] on an interim or full compliance basis?

**RESPONSE:**

U S WEST is providing LNP in most offices in Arizona.

- b) If it is on an interim basis, what are the characteristics of the interim system and when will full number portability be implemented?

**RESPONSE:**

Full number portability capability (LNP) has been implemented for most lines in Arizona.

- c) Is U S WEST providing carrier, geographic or service number portability or any combination of the three [to ELI]?

**RESPONSE:**

U S WEST currently provides only carrier number portability to ELI.

- d) What is the pricing methodology used to determine charges for number portability?

**RESPONSE:**

See answer to 1(c) above. U S WEST uses Commission approved rates for interim number portability except for Out-of-Hours cutovers which were not included in Decision No. 60635. For Long Term Number Portability, U S WEST uses FCC tariff rates.

- 12) Nondiscriminatory access to such services or information as are necessary to allow the requesting carrier to implement local dialing parity in accordance with the requirements of Section 251(b)(3).

- a) Is U S WEST providing dialing parity [to ELI] for both local and intraLATA toll service?

**RESPONSE:**

Yes.

- b) If not, is U S WEST capable of providing such parity and will it provide it prior to the time when it offers interLATA service or at the time that it offers interLATA service?

**RESPONSE:**

Not applicable.

- c) Does [ELI] have any ACC, state court, federal court, FCC, or legislative action pending related to the provision of intraLATA and local dialing parity?

**RESPONSE:**

No.

- d) To what percentage of its customers will U S WEST provide intraLATA dialing parity, prior to being released from its in-region interLATA restrictions?

**RESPONSE:**

Not applicable to ELI.

- 13) Reciprocal compensation arrangements in accordance with the requirements of Section 252(d)(2).

- a) What reciprocal compensation arrangements does U S WEST have in Arizona with [ELI]?

**RESPONSE:**

U S WEST's interconnection agreement with ELI specifies Bill-and-Keep until traffic is out of balance. At that time, reciprocal compensation would be used. Traffic has been out of balance for some time between ELI and U S WEST. U S WEST is refusing to abide by its contract obligations and has not paid ELI its rightful fees for the termination of U S WEST traffic in Arizona. See In the Matter of the Petition of Electric Lightwave, Inc. to Establish an Interconnection Agreement with U S WEST, ACC Docket No. T01051-B-98-0689, U S WEST is a party to that proceeding and possesses pertinent information and documents concerning ELI's reciprocal compensation complaints against U S WEST.

- b) What reciprocal compensation arrangements does U S WEST have in Arizona with other incumbent carriers?

**RESPONSE:**

Not applicable to ELI.

- c) Where interconnection is in place, how does traffic terminated on [ELI's] networks compare with traffic terminated on U S WEST's network? This

can be expressed as percentages, number of specific calls, minutes of use or other measure.

**RESPONSE:**

ELI's responses to question 13(c) are deemed confidential and proprietary. U S WEST has not executed an appropriate confidentiality and protective agreement in this § 271 case. ELI will not provide U S WEST with its responses to this question until an appropriate confidentiality and protective agreement is in place.

- 14) Telecommunications services are available for resale in accordance with the requirements of sections 251(c)(4) and 252(d)(3).
- a) Have all the services offered [to ELI] by U S WEST been made available for resale on the same terms previously offered?

**RESPONSE:**

U S WEST is obligated to provide all telecommunications services for resale.

- b) If not, which services have been withdrawn or changed in terms with respect to resale?

**RESPONSE:**

ELI does not have this information.

- c) What are the percentage discounts offered for resold services?
- i) The specific tariffed resale rates.

**RESPONSE:**

See ACC Consolidated Cost Proceedings, ACC Docket No. U-3021-96-448, Decision No. 60635. Basic residential service 12%. All other services 18%.

- ii) Negotiated rates by specific contract.

**RESPONSE:**

Basic residential service 12%. All other services 18%.

- d) What, if any, limitations does U S WEST impose on the resale of its services?

**RESPONSE:**

U S WEST will not resell services which it defines as non-telecommunications services. U S WEST will also not resell "unregulated" services. There may be disagreements as to which services are included in these categories. The U S WEST SGAT does not list services which are included in resale so it is not possible to determine the services that will be available for resale.

- e) Are there currently any formal disputes related to the pricing of services for resale?

**RESPONSE:**

ELI believes that the ACC's pricing decision has been appealed.

- f) Are there currently any formal disputes related to the services or the definition of services for resale?

**RESPONSE:**

ELI does not know of any at this time.

- g) [Has ELI] requested to purchase services from U S WEST at specific tariffed rates (not including negotiated agreements)?

**RESPONSE:**

ELI has been purchasing loops for local service from special access tariffs. These loops should have been leased as unbundled loops. The problems associated with the ordering process for unbundled loops, and the complexity involved, forced ELI for the sake of expediency to order the more expensive special access circuits. ELI expects to begin ordering unbundled loops instead of special access in the near future and will convert existing special access circuits to unbundled loops.

- h) [Is ELI] currently purchasing services from U S WEST at specific tariffed rates (not including negotiated agreements)?

**RESPONSE:**

See answer to 14(g) above.

- i) Are any negotiations pending for the purchase of services for resale?

**RESPONSE:**

Not at this time.

- j) [Does ELI] currently purchase services from U S WEST pursuant to a negotiated agreement?

**RESPONSE:**

ELI has purchased resale services from U S WEST in the past, but ELI is not purchasing such services at this time.

- k) How much revenue does the resale of services generate for [ELI]?

**RESPONSE:**

None.

#739065 v1 - ELI Responses

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May 18, 1999

VIA FACSIMILE AND REGULAR MAIL

Charles W. Steese, Esq.  
U S WEST, Inc.  
1801 California Street  
Suite 5100  
Denver, Colorado 80202

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 responds to U S WEST's objections to ELI's first set of data requests. I outline ELI's problems and concerns with U S WEST's objections and responses. This letter is intended as an initial outline for a "meet-and-confer" session. On that note, please let me know when you are available later this week to conduct a meet-and-confer session on these discovery requests.

In response to ELI Data Request No. 1, U S WEST objects "because the words 'means for' render the first sentence of the question vague and ambiguous." ELI does not agree with that position. Even so, ELI offers the following change to that data request to alleviate your objection:

Please provide a detailed explanation with diagrams of the cable vaults, fiber splices, fiber distribution panels, and other fiber termination "equipment when CLEC trunks or fibers are brought" into a U S WEST building or ELI is collocating. Show in the diagrams the entire path the CLEC fiber will take and all equipment or terminations it must encounter up to the collocation cage. Show how U S WEST fiber is treated when brought into the same type of building.

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That change should correct U S WEST's objection.

With respect to Data Request No. 2, ELI requests that U S WEST provide typical diagrams that clearly show all required equipment, frames, connection points, etc. That request certainly is not unreasonable nor unduly burdensome. ELI requests that U S WEST make sure its responses meet that demand.

On Data Request No. 3, ELI needs to know which elements are involved, how much/many of each element is used, and under what circumstances the elements are used in these configurations. U S WEST's citation to the cost docket is inadequate because the docket does not show how U S WEST will apply costs to particular configurations. Further, the four examples cited in request by ELI cannot possibly be burdensome. The question focuses on four specific configurations and U S WEST is obligated to answer those requests. All in all, this request is relevant and reasonable because these requests focus on interconnection and collocation issues.

With respect to ELI Data Requests Nos. 4, 7 and 14, U S WEST provided no objection, so I assume U S WEST fully and completely answered those questions.

On ELI Data Request No. 5, U S WEST completely failed to answer the question. U S WEST's "relevance" objection is inappropriate. ELI needs to test whether or not there has been discrimination in interconnection trunking by U S WEST. ELI Data Request No. 5 bears on that issue because LD trunking is similar in nature. ELI is entitled to full and complete answers from U S WEST on these issues.

On ELI Data Request No. 6, ELI does not seek information outside of Arizona. Even so, U S WEST is required to provide any and all requested information concerning "independent local exchange companies" that operate in Arizona. U S WEST must answer the question for any and all independent companies operating in Arizona. Further, subparagraph (F) is directly relevant to this proceeding because ELI is entitled to investigate potential discrimination now or in the past two years.

On Data Request No. 8, U S WEST's objections are not well founded. ELI asks for data at the DS1 level. There are not thousands of trunks in the DS1 level; instead, there are dozens of trunks with approximately two hundred or so orders. ELI's request for U S WEST to produce that information is not burdensome nor unreasonable by any stretch of the imagination. If U S WEST still maintains that it is too burdensome, then U S WEST should give ELI access to U S WEST's EXACT and WFA systems and show ELI how to pull data and perform studies. Also, U S WEST should not produce information at the DS0 level or with private line orders.

U S WEST's objection to Data Request No. 9 is likewise inappropriate. Again, U S WEST simply provides no information. Data Request No. 9 goes to the issue of whether

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U S WEST builds to CLEC forecasts. Dollar amounts help determine how much capacity was built and other similar issues. ELI clearly is entitled to that information.

The same holds true for ELI Data Request No. 10. U S WEST claims that request is irrelevant and unduly burdensome. U S WEST is wrong. ELI needs to determine if U S WEST prepared its network for interconnection. As such, ELI Data Request No. 10 clearly is relevant to this proceeding.

On ELI Data Request No. 11, ELI is not seeking information outside of Arizona. As such, the request can be amended as follows:

Provide a summary of switching and trunking increases currently planned and approved for installation during 1999/2000 in Arizona.

On Data Request No. 12, it appears that U S WEST intends to fully answer the question. On that note, U S WEST must provide data excluding private line data. ELI requests that U S WEST indicate whether Mr. Williams' results include OP-4 data with private line, special access or HICAP included in his results.

Finally, on Data Request No. 13, U S WEST imposes a blanket objection and provides no response whatsoever. That position is unfounded. ELI Data Request No. 13 is relevant because ELI needs such information to determine whether U S WEST has discriminated in interconnection provisioning. ELI Data Request No. 13 clearly is relevant to this proceeding.

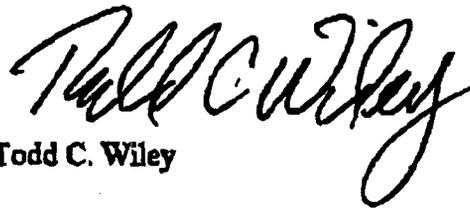
As set forth above, U S WEST should amend its responses to ELI's data requests and submit the appropriate responses along with documents and materials. Again, I would like to schedule a meet-and-confer session on these issues later this week. Hopefully, U S WEST will comply with these requests, and ELI will not have to file any motions to compel.

Very truly yours,

GALLAGHER & KENNEDY, P.A.

By:

Todd C. Wiley



TCW:mhh  
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