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BEFORE THE

CARL J. KUNASEK  
Chairman  
JIM IRVIN  
Commissioner  
TONY WEST  
Commissioner

Arizona Corporation Commission

DOCKETED

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IN THE MATTER OF U S WEST	)	Docket No. T-0000B-97-0238
COMMUNICATIONS, INC'S	)	SPRINT'S
COMPLIANCE WITH §271 OF THE	)	RESPONSE TO U S
TELECOMMUNICATIONS ACT OF	)	WEST'S MOTION TO
1996	)	COMPEL

Sprint Communications Company L.P. (Sprint) hereby responds to "U S WEST's Motion to Compel Responses From Sprint to Data Requests" ("USW Motion" or "Motion"), received May 19, 1999, as follows:

**Introduction.** USW's Motion concerns Sprint's responses to the Commission questions in Attachments A and B. The Hearing Examiners ordered the CLEC intervenors in this matter to respond to such questions in lieu of the data requests that USW had previously propounded. However, it is evident from the Motion that USW is attempting to distort the questions in Attachments A & B to achieve the same goals as USW sought with its original DRs. Having been stymied once, USW is again attempting to force competitors to provide extremely confidential business plans or withdraw from participation in this matter. Having been unsuccessful in its prior fishing expedition, USW is attempting to widen the specific Attachment A & B questions into a broad net to capture irrelevant information. USW's attempts should again be rejected.

As discussed below, Sprint has responded fully to any reasonable interpretation of the questions and should not be required to respond further. The hearing examiners have already ruled that CLECs only need to respond to the Attachment A & B questions and not the broad data requests previously submitted by USW. USW's unreasonable

attempt to read the A & B questions to seek the same information should therefore be denied. USW's interpretations of the questions are not only clearly beyond the plain reading of the questions but would also expand the questions to seek information irrelevant to the issues in this proceeding. Consequently, USW's motion should be denied.

**Attachment A Questions.**

Question 3. In response to the plain question "If the competitor is not providing any of these services, does it plan to. When?" Sprint responded that it has not commenced provision of service and that "Sprint anticipates offering local exchange services and exchange access on a facilities basis sometime within the next eighteen months and plans to eventually offer services to residential customers. Specific timetables are proprietary and subject to change."

Although Sprint obviously responded fully to the question, USW demands that Sprint provide details and documents of its plans for entering the local market in Arizona. USW argues that it "is entitled to know the details of Sprint's plans" - even though the question does not ask for details of any kind. USW is thus renewing its efforts to obtain the competitively valuable and highly proprietary business plans of its competitors, knowing that CLECs were forced to severely limit their participation in the Nebraska §271 case rather than disclose the information.<sup>1</sup> As Sprint and other CLEC intervenors argued before in this proceeding, competitors' future plans are simply not relevant to the issues in this matter. See e.g. "Sprint's Response to U S WEST's Motion to Compel" (March 25, 1999), and "AT&T and TCG's Response to U S West's Motion to Compel" (March 26, 1999). For the sake of brevity, Sprint will only briefly

summarize those arguments here and would rely on the full arguments and citations contained in those prior responses.

For purposes of examining the extent of competition in the local market as part of a Track A §271 proceeding, it is clear that the FCC focus is on the current status of competition, not on projections or plans for the future. Thus, in the Ameritech Michigan §271 order, the FCC found that the RBOC needed to demonstrate the existence of competing providers as of the day the §271 application is filed. Further, and most tellingly, the FCC found that Bell South did not meet the Track A §271 requirements in Louisiana because the only wireline carrier with which Bell South had an interconnection agreement did not presently provide residential service. USW is simply wrong in stating that Sprint's intentions are relevant to the question of the extent of competition.

USW also cannot justify its demands for detailed future CLEC plans by pointing the issue of "reasonably foreseeable" demands for access to the checklist items. The Hearing Examiners have just recently deferred USW's Motion for Reconsideration on the prior DRs, Nos. 32 and 33, which directly ask for CLECs demand forecasts. Since this question only involves the "foreseeable demand" question indirectly, there is clearly no basis to require further response at this time. Furthermore, as argued previously, USW is incorrect in its continued assertion that CLEC plans are relevant to the "reasonably foreseeable" demand issue. As the Montana and New Mexico state commissions have recognized, a CLEC's forecast of demands is irrelevant to USW's §271 obligation to demonstrate the ability to furnish services and items in the "quantities

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<sup>1</sup> It is instructive to note that USW did not feel strongly enough about this information to include it in USW's April 20<sup>th</sup> Motion to Reconsider Procedural Order.

that competitors may *reasonably demand*.<sup>2</sup> That question of reasonable demand is clearly an objective one that cannot depend on the future (and constantly changing) forecasts and plans of individual CLECs.

Finally, USW again attempts to justify its demand for highly sensitive CLEC business plans by pointing to its self-created “public interest” argument. It suggests that Sprint’s plans are needed to show that USW’s entry into the interLATA market will either allow USW to provide “one stop shopping” where Sprint does not serve or will spur CLECs to enter markets in the face of competition from USW. Such arguments are, of course, irrelevant to the central issues in this case of whether USW has opened its local markets to competition by fully complying with the competitive checklist. In any event, USW is free to make these arguments without having access to Sprint’s highly confidential business plans. Any possible relevance that Sprint’s plans have to that argument are outweighed by the prejudice that would result from ordering disclosure. At the very least, the examiners should defer requiring this information unless and until the CLECs contest USW’s arguments in this regard.

Question 5. USW misstates the facts in stating that Sprint “does not respond to this Data Request at all.” This question clearly asks about the services and facilities that CLECs are presently providing and using. Sprint simply referred to its response to Question 3 that Sprint has not commenced provision of service in Arizona yet. Instead of recognizing the obvious fact that Sprint did answer the question, USW attempts to change the question to ask for future intentions and plans and to ask for documents about those future plans. For the reasons discussed above, USW is not entitled to such information.

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<sup>2</sup> See the Montana decision attached as Exhibit B to AT&T and TCG Response, *Ibid*, at p. 2..

Question 6. Sprint did not respond to this question since it clearly was aimed specifically at USW. Except for requesting intraLATA revenues, Question 6 asked for the same information with regard to USW that Question 5 asked with regard to CLECs. And the amount of CLEC intraLATA revenue is hardly of significance to the issues in this matter. Sprint's interpretation that this Question does not pertain to CLECs was therefore reasonable.

In any event, the primary dispute is apparently with regard to Sprint's intraLATA revenues. USW suggests that such information is relevant to establish that Sprint "has a ready market in which to offer local services when it enters Arizona" and that has no incentive to support USW's application. Again, it is hardly necessary for USW to acquire Sprint's confidential and proprietary information to make these arguments.

Question 8. This question asks about Arizona complaints filed by CLECs. USW's motion complains that Sprint did not provide any details or documentation about the complaint that Sprint references in its response. USW's motion with regard to this question is extremely surprising since USW did not request further responses from Sprint or even discuss this question during the "meet and confer" telephone call. More importantly, USW's harangue about "unsupported allegations" is completely off base since USW is fully aware of all the details of the Sprint complaint. Sprint's response referenced a Sprint formal complaint filed with the Arizona Corporation Commission against USW regarding collocation. The same complaint was referenced in USW answers to Attachments A & B. (Sprint's response corrected the erroneous date of the complaint contained in USW's answer.) Furthermore, USW not only filed an answer to the complaint but also recently filed a motion to dismiss the complaint. Sprint acquiesced in dismissing the complaint since it was moot. In view of these facts,

USW's diatribe about the lack of specific information concerning Sprint's complaint is truly astonishing. Indeed, it might appear that this portion of the Motion was brought simply to harass Sprint.

Questions 9 & 10. These questions ask for information demonstrating that USW will comply with §272 and evidence supporting USW's assertion that granting it §271 authority is in the public interest. Contrary to USW's characterization in its motion, Sprint did not assert that these questions "are not applicable to Sprint." Sprint simply stated that it did not have such information or evidence.

However, USW again wishes to change the questions to ask for information and documents about "any allegations" that USW will or will not comply with §272 or that its entry into interLATA market is or is not in the public interest. As noted in Sprint's response to USW's request for further information (Exhibit 2 to USW's motion), that request is not a fair reading of the questions but Sprint has indicated its position regarding the public interest in testimony in prior USW §271 cases in other states. Further, Sprint is developing any elaboration or changes in those positions and is developing positions on the §272 issue:

With regard to Questions 9 & 10), you suggested that the questions should be read to request information regarding U S WEST's *noncompliance*, as well as compliance, with §272 and evidence that U S WEST's provision of interLATA services would *not* be in the public interest, as well as in the public interest. I cannot agree that that is a fair reading of the Commission's questions. In any event, as indicated in Sprint responses to prior U S WEST data requests, Sprint's public interest concerns about U S WEST's entry into the interLATA market have been expressed in its testimony in prior U S WEST 271 cases in other states. Any changes to, or elaboration on, those concerns and any Sprint analysis of U S WEST §272 compliance would be considered "work product" at this time.

USW, however, argues that it should be provided with documents underlying the testimony in those prior §271 cases. Sprint would only note that USW has had opportunities to discover such documents in those prior cases.

### **Attachment B Questions.**

USW's Motion complains that Sprint has not provided any details or documentation concerning Sprint's views of USW's compliance with the §271 checklist items. With the exception of Question 9, (regarding number administration), USW seeks "[a]ny analyses, opinions, or investigations – indeed, any information at all" (USW Motion, at 8) regarding Sprint's views. USW is, of course, attempting to turn the specific questions in Attachment B into the broad discovery requests that USW previously sought and was denied. Attachment B asks specific questions about the Checklist items that are being provided by USW and requested by CLECs. Since Sprint has not made requests for these items (except for collocation), it has no direct information and experience concerning USW's provisioning of those items. Although Sprint could obviously have summarized what USW claims to be providing, that is clearly not the purpose of the questions. Sprint has consequently answered the questions and should not be required to submit any further responses.

Even if USW were entitled to rewrite the Attachment B questions as it wishes, its requested interpretation is clearly overly broad and burdensome in asking for "any information" about Sprint's views on USW's compliance with the checklist items. In response to USW's First Set of Data Requests, Sprint has identified some of the specific concerns it has with regard to USW's checklist compliance, based on what USW has stated is available. However, production of all documents and information that relate to those concerns would be a monumental undertaking that is not warranted.

The USW rewrite of these questions would also call for highly confidential or privileged information. In asking for all documents and information, USW is asking for information about the details of Sprint's business plans. As discussed previously, such

plans are extremely valuable to competitors and will not be provided by Sprint. Furthermore, Sprint is still evaluating USW's responses to discovery requests in formulating its specific positions regarding USW's checklist compliance and much of the information would be privileged as work product.<sup>3</sup>

IN CONCLUSION, USW's Motion to Compel should be denied as an unjustified attempt to rewrite the Commission's Attachment A & B questions into requests for information that are irrelevant or overly broad, or call for highly sensitive confidential or privileged information.

Respectfully submitted,

SPRINT COMMUNICATIONS COMPANY L.P.



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Certificate of Service

The undersigned hereby certifies that a copy of the foregoing was served by sending a copy thereof to the attached service list on this 25th day of May 1999.



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<sup>3</sup> Sprint would also note that it is commencing negotiations with USW regarding a new interconnection agreement and would consider the materials to be used for those negotiations as privileged.

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