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BEFORE THE ARIZONA CORPORATION COMMISSION

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CHAIRMAN  
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COMMISSIONER  
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COMMISSIONER

Docket No. T-00000A-97-0238

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

PRELIMINARY COMMENTS OF THE RESIDENTIAL UTILITY CONSUMER OFFICE

The Residential Utility Consumer Office ("RUCO") hereby files its preliminary statement of position regarding U S WEST Communications, Inc.'s request that the Arizona Corporation Commission ("Commission") find U S WEST to be in compliance with Section 271 of the Telecommunications Act of 1996.<sup>1</sup>

In order to demonstrate its compliance with Section 271,<sup>2</sup> U S WEST must show:

<sup>1</sup>47 U.S.C. § 271 (hereinafter, "Section 271")

<sup>2</sup>This description pertains to an application made pursuant to Section 271(c)(1)(A), commonly referred to as a "Track A" application. "Track B" (which involves reliance on a Statement of Generally Available Terms as the basis for "checklist" compliance) is available only to a Bell Operating company who can demonstrate that it has not received any bona fide requests to enter into an interconnection agreement. U S West has filed present application under "Track A." U S WEST Communications, Inc.'s Notice of Intent to File with FCC and Application for Verification of § 271(c) Compliance ("Application") at 2; U S WEST Supplemental Notice of Intent to File with FCC and Application for Verification of § 271(c) Compliance ("Supplemental Notice") at 11-12.

1 (1) that it "has entered into one or more binding agreements that have been  
2 approved under section 252 specifying the terms and conditions under which the  
3 Bell operating company is providing access and interconnection to its network  
4 facilities for the network facilities of one or more unaffiliated competing providers  
5 of telephone exchange service;"

6 (2) the unaffiliated competing provider(s) is offering telephone exchange service  
7 "either exclusively over their own telephone exchange service facilities or  
8 predominantly over their own telephone exchange service facilities in  
9 combination with the resale of the telecommunications services of another  
10 carrier"; and

11 (3) "such access and interconnection access and interconnection meets the  
12 requirements of [Section 271(c)(2)] subparagraph (B)," the so-called "competitive  
13 checklist."  
14

15  
16 In addition, before the Federal Communications Commission may grant U S WEST's  
17 application, it must find that the "requested authorization will be carried out in accordance with  
18 the requirements of section 272" (safeguards on affiliate transactions) and that "the requested  
19 authorization is consistent with the public interest, convenience, and necessity."<sup>3</sup> The FCC  
20 has specifically requested state commissions to develop a record on the status of competition  
21 within their respective jurisdictions, as this information is highly relevant to the public interest  
22 determination under Section 271(d).

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23 <sup>3</sup>47 U.S.C. § 271(d)(3).  
24

1 U S WEST alone has the burden of proof to demonstrate compliance with the checklist.<sup>4</sup>  
2 It is not entitled to rely on promises of future compliance to carry this burden,<sup>5</sup> nor may it shift  
3 the burden to other parties. In particular, it is critical that U S WEST supply meaningful and  
4 appropriately documented performance measures for evaluating its non-discriminatory and  
5 adequate provisioning of required items. The FCC has articulated specific evidentiary  
6 standards for the checklist items.

7 It is also important that U S WEST's application not be a "moving target." The  
8 Commission previously directed U S WEST that it must prepare and submit its complete  
9 application before a review of the Company's application would commence. The FCC has also  
10 ruled that a Bell Operating company filing a Section 271 application "must be complete on the  
11 day it is filed" and that the BOC may not supplement its evidence or arguments after that time,  
12 unless it is directly responsive to arguments or evidence raised by other parties.<sup>6</sup>

13 In its filing, U S WEST claims that it has met the requirements of Track A, has fully  
14 implemented the competitive checklist, and is prepared to operate in accordance with Section  
15 272. U S WEST also claims that the Company's provision of interLATA service is in the "public  
16 interest." Based on its analysis on U S WEST's application, the supporting exhibits, and the  
17 responses to interrogatories received and analyzed to date, RUCO cannot agree that U S  
18 WEST has demonstrated full compliance with the competitive checklist or that U S WEST has

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19 <sup>4</sup>*Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as*  
20 *amended, to Provide In-region, InterLATA Services in Michigan* ("2nd Michigan Application"), CC Docket No. 97-  
21 137, *Memorandum Opinion and Order*, FCC 97-298, released August 19, 1997, at para. 43.

22 <sup>5</sup>*Id.* at paras. 44 and 55.

23 <sup>6</sup>*Second Ameritech Application, Order* at para. 51.

1 shown that competition in the local exchange and exchange access market is sufficiently  
2 established to ensure that the public interest would be served by authorizing the Company to  
3 offer interLATA telecommunications services at this time.

4 Based on a preliminary analysis of U S WEST's filing, RUCO finds that U S WEST has  
5 failed to demonstrate compliance with the competitive checklist in several major respects:

6 **Operations Support Systems:** The evidence suggests that U S WEST's  
7 arrangements for competitive local exchange carriers' ("CLECs") access to its  
8 operations support systems ("OSS") are discriminatory and that they are not, at present,  
9 sufficiently developed to satisfy checklist items (ii) and (xiv) of the competitive checklist.  
10 U S WEST must demonstrate both the adequacy of OSS access provided to CLECs<sup>7</sup>  
11 and that "the OSS functions that the BOC has deployed are operationally ready, as a  
12 practical matter."<sup>8</sup> Deficiencies in OSS have been a significant factor in the FCC's  
13 rejection of Section 271 applications filed previously at the federal level, as well as the  
14 decisions of numerous state PUCs to withhold their approval of such applications.<sup>9</sup>

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15 <sup>7</sup> Specifically, the BOC must demonstrate "that sufficient access to each of the necessary OSS functions  
16 and whether the BOC is adequately assisting competing carriers to understand how to implement and use all of  
17 the OSS functions available to them." *Application by BellSouth Corp., BellSouth Telecommunications, Inc., and*  
18 *BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in South Carolina*, CC Docket No.  
19 97-208, FCC 97-418 (December 24, 1997), at para. 96.

20 <sup>8</sup>*Id.*

21  
22 <sup>9</sup>U S WEST suggests that the FCC's decision to include access to OSS as a "network element" is clouded  
23 by the recent Supreme Court decision in *AT&T Corp. et al. v. Iowa Utilities Board, et al.*, 1999 WL 245568 (S. Ct.,  
24 January 9, 1999). As U S WEST acknowledges, the Supreme Court upheld the FCC's decision to treat OSS as a  
UNE. However, U S WEST argues that the FCC may modify its OSS unbundling requirement based on the more  
stringent interpretation of the "necessary and impair" standard in Section 251. U S WEST Supplemental Notice  
at 23. Given the extraordinary emphasis that the FCC has placed on OSS access in its prior Section 271 order;

1 In an earlier filing, RUCO identified the types of information necessary to evaluate U S  
2 WEST's OSS compliance.<sup>10</sup> RUCO hopes that the ongoing workshops, followed by  
3 third-party testing, will help to remedy the deficiencies with respect to OSS access for  
4 CLECs. RUCO will be re-evaluating its position regarding U S WEST's OSS  
5 compliance based on the evidence developed in the OSS collaborative process.

6 **Provision of required UNEs:** U S WEST has failed to demonstrate that it is providing  
7 particular unbundled network elements, including dedicated interoffice transport, shared  
8 interoffice transport, and local switching, in compliance with checklist items (v) and (vi).

9  
10 Furthermore, because of the uncertainty that presently exists over which functionalities  
11 an ILEC must provide as unbundled network elements, it is difficult (perhaps  
12 impossible) to evaluate whether U S WEST is in compliance with checklist item (ii)  
13 which requires "nondiscriminatory access to network elements in accordance with the  
14 requirements of sections 251(c)(3) and 252(d)(1)." Although the Company has agreed,  
15 for the present, to make available all UNEs required under the vacated Rule 319, U S  
16 WEST is relying on the uncertainty about which UNEs will eventually be required as a  
17 basis not to offer pre-existing UNE combinations, as required under FCC Rule 315(b).<sup>11</sup>  
18 The FCC is presently revisiting the Local Competition Rules vacated by the Supreme  
19 Court and will soon come up with revised rules intended to respond to the Court's

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20  
21 the Commission should review the Company's OSS compliance based on the current OSS unbundling  
22 requirement until such time that the requirement is changed.

22 <sup>10</sup> See RUCO's response to question #7. RUCO's Response to the June 8, 1999 Procedural Order. Filed  
23 June 22, 1999.

23 <sup>11</sup>Supplemental Notice at 23.

1 concerns. U S WEST's compliance needs to be judged in light of those revised UNE  
2 rules.<sup>12</sup>

3  
4 **Non-discriminatory access to emergency services:** U S WEST has not provided  
5 data sufficient to demonstrate that it is providing nondiscriminatory access to 911 and E-  
6 911 emergency services, as required by checklist item (vii).

7 While these are RUCO's primary areas of concern, based on its initial review of the evidence,  
8 RUCO reserves the right to comment in its testimony on other aspects of U S WEST's  
9 checklist compliance.

10 In addition to evidence of checklist compliance, U S WEST has also presented its case  
11 that, based on current competitive conditions in Arizona, the Company's provision of interLATA  
12 services at this time is in the public interest. However, the evidence suggests that despite  
13 limited inroads by competitors in niche segments of the Arizona market (particularly with  
14 respect to large businesses in major urban areas), competition in the local exchange and  
15 exchange access market in Arizona is slow developing. While the Company complains of a  
16 competitive disadvantage in not being able to bundle local and long distance services to  
17 customers, RUCO is concerned that, U S WEST's continued dominance in the local exchange  
18 market would permit the ILEC to quickly overwhelm its competitors, if it were permitted to re-  
19 enter the interLATA market at this highly tenuous stage in the development of local  
20 competition. If customers today do not have a choice of provider for bundled local and long  
21 distance service, it would directly conflict with the goals of the 1996 Telecommunications Act  
and the pro-competitive policies of this Commission and is not in the public interest.

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22  
23 <sup>12</sup>In the meantime, ILECs continue to challenge the FCC's TELRIC costing standard before the Eighth  
24 Circuit. To the extent that uncertainty persists about the basic UNE requirements and the pricing of such  
elements, it is difficult to judge U S WEST's compliance with Section 271.

1                                   **RESPONSE TO HEARING OFFICER'S QUESTIONS CONCERNING**  
2                                   **THE BIFURCATION OF THE PROCEEDING AND RELATED**  
3                                   **SCHEDULING MATTERS**

4 1.       Should non-OSS issues be bifurcated from OSS issues and proceed on a separate  
5 track? If so, why? If not, why not?

6                                   RUCO believes that the OSS issues should NOT be bifurcated from the non-OSS  
7 issues. Such a proposal would result in duplicative testimony in both proceedings and  
8 put enormous pressure on RUCO's limited resources.

9  
10                                  A bifurcated proceeding would result in duplicative testimony from many of the parties.  
11 Many OSS issues tie into several key checklist items. RUCO believes it will be very  
12 difficult to avoid repeating arguments if it has to "unbundle" its arguments. As a state  
13 agency with limited resources, RUCO feels that the duplicative testimony, attendance of  
14 consultants, etc., would put a tremendous amount of pressure on a party with limited  
15 funds. Therefore, a bifurcated hearing may seriously impact the ability of such parties  
16 to participate in these proceedings.

17                                  RUCO also has serious concerns about uncertainties related to U S West's revised  
18 SGAT in Nebraska and the pending FCC proceeding regarding UNE definitions. RUCO  
19 wholeheartedly concurs with Mr. Daniel Waggoner in his August 25, 1999 letter to Mr.  
20 Timothy Berg, that any revisions U S West intends to file to its Arizona SGAT be filed  
21 and considered before any hearing schedule is issued in this proceeding. Furthermore,  
22 RUCO concurs with Mr. Waggoner that testimony in this proceeding should not be filed  
23 until after the FCC takes action on the remand of UNE definitions from the Supreme  
24 Court. RUCO disagrees with U S West that the uncertainty regarding these items is

1 "perpetual." These developments have direct implications for the pending Arizona  
2 Section 271 application and must be considered.

3  
4 2. If non-OSS issues are bifurcated,

5 (a) What issues should be included in the non-OSS proceeding?

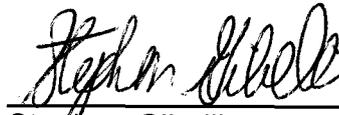
6  
7 If there is any bifurcation, it should put the controversial and complex issues first, not  
8 last, since without compliance on these, the rest of U S West's filing is irrelevant.  
9 Furthermore, U S West's listing of the checklist items and whether OSS would be  
10 implicated (Attachment One of the Procedural Order) is misleading. It treats each  
11 checklist item as having equal importance when, in reality, the provisioning of core  
12 UNEs (e.g. unbundled switching, unbundled loops) and resale, in which OSS access is  
13 a significant issue, are more critical to competition and less easily attained than certain  
14 other checklist items. Therefore, if non-OSS issues are bifurcated, only checklist items  
15 that have absolutely no OSS component should be included in the non-OSS proceeding  
16 because of the impossibility of separating OSS from UNE and resale provisioning.

17 (b) What schedule would you consider to be a reasonable schedule for the non-OSS  
18 proceeding?

19 RUCO reiterates that it is opposed to a bifurcated schedule. However, if one is adopted  
20 RUCO proposes the following changes to U S West's proposed procedural schedule as  
21 filed on August 27, 1999. Staff/Intervenor testimony should be filed on October 19,  
22 1999. This would give RUCO additional time to attempt to "unbundle" its testimony. In  
23 addition, RUCO believes that on December 1, 1999 Surrebuttal Testimony should be  
24

1 filed by Staff AND Intervenors. It is grossly unfair to not allow RUCO to pre-file its  
2 surrebuttal testimony. Furthermore, it will only delay and further complicate what would  
3 be an already complicated hearing, by having intervenors supply surrebuttal testimony  
4 at the hearing.

5  
6 RESPECTFULLY SUBMITTED this 7th day of September, 1999.

7 

8 \_\_\_\_\_  
9 Stephen Gibelli  
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Attachment One

U S WEST SECTION 271 PROCEEDING  
RUCO'S PROPOSED PROCEDURAL SCHEDULE ON NON-OSS  
RELATED ISSUES ONLY IF ISSUES ARE BIFURCATED

October 19, 1999

Staff/Intervenor Testimony

November 19, 1999

U S West Rebuttal Testimony

December 1, 1999

Staff/Intervenor Surrebuttal Testimony

December 7, 1999

Hearing