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BEFORE THE ARIZONA COMMUNICATIONS COMMISSION

CARL J. KUNASEK

Chairman

JAMES M. IRVIN

Commissioner

WILLIAM A. MUNDELL

Commissioner

Arizona Communication Commission

DUCKETED

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

DOCKET NO. T-00000B-97-0238

**ELI'S § 271 POSITION
STATEMENT**

In accordance with the Commission's July 22, 1999 procedural order, Electric Lightwave, Inc. submits the following preliminary § 271 position statement. This statement is intended to be a general outline of ELI's position on the fourteen checklist items under § 271 of the Telecommunications Act of 1996. ELI hasn't addressed the reasons why U S WEST's § 271 application is not in the "public interest" under the Telecommunications Act of 1996. At this stage of the proceedings, ELI's statement is preliminary and may be subject to change. It's not intended to be a substitute for ELI's testimony nor a complete and final presentation of ELI's § 271 case. ELI reserves its rights to raise any and all deficiencies in U S WEST's § 271 application in ELI's testimony and at hearing.

ELI also addresses the issues of bifurcation and scheduling following the August 27, 1999 scheduling conference and the Hearing Officer's August 27, 1999 procedural order. On those issues, it's imperative that the Commission establish a fair

and impartial case schedule that allows ELI (and other CLECs) an opportunity to respond to all issues raised in U S WEST's § 271 application and testimony.

Unfortunately, given U S WEST's track record in § 271 cases in other states, ELI anticipates that U S WEST will offer additional testimony, data and evidence in its rebuttal testimony or shortly before the deadline for CLEC/intervenor testimony.¹ If that happens, the Commission either should strike U S WEST's supplemental testimony and filings or adjust the case schedule to allow ELI (and other CLECs) a chance to analyze, rebut and propound discovery on any such supplemental issues, data and/or testimony.

I. ELI'S PRELIMINARY POSITION STATEMENT ON THE §271 COMPETITIVE CHECKLIST ITEMS

Checklist Item No. 1: Interconnection in accordance with the requirements of §§ 251(c)(2) and 252(d)(1). Under § 251(c)(2), U S WEST must provide interconnection for the transmission and routing of telephone exchange service at any technically feasible point in its network that is at least equal in quality to the interconnection provided to itself, any affiliate, subsidiary or any other party which U S WEST provides interconnection, and on rates, terms and conditions that are just, reasonable and nondiscriminatory, in accordance with the terms and conditions of the interconnection agreements and the requirements of §§ 251 and 252 of the Act. Under § 251(c)(6), U S WEST has the duty to provide physical collocation for equipment necessary for interconnection at the premises of the local exchange carrier on rates, terms and conditions that are just, reasonable and nondiscriminatory. U S WEST may provide virtual collocation if it demonstrates to the Arizona Corporation Commission that physical collocation is not practical for technical reasons or because of space limitations. Under § 252(d)(1), rates for interconnection shall be 1) based on cost (determined without reference to a rate-of-return or other rate-based proceeding) of providing interconnection; 2) nondiscriminatory; and 3) may include a reasonable profit.

¹ For example, in responses to AT&T's data requests U S WEST recently indicated it intends to file a new SGAT in Arizona just a couple of weeks before intervenor testimony will be due.

RESPONSE: U S WEST is not meeting its obligations for interconnection as defined above for several reasons. First, U S WEST has not provided the necessary forecasts and forecast information that ELI needs for interconnection trunking. Second, U S WEST is discriminating against ELI in the provisioning of interconnection trunks by provisioning others more quickly. Many of ELI's interconnection trunk orders have experienced excessive delays in provisioning caused by U S WEST's failure to build capacity based on ELI's forecasts. Third, there have been high levels of blocking on calls between ELI customers and U S WEST customers due to (among other things) U S WEST's inadequate preparation for interconnection. And fourth, U S WEST policies have imposed inefficient interconnection configurations which caused delays and additional expense. The combination of these problems have hurt ELI's business in Arizona.

Also, U S WEST is not meeting its obligations for collocation of CLEC equipment and facilities as defined above. Among other things, U S WEST is requiring unnecessary intermediate frames between CLEC facilities and U S WEST facilities. Further, U S WEST has required an unnecessary fiber splice and cable vault for CLEC fibers. Finally, U S WEST does not meet many of the new requirements set forth in the recent FCC order on collocation.

ELI joins in the position statements filed by the other CLECs regarding checklist item no. 1. ELI reserves the right to raise additional deficiencies in U S WEST's § 271 application on checklist item no. 1 as this case progresses. ELI will supplement this statement as appropriate.

Checklist Item No. 2: Nondiscriminatory access to network elements in accordance with the requirements of §§ 251(c)(3) and 252(d)(1). Pursuant to § 251(c)(3), U S WEST must provide nondiscriminatory access to network elements at any technically feasible point on rates, terms and conditions that are just, reasonable and nondiscriminatory, in accordance with the terms and conditions of the interconnection agreements and the requirements of §§ 251 and 252. U S WEST also must provide network elements in a manner that allows the requesting carrier to combine them to provide a finished telecommunications service. Pursuant to § 251(c)(6), U S WEST has the duty to provide physical collocation for equipment necessary for access to unbundled network elements at the premises of the local exchange carrier on rates, terms and conditions that are just, reasonable and nondiscriminatory. U S WEST may provide virtual collocation if it demonstrates to the Arizona Corporation Commission that physical collocation is not practical for technical reasons or because of space limitations. Pursuant to § 252(d)(1), rates for access to unbundled network elements shall be 1) based on cost (determined without reference to a rate-of-return or other rate-based proceeding) of providing network elements; 2) nondiscriminatory; and 3) may include a reasonable profit.

RESPONSE: ELI joins in the position statements filed by the other CLECs regarding checklist item no. 2. ELI reserves the right to raise additional deficiencies in U S WEST's § 271 application on checklist item no. 2 as this case progresses. ELI will supplement this statement as appropriate.

Checklist Item No. 3: Nondiscriminatory access to the poles, conduits and rights-of-way owned or controlled by U S WEST at just and reasonable rates in accordance with the requirements of § 224.

RESPONSE: U S WEST, in new tariff filings, is attempting to gain exclusive control of access to MDUs, malls, and other campus type arrangements. This exclusive control would prevent CLECs from having nondiscriminatory access to poles, conduits and rights-of-way controlled by U S WEST.

ELI joins in the position statements filed by the other CLECs regarding checklist item no. 3. ELI reserves the right to raise additional deficiencies in U S

WEST's § 271 application on checklist item no. 3 as this case progresses. ELI will supplement this statement as appropriate.

Checklist Item No. 4: Local loop transmission from the central office to the customer's premises, unbundled from local switching or other services.

RESPONSE: ELI joins in the position statements filed by the other CLECs regarding checklist item no. 4. ELI reserves the right to raise additional deficiencies in U S WEST's § 271 application on checklist item no. 4 as this case progresses. ELI will supplement this statement as appropriate.

Checklist Item No. 5: Local transport from the trunk side of U S WEST's switch unbundled from switching or other services.

RESPONSE: ELI joins in the position statements filed by the other CLECs regarding checklist item no. 5. ELI reserves the right to raise additional deficiencies in U S WEST's § 271 application on checklist item no. 5 as this case progresses. ELI will supplement this statement as appropriate.

Checklist Item No. 6: Local switching unbundled from transport, local loop transmission, or other services.

RESPONSE: ELI joins in the position statements filed by the other CLECs regarding checklist item no. 6. ELI reserves the right to raise additional deficiencies in U S WEST's § 271 application on checklist item no. 6 as this case progresses. ELI will supplement this statement as appropriate.

Checklist Item No. 7: Nondiscriminatory access to 1) 911 and E911 services; 2) directory assistance services to allow the other carrier's customers to obtain telephone numbers; and 3) operator call completion services.

RESPONSE: ELI joins in the position statements filed by the other CLECs regarding checklist item no. 7. ELI reserves the right to raise additional

deficiencies in U S WEST's § 271 application on checklist item no. 7 as this case progresses. ELI will supplement this statement as appropriate.

Checklist Item No. 8: White pages directory listings for customers of the other carrier's telephone exchange service.

RESPONSE: ELI joins in the position statements filed by the other CLECs regarding checklist item no. 8. ELI reserves the right to raise additional deficiencies in U S WEST's § 271 application on checklist item no. 8 as this case progresses. ELI will supplement this statement as appropriate.

Checklist Item No. 9: Nondiscriminatory access to telephone numbers and compliance with numbering administration guidelines, plans or rules.

RESPONSE: U S WEST has been using its monopoly power in Arizona to hinder ELI, and others, from obtaining new NXX prefixes. New prefixes are necessary due to the NPA split which is currently in progress in Arizona. U S WEST is preventing ELI from getting new prefixes in a timely manner to accommodate its customers.

ELI joins in the position statements filed by the other CLECs regarding checklist item no. 9. ELI reserves the right to raise additional deficiencies in U S WEST's § 271 application on checklist item no. 9 as this case progresses. ELI will supplement this statement as appropriate.

Checklist Item No. 10: Nondiscriminatory access to databases and associated signaling necessary for call routing and completion.

RESPONSE: ELI joins in the position statements filed by the other CLECs regarding checklist item no. 10. ELI reserves the right to raise additional

deficiencies in U S WEST's § 271 application on checklist item no. 10 as this case progresses. ELI will supplement this statement as appropriate.

Checklist Item No. 11: Interim 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, and provision of long term number portability in full compliance with the Federal Communications Commission's regulations.

RESPONSE: U S WEST has failed to meet its obligations for providing number portability to ELI. U S WEST fails to provide adequate processes to insure that numbers are ported properly. That causes ELI customers to experience serious problems. There have been many situations where calls to ELI customers are not being completed, instead receiving adverse messages from U S WEST.

ELI joins in the position statements filed by the other CLECs regarding checklist item no. 11. ELI reserves the right to raise additional deficiencies in U S WEST's § 271 application on checklist item no. 11 as this case progresses. ELI will supplement this statement as appropriate.

Checklist Item No. 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 § 251(b)(3). Pursuant to § 251(b)(3), U S WEST must provide dialing parity to competing providers of telephone exchange service and telephone toll service and permit all such providers to have nondiscriminatory access to telephone numbers, operator services, directory assistance and directory listing, with no unreasonable dialing delays.

RESPONSE: ELI joins in the position statements filed by the other CLECs regarding checklist item no. 12. ELI reserves the right to raise additional deficiencies in U S WEST's § 271 application on checklist item no. 12 as this case progresses. ELI will supplement this statement as appropriate.

Checklist Item No. 13: Reciprocal compensation arrangements for the transport and termination of telecommunication in accordance with the requirements of § 252(d)(2). Pursuant to § 252(d)(2), the rates, terms and conditions for reciprocal compensation shall not be considered just and reasonable unless the terms and conditions provide for mutual and reciprocal recovery of costs associated with transport of termination of calls and such terms and conditions determine such costs on the basis of a reasonable approximation of the additional costs of terminating such calls.

RESPONSE: U S WEST refuses to honor the terms of its contract agreement with ELI in Arizona for reciprocal compensation. Specifically, U S WEST refuses to pay ELI reciprocal compensation for Internet Service Provider traffic as required by the ELI/U S WEST Interconnection Agreement. Despite express contract language subjecting ISP traffic to reciprocal compensation, U S WEST claims ISP traffic does not fall under provisions of the reciprocal compensation provisions of the contract and, thus, U S WEST has refused to pay legally required amounts to ELI under the contract.

ELI has been forced to litigate that issue before this Commission. See In the Matter of the Petition of Electric Lightwave, Inc. to Establish an Interconnection Agreement With U S WEST Communications, Inc., Arizona Corporation Commission Docket No. T-01051B-98-0689. U S WEST's failure to comply with checklist item no. 13 is outlined and detailed in the pleadings, testimony and documents filed and docketed in that case. ELI incorporates those materials by reference.

Checklist Item No. 14: Telecommunications services are available for resale in accordance with the requirements of §§ 251(c)(4) and 252(d)(3). Pursuant to § 251(c)(4), U S WEST must provide for resale at wholesale any telecommunications service that it provides at retail to subscribers who are not telecommunications carriers and may not prohibit, or impose any unreasonable or discriminatory conditions or limitations on the resale of such telecommunications service. Pursuant to § 252(d)(3), the wholesale rates shall be determined on the basis of retail rates, excluding the

portion thereof attributable to any marketing, billing, collection and other costs that will be avoided by U S WEST.

RESPONSE: ELI joins in the position statements filed by the other CLECs regarding checklist item no. 14. ELI reserves the right to raise additional deficiencies in U S WEST's § 271 application on checklist item no. 14 as this case progresses. ELI will supplement this statement as appropriate.

II. ELI'S POSITION ON BIFURCATION AND U S WEST'S PROPOSED PROCEDURAL SCHEDULE ON NON-OSS RELATED ISSUES

A. Should Non-OSS Issues Be Bifurcated From OSS Issues And Proceed On A Separate Track? If So, Why? If Not, Why Not?

From ELI's perspective, this § 271 case focuses on obtaining better service from U S WEST. That means U S WEST must provide equal and non-discriminatory access and services to ELI. ELI, therefore, would like nothing more than a timely hearing to resolve ELI's problems with U S WEST. But that doesn't mean employing a bifurcation process and schedule that prejudices ELI and the other CLECs. The Hearing Division should order bifurcation only if it makes sense and will benefit the parties.

If the Hearing Division opts for a bifurcated process, there are several pressing concerns that must be addressed and resolved before implementing such a process. Specifically, ELI is concerned that U S WEST will raise a host of new issues by filing another SGAT or adding further evidence in its rebuttal testimony. Further, we note that the FCC expects to issue its UNE opinion and order in September/October 1999. The FCC's UNE opinion and order will impact the issues presented in this § 271 case and the testimony filed by the parties.

B. If Non-OSS Issues Are Bifurcated, What Issues Should Be Included In The Non-OSS Proceeding? What Schedule Would You Consider To Be A Reasonable Schedule For The Non-OSS Proceeding?

This § 271 case involves numerous intertwined and complicated issues.

It's difficult to separate the checklist items into OSS and non-OSS categories. Even so, ELI believes the checklist items can be divided into the following groups:

- Independent of OSS: Checklist items 3(Poles, Ducts and Conduits), 7 (911 and Directory Assistance), 9 (Number Administration), 12 (Dialing Parity), and 13 (Reciprocal Compensation).
- OSS-Related: Checklist items 1 (Interconnection), 2 (UNE access), 4 (Loops), 5 (Transport), 6 (Switching), 8 (Directory Listings), 10 (Databases), 11 (Number Portability), and 14 (Resale).

In the event the Hearing Division opts for bifurcation, ELI also would suggest checklist items 8 and 10 could be included in an initial non-OSS hearing.

Again, it bears emphasis that a bifurcation order must be fair and allow ELI and the other CLECs adequate opportunity to address new, additional or updated data/evidence offered by U S WEST. U S WEST shouldn't be allowed to use bifurcation as a weapon to deprive ELI of the opportunity to respond to U S WEST's supplemental § 271 filings or hamper ELI's ability address all issues raised by U S WEST. ELI requests that measures be taken to prevent U S WEST from unduly prejudicing ELI and the CLECs by offering new issues and testimony. Such measures include requiring U S WEST to file its updated SGAT (if any) and supplemental testimony several weeks in advance and giving the CLECs adequate time to analyze and respond to any such added issues before scheduling a bifurcated hearing (on the non-OSS related issues).

Under these circumstances, U S WEST's proposed bifurcated procedural schedule doesn't fairly and adequately resolve these issues. If U S WEST files an updated SGAT in Arizona or raises new issues in its rebuttal testimony, the CLECs won't have a fair opportunity to address those issues or arguments. What's more, U S WEST's schedule also limits surrebuttal testimony to Staff only. ELI, therefore, requests the opportunity to file surrebuttal testimony (if necessary).

Because U S WEST intends to file an updated Arizona SGAT and will (undoubtedly) raise new issues in its rebuttal testimony, ELI proposes a procedural schedule along these lines: Hearing Division first should impose a deadline for U S WEST to file an updated SGAT and/or testimony supplementing U S WEST's original § 271 testimony. ELI believes U S WEST's filing should be due 4-5 weeks from the date the Hearing Division issues its procedural order.

In turn, Staff and intervenor testimony would be due 4-5 weeks later; and, U S WEST's rebuttal testimony would be due 2-3 weeks after that. Again, ELI requests the right to file surrebuttal testimony to the extent U S WEST introduces new testimony or raises additional issues in its rebuttal filing. Hearing Division should then set a non-OSS hearing shortly thereafter, but accounting for holidays and scheduling conflicts. ELI also requests the opportunity to file post-hearing briefs.

II. CONCLUSION

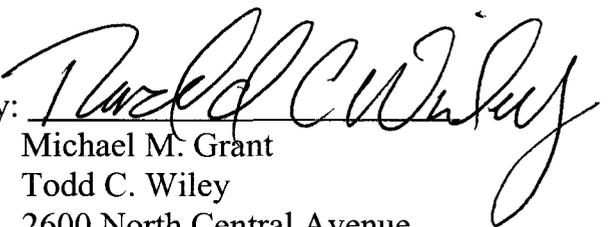
In accordance with the Commission's procedural order, this brief is a preliminary statement of ELI's position on the fourteen § 271 competitive checklist items. ELI provides enough detail to outline it's position on the various checklist

items and allow Hearing Division to understand the disputed issues and evaluate U S WEST's compliance with the competitive checklist items. This statement isn't a substitute for ELI's testimony nor a complete and final presentation of ELI's § 271 case. ELI reserves its rights to raise any and all deficiencies in U S WEST's § 271 application on ELI's testimony and at hearing. ELI also incorporates its responses to Attachments A and B pursuant to the May 27, 1997 procedural order.

ELI requests that Hearing Division order a fair and impartial procedural schedule that allows ELI and the other CLECs a full opportunity to address U S WEST's § 271 application.

RESPECTFULLY submitted this 7 day of September, 1999.

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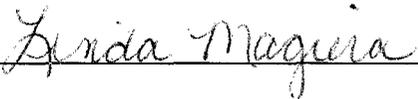
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