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BEFORE THE ARIZONA CORPORATION COMMISSION

CARL J. KUNASEK
CHAIRMAN
JIM IRVIN
COMMISSIONER
WILLIAM A. MUNDELL
COMMISSIONER

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

Docket No. T-00000^AB-97-0238

**E-SPIRE™ COMMUNICATIONS, INC.'S
PRELIMINARY STATEMENT OF POSITION**

Pursuant to the July 22, 1999 and August 27, 1999 Procedural Orders in this docket, e-spire™ Communications, Inc. ("e-spire™") submits its comments on bifurcating OSS and non-OSS issues and its preliminary statement of position on US West's compliance with the fourteen competitive checklist items set forth in Section 271 of the Telecommunications Act of 1996:

A. BIFURCATION

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

Response to 1: Non-OSS issues should *not* be bifurcated. First, bifurcated consideration of non-OSS issues will be inefficient, as well as potentially incomplete, in light of several other pending matters:

- (i) OSS Testing: The proposed OSS test plan does not contemplate actual test results until April 2000. Therefore, final 271 resolution of compliance with all checklist items at the state level will not be completed until at least that time.

1 (ii) US WEST/Owest Merger: The proposed merger may not be
2 consummated until sometime next year. The terms and structure of that
3 merger are critical to a proper analysis of § 272 issues. Again, that may not be
4 complete until next Spring at the earliest.

5 (iii) US WEST Rate Case: US WEST is seeking extraordinary relief
6 from regulation that, if granted, will significantly affect the competitive
7 landscape in Arizona. "Competitive Zones" that allow US WEST flexible
8 pricing and deregulation of data services certainly could affect the "public
9 interest" considerations under § 271. That rate case does not begin until
10 January 2000 and will not be resolved until months later.

11 Therefore, it makes no sense to rush to an evidentiary hearing on non-OSS issues. By
12 the time other critical proceedings are resolved, the bifurcated proceedings will be hopelessly
13 stale and meaningless. Competition is still in its nascent stages in Arizona. The landscape
14 can change considerably in six to eight months. e-spire™ believes that, in order to have a full
15 and proper record, the non-OSS issues would have to be revisited at that time if those issues
16 are considered now.

17 Second, that inefficiency only compounds the significant burden a bifurcated
18 proceeding places on smaller CLECs with limited resources. Duplicate (or perhaps
19 triplicate) proceedings mean double or triple costs for testimony, preparation, travel and
20 general resource commitments.

21 Third, e-spire™ believes it is difficult to define "non-OSS issues" in many instances.
22 Such confusion could lead to issues being considered either twice or not at all.

23 2. If non-OSS issues are bifurcated,

- 24 (a) What issues should be included in the non-OSS
25 proceeding?
26 (b) What schedule would you consider to be a reasonable
schedule for the non-OSS proceeding?

Response to 2(a): Should the Hearing Officers conclude bifurcation is in the public
interest, e-spire™ believes only the following checklist items be addressed:

Item 3 poles, conduits an rights-of-way;

Item 7ii and iii directory assistance and operator service;

- 1 Item 8 white pages;
- 2 Item 9 number administration;
- 3 Item 12 dialing parity; and
- 4 Item 13 reciprocal compensation.

5 **Response to 2(b):** The reasonableness of the schedule depends on the scope of the
6 issues to be considered in the bifurcated proceeding. In general, AT&T's proposed schedule
7 seems appropriate.

8 **B. PRELIMINARY POSITION ON CHECKLIST ITEMS**

9 **Checklist Item No. 1:** Interconnection in accordance with the requirements
10 of sections 251(c)(2) and 252(d)(1).

11 **Position:** US WEST has not complied with Item No. 1. Interconnection has been
12 neither timely or adequate. For example, US WEST refused to provide interconnection for
13 frame relay services, forcing e-spire™ to arbitrate each and every issue related to frame relay
14 interconnection, regardless of controlling authority in the Telecommunications Act and FCC
15 orders that required such interconnection. See Docket No. T-01051B-98-0406. Moreover,
16 as set forth in complaints before the Arizona Corporation Commission and the New Mexico
17 Public Regulation Commission, US WEST is not meeting its obligations under the
18 interconnection agreements negotiated/arbitrated pursuant to Sections 251 and 252 of the
19 Telecommunications Act. For example, e-spire™ ordered interconnecting direct trunk
20 groups between several US WEST end offices and e-spire™ switching facilities for the
21 purpose of mutually exchanging traffic. Before the lines were tested and made operational,
22 US WEST began to route calls originating at the US WEST end office to non-operational
23 trunks.

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Checklist Item No. 2: Nondiscriminatory access to network elements in accordance with the requirements of sections 251(c)(3) and 252(d)(1).

Position: US WEST has not complied with Item No. 2. US WEST has either refused access to network elements (e.g., frame relay network elements) or has failed to provide non-discriminatory access to network elements. US WEST's processes for transferring customers to e-spire™ who will be using US WEST loops or other UNEs is wholly inadequate and not equal to what US WEST provides its own customers using similar network elements. US WEST also does not provide non-discriminatory access to its OSS.

Checklist Item No. 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.

Position: US WEST has not complied with Item No. 3. First, US WEST does not pay the same city and county franchise fees that e-spire™ is required to pay in Tucson and Pima County. Second, US WEST has sought approval of tariffs that could act to exclude CLECs from US WEST's rights-of-way to multi-tenant environments. See Docket Nos. T-01051B-99-0272 (Construction Charge Waiver) and T-01051B-99-0450 (Tenant Solutions).

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

Position: US WEST is not in compliance with Item No. 4. US WEST does not provide loops to e-spire™ in the same manner, efficiency and timing that it provides loops to itself and its customers. In particular, US WEST's performance in "cutting over" a loop from US WEST to e-spire™ is unacceptable. US WEST often does the cutover at the wrong time or in the wrong manner – all of which provide difficulties for e-spire™ and its new customer.

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Checklist Item No. 5: Local transport from the trunk side of a wireline local exchange carrier switch unbundled from switching or other services.

Position: e-spire™ has inadequate information at this time to determine whether US WEST is in compliance with this checklist item. e-spire™ reserves its right to comment on this item if it does obtain relevant information regarding US WEST's compliance with this item.

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

Position: e-spire™ has inadequate information at this time to determine whether US WEST is in compliance with this checklist item. e-spire™ reserves its right to comment on this item if it does obtain relevant information regarding US WEST's compliance with this item.

Checklist Item No. 7: Nondiscriminatory access to –

- (i) 911 and E911 services;
- (ii) directory assistance services to allow the other carrier's customers to obtain telephone numbers; and
- (iii) operator call completion services.

Position: e-spire™ has inadequate information at this time to determine whether US WEST is in compliance with this checklist item. e-spire™ reserves its right to comment on this item if it does obtain relevant information regarding US WEST's compliance with this item.

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1 WEST to e-spire™. Often, US WEST incorrectly ports numbers so that the new e-spire™
2 customer cannot receive phone calls.

3
4 **Checklist Item No. 12:** Nondiscriminatory access to such services or
5 information as are necessary to allow the requesting carrier to
6 implement local dialing parity in accordance with the requirements of
7 section 251(b)(3).

8 **Position:** e-spire™ has inadequate information at this time to determine whether US
9 WEST is in compliance with this checklist item. e-spire™ reserves its right to comment on
10 this item if it does obtain relevant information regarding US WEST's compliance with this
11 item.

12 **Checklist Item No. 13:** Reciprocal compensation arrangements in
13 accordance with the requirements of section 252(d)(2).

14 **Position:** e-spire™ has inadequate information at this time to determine whether US
15 WEST is in compliance with this checklist item. e-spire™ reserves its right to comment on
16 this item if it does obtain relevant information regarding US WEST's compliance with this
17 item.

18 **Checklist Item No. 14:** Telecommunications services are available for
19 resale in accordance with the requirements of sections 251(c)(4) and
20 252(d)(3).

21 **Position:** e-spire™ has inadequate information at this time to determine whether US
22 WEST is in compliance with this checklist item. e-spire™ reserves its right to comment on
23 this item if it does obtain relevant information regarding US WEST's compliance with this
24 item.

25 CONCLUSION

26 These above statements are preliminary in nature and are intended to identify those
checklist items on which e-spire™ affirmatively asserts US WEST is not meeting. e-spire™
intends to fully set forth its affirmative position on compliance in its prefiled testimony and

1 in this proceeding. Indeed, e·spire™ continues to obtain information on US WEST's
2 compliance with checklist items as a result of e·spire™'s ongoing interactions with US
3 WEST as in Arizona.

4
5 Dated: September 7, 1999.

6 Respectfully submitted,

7 E·SPIRE™ COMMUNICATIONS, INC.

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