

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of US West	)	Application C-1830
Communications, Inc., filing of	)	
its notice of intention to file	)	
Section 271(c) application with	)	PROCEDURES
the FCC and request for Commission	)	PROGRESSION ORDER #5
to verify US West compliance with	)	
Section 271(c).	)	Entered: August 14, 1998

On July 21, 1998, the Nebraska Public Service Commission (the "Commission") entered Procedure Progression Order #2 appointing the undersigned as a Special Master to hear and rule upon discovery and other related issues. On July 21, July 27, July 29, and July 30, 1998, the Special Master held hearings after due notice with all of the interested parties present, some by telephone conference call. At such hearings, objections to various requests for admission and motions to compel answers were discussed and argued by the parties. On July 31, 1998, Procedure Progression Order #3 was entered by the Special Master ordering an in camera review of certain material in the possession of US West, respecting which it claimed the attorney-client, work product, and self-evaluation privileges. That material has been submitted to the Special Master, and an in camera review has been conducted. Other pending objections to the responsiveness of certain requests, previously taken under submission, have been considered. Accordingly, the Special Master makes the following findings and rulings respecting all discovery issues which are pending as of this date:

1. Respecting Aliant Midwest and McLeod USA, all objections have been agreed upon between the parties with the exception of US West's objection to the relevance of its withdrawal of the Centrex system. The Special Master previously advised the parties that since the circumstances of such withdrawal were relevant under the public interest requirement of Section 271, this objection was overruled, and US West ordered to respond accordingly.

2. Joint intervenors submitted 158 requests for information, to most of which US West objected, and the intervenors moved to compel. At various prior hearings, the Special Master gave his rulings on the record respecting objections to many of those requests. A general relevance

objection to Section 272 issues was overruled, to allow this Commission to make a proper record for the FCC to determine whether Section 272 has been satisfied. Others were agreed upon and resolved between the parties. A few were taken under submission by the Special Master subject to further review and the in camera inspection. For clarification, the status of compliance, objections and rulings by the Special Master will be set forth respecting each request as follows:

Request 1. On July 29, the intervenors stated the response was satisfactory.

Request 2. On July 30, the intervenors stated the response was satisfactory.

Request 3. On July 29, the intervenors stated the response was satisfactory.

Request 4. On July 29, the intervenors stated the response was satisfactory.

Request 5. On July 30, the intervenors stated the response was satisfactory.

Request 6. The intervenors stated the answer was not responsive, and a ruling was requested on July 30. The Special Master finds that the first question could have been answered "yes" or "no" and, therefore, was not responsive. The first two sentences of the second question are sufficiently compound to prevent US West from making a response.

Request 7. US West had not responded on July 29 other than referring to Montana material. On July 30, intervenors stated they would see if the four boxes of recently received material satisfied the request.

Request 8. On July 29, US West had not complied. On July 30, it advised that a further response was being furnished.

Request 9. On July 29, US West had not complied other than to refer to Montana material. On July 30, the intervenors stated they would see if the four boxes of material satisfied the request.

Request 10. On July 30, a satisfactory response was given.

Request 11. As of July 27, US West had not complied other than to refer to Montana material. On July 30, intervenors stated that they would see if the four boxes of material satisfied the request.

Request 12. On July 29, intervenors stated the response was satisfactory.

Request 13. On July 29, US West had not responded other than referring to Montana material. On July 30, intervenors stated they would see if the four boxes of material satisfied the request.

Request 14. On July 29, US West had not responded other than referring to Montana material. On July 30, intervenors stated they would see if the four boxes of material satisfied the request.

Request 15. On July 29, US West had not responded other than referring to Montana material. On July 30, intervenors stated they would see if the four boxes of material satisfied the request.

Request 16. On July 29, US West had not responded other than referring to Montana and Wyoming material. On July 30, intervenors stated they would see if the four boxes of material satisfied the request.

Request 17. On July 29, US West had not responded other than referring to Montana material. On July 30, intervenors stated they would see if the four boxes of material satisfied the request.

Request 18. On July 29, US West had not responded other than referring to Montana material. On July 30, intervenors stated they would see if the four boxes of material satisfied the request.

Request 19. On July 29, intervenors stated the response was satisfactory.

Request 20. On July 29, intervenors stated the response was satisfactory.

Request 21. On July 30, intervenors stated the response was not responsive. The Special Master agrees. If US West cannot state how many CLE design and non-design orders per day can be manually processed at the specified delivery centers, it should so state. Otherwise, it should furnish the specific number.

Request 22. On July 29, intervenors stated the response was satisfactory.

Request 23. On July 29, intervenors stated the response was satisfactory.

Request 24. On July 29, intervenors stated the response was satisfactory.

Request 25. On July 29, intervenors stated the response was satisfactory.

Request 26. On July 29, intervenors stated the response was satisfactory.

Request 27. On July 29, intervenors stated the response was satisfactory.

Request 28. On July 29, intervenors stated the response was satisfactory.

Request 29. On July 29, intervenors stated the response was satisfactory.

Request 30. As of July 29, US West had not responded. On July 30, it stated that it would do so.

Request 31. On July 29, intervenors stated the response was satisfactory.

Request 32. On July 29, intervenors stated the response was satisfactory.

Request 33. On July 29, intervenors stated the response was satisfactory.

Request 34. As of July 29, certain attachments were missing, which were furnished on July 30.

Request 35. On July 29, intervenors stated the response was satisfactory.

Request 36. On July 29, intervenors stated the response was satisfactory.

Request 37. US West did not furnish any information pursuant to this request, but objected based upon the attorney-client, work product, and self-evaluation privilege. It subsequently furnished to the Special Master three reports for an in camera review. The same have been reviewed, and the Special Master finds that material contained therein is subject to the attorney-client and work product privilege, and need not be produced. That is because these reports were made to facilitate the rendition of legal services to US West. The primary motivation for the surveys was to aid in pending and anticipated litigation. The material furnished will be sealed subject to appellate review, as per Greenwalt v. Wal-Mart Stores, 253 Neb. 32, 567 N.W.2d 560 (1997). However, the underlying facts upon which the surveys were based are not privileged, simply because they were incorporated in the reports.

Request 38. US West did not furnish any information pursuant to this request, but objected based upon the attorney-client, work product, and self-evaluation privilege. It subsequently furnished to the Special Master three reports for an in camera review. The same have been reviewed, and the Special Master finds that material contained therein is subject to the attorney-client and work product privilege, and need not be produced. That is because these reports were made to facilitate the rendition of legal services to US West. The primary motivation for the surveys was to aid in pending and anticipated litigation. The material furnished will be sealed subject to appellate review, as per Greenwalt v. Wal-Mart Stores, 253 Neb. 32, 567 N.W.2d 560 (1997). However, the underlying facts upon which the surveys were based are not privileged, simply because they were incorporated in the reports.

Request 39. On July 30, intervenors stated the response was satisfactory.

Request 40. On July 29, US West had not responded other than referring to Montana material. On July 30, intervenors stated they would see if the four boxes of material satisfied the request.

Request 41. US West did not furnish any information pursuant to this request, but objected based upon the attorney-client, work product, and self-evaluation privilege. It subsequently furnished to the Special Master three reports for an in camera review. The same have been reviewed, and the Special Master finds that material contained therein is subject to the attorney-client and work product privilege, and need not be produced. That is because these reports were made to facilitate the rendition of legal services to US West. The primary motivation for the surveys was to aid in pending and anticipated litigation. The material furnished will be sealed subject to appellate review, as per Greenwalt v. Wal-Mart Stores, 253 Neb. 32, 567 N.W.2d 560 (1997). However, the underlying facts upon which the surveys were based are not privileged, simply because they were incorporated in the reports.

Request 42. US West did not furnish any information pursuant to this request, but objected based upon the attorney-client, work product, and self-evaluation privilege. It subsequently furnished to the Special Master three reports for an in camera review. The same have been reviewed, and the Special Master finds that material contained therein is subject to the attorney-client and work product privilege, and need not be produced. That is because these reports were made to facilitate the rendition of legal services to US West. The primary motivation for the surveys was to aid in pending and anticipated litigation. The material furnished will be sealed subject to appellate review, as per Greenwalt v. Wal-Mart Stores, 253 Neb. 32, 567 N.W.2d 560 (1997). However, the underlying facts upon which the surveys were based are not privileged, simply because they were incorporated in the reports.

Request 43. As of July 29, US West objected to the request as burdensome, and the joint intervenors objected to the response as not being responsive. The objection that the request is burdensome is overruled. The responses to questions A, B and C are responsive. The answer to question D is not responsive as the question asks for a number, rather than a "yes" or "no" answer. The answer to question E is not responsive as it asks for the production of copies of certain agreements. Such copies should either be produced or, if they do not exist, US West should so state.

Request 44. On July 29, intervenors stated the response was satisfactory.

Request 45. On July 29, US West had not responded other than referring to Montana material. On July 30, intervenors stated they would see if the four boxes of material satisfied the request.

Request 46. On July 29, intervenors stated the response was satisfactory.

Request 47. US West had not responded as of July 29, but objected to the request as burdensome. That objection has been overruled and on July 30, US West stated that it would furnish the requested material.

Request 48. On July 29, intervenors stated the response was satisfactory.

Request 49. US West had not responded by July 29. On July 30, it stated it would furnish a response.

Request 50. On July 29, intervenors stated the response was satisfactory.

Request 51. US West made a partial response by July 29, and on July 30 stated that it would furnish a further response.

Request 52. On July 29, intervenors stated the response was satisfactory.

Request 53. On July 29, intervenors stated the response was satisfactory.

Request 54. On July 29, US West had not responded other than referring to Montana material. On July 30, intervenors stated they would see if the four boxes of material satisfied the request.

Request 55. US West's initial response did not include attachments, which were furnished as of July 30.

Request 56. On July 29, US West had not responded other than referring to Montana material. On July 30, intervenors stated they would see if the four boxes of material satisfied the request.

Request 57. On July 29, intervenors stated the response was satisfactory.

Request 58. On July 29, intervenors stated the response was satisfactory.

Request 59. On July 29, intervenors stated the response was satisfactory.

Request 60. Prior to July 27, US West objected that the request was burdensome and the material was subject to a protective order in the State of Iowa. The objection is sustained. If the joint intervenors wish this information, they should apply to the State of Iowa for the same.

Request 61. On July 29, intervenors stated the response was satisfactory.

Request 62. On July 29, intervenors stated the response was satisfactory.

Request 63. On July 29, intervenors stated the response was satisfactory.

Request 64. On July 29, intervenors stated the response was satisfactory.



Request 65. On July 29, US West partially had responded, and the joint intervenors objected that the material was not fully responsive. The Special Master concurs. If the requested information is not available, US West should so state and should also advise when the information will be available.

Request 66. On July 29, intervenors stated the response was satisfactory.

Request 67. On July 29, intervenors stated the response was satisfactory.

Request 68. On July 29, US West had not responded. On July 30 it advised that it was furnishing information on that date.

Request 69. On July 29, US West had not responded. On July 30 it advised that it was furnishing information on that date.

Request 70. On July 29, intervenors stated the response was satisfactory.

Request 71. On July 29, intervenors stated the response was satisfactory.

Request 72. On July 29, intervenors stated the response was satisfactory.

Request 73. On July 29, intervenors stated the response was satisfactory.

Request 74. On July 30, intervenors stated the response was satisfactory.

Request 75. On July 29, intervenors stated the response was satisfactory.

Request 76. US West's initial response answered six of fourteen categories. On July 30, US West advised that it would answer the remainder prior to July 31.

Request 77. On July 29, intervenors stated the response was satisfactory.

Request 78. On July 29, US West had not responded other than referring to Montana material. On July 30, intervenors stated they would see if the four boxes of material satisfied the request.

Request 79. On July 29, intervenors stated the response was satisfactory.

Request 80. On July 29, intervenors stated the response was satisfactory.

Request 81. On July 29, intervenors stated the response was satisfactory.

Request 82. On July 29, intervenors stated the response was satisfactory.

Request 83. Prior to July 27, US West objected that the request was burdensome. The joint intervenors stated the response was non-responsive. The burdensome objection is overruled. The Special Master interprets the response as stating that the information is not available.

Request 84. Prior to July 27, US West objected that the request was burdensome, which objection is overruled. The joint intervenors objected that the response was not complete and responsive. The requested surveys, plans and documents should be furnished. If none exist, US West should so state. Reference to and attachment of the responses in Montana and Wyoming are not adequate.

Request 85. On July 29, US West had not responded other than referring to Montana and Wyoming materials. On July 30, intervenors stated they would see if the four boxes of material satisfied the request.

Request 86. On July 29, US West had not responded other than referring to Montana and Wyoming materials. On July 30, intervenors stated they would see if the four boxes of material satisfied the request.

Request 87. On July 29, US West had not responded other than referring to Montana and Wyoming materials.

On July 30, intervenors stated they would see if the four boxes of material satisfied the request.

Request 88. On July 29, intervenors stated the response was satisfactory.

Request 89. On July 29, US West had not responded other than referring to Montana material. On July 30, intervenors stated they would see if the four boxes of material satisfied the request.

Request 90. On July 20, US West had not responded other than referring to Montana material. On July 30, intervenors stated they would see if the four boxes of material satisfied the request.

Request 91. On July 29, intervenors stated the response was satisfactory.

Request 92. On July 29, intervenors stated the response was satisfactory.

Request 93. On July 29, intervenors stated the response was satisfactory.

Request 94. On July 29, intervenors stated the response was satisfactory.

Request 95. On July 29, intervenors stated the response was satisfactory.

Request 96. On July 29, intervenors stated the response was satisfactory.

Request 97. On July 29, intervenors stated the response was satisfactory.

Request 98. On July 29, intervenors stated the response was satisfactory.

Request 99. On July 29, intervenors stated the response was satisfactory.

Request 100. On July 29, intervenors stated the response was satisfactory.

Request 101. On July 29, US West had not responded other than referring to Montana material. On July 30, intervenors stated they would see if the four boxes of material satisfied the request.

Request 102. On July 29, US West had not responded other than referring to Montana material. On July 30, intervenors stated they would see if the four boxes of material satisfied the request.

Request 103. On July 29, US West had not responded other than referring to Montana material. On July 30, intervenors stated they would see if the four boxes of material satisfied the request.

Request 104. On July 29, intervenors stated the response was satisfactory.

Request 105. On July 29, intervenors stated the response was satisfactory.

Request 106. On July 29, intervenors stated the response was satisfactory.

Request 107. On July 29, intervenors stated the response was satisfactory.

Request 108. On July 29, intervenors stated the response was satisfactory.

Request 109. Prior to July 27, US West objected to the request as being over-broad and burdensome, which was sustained in part. US West was directed to submit a list. As of July 29, such list had not been furnished, but was furnished as of July 30.

Request 110. On July 29, intervenors stated the response was satisfactory.

Request 111. On July 29, intervenors stated the response was satisfactory.

Request 112. On July 29, intervenors stated the response was satisfactory.

Request 113. US West responded, but did not include an attachment. This was furnished as of July 30.

Request 114. On July 29, US West had not responded other than referring to Montana material. On July 30, intervenors stated they would see if the four boxes of material satisfied the request.

Request 115. On July 29, US West had not responded other than referring to Montana and Wyoming materials. On July 30, intervenors stated they would see if the four boxes of material satisfied the request.

Request 116. On July 29, intervenors stated the response was satisfactory.

Request 117. US West objected to this request as being burdensome, which objection is overruled. The response referred to material furnished in Wyoming, which was objected to by the joint intervenors as being non-responsive. The Special Master agrees that the response is not responsive. Although the word "actions" is vague, the word "meetings" is not. US West should produce any notices, agendas and minutes of such meetings, but need not furnish any other correspondence, memos or documents which may refer to the meetings.

Request 118. On July 29, intervenors stated the response was satisfactory.

Request 119. On July 29, US West had not responded other than referring to Montana and Wyoming materials. On July 30, intervenors stated they would see if the four boxes of material satisfied the request.

Request 120. US West had not fully responded to this request as of July 29, but stated on July 30 that it would do so prior to July 31.

Request 121. On July 29, intervenors stated the response was satisfactory.

Request 122. On July 29, intervenors stated the response was satisfactory.

Request 123. On July 30, US West stated that it will comply on or before July 31.

Request 124. On July 29, US West had not responded other than referring to Wyoming material. On July 30, intervenors stated they would see if the four boxes of material satisfied the request.

Request 125. On July 29, US West had not responded other than referring to Montana material. On July 30, intervenors stated they would see if the four boxes of material satisfied the request.

Request 126. On July 29, intervenors stated the response was satisfactory.

Request 127. On July 29, intervenors stated the response was satisfactory.

Request 128. On July 29, intervenors stated the response was satisfactory.

Request 129. On July 29, US West had not responded other than referring to Wyoming material. On July 30, intervenors stated they would see if the four boxes of material satisfied the request.

Request 130. On July 29, US West had not responded other than referring to Montana material. On July 30, intervenors stated they would see if the four boxes of material satisfied the request.

Request 131. On July 29, US West had not responded other than referring to Wyoming material. On July 30, intervenors stated they would see if the four boxes of material satisfied the request.

Request 132. On July 29, intervenors stated the response was satisfactory.

Request 133. On July 29, intervenors stated the response was satisfactory.

Request 134. On July 29, intervenors stated the response was satisfactory.

Request 135. Attachments A and B of this request were initially missing, but were furnished as of July 30.

Request 136. On July 29, intervenors stated the response was satisfactory.

Request 137. On July 29, intervenors stated the response was satisfactory.

Request 138. On July 30, intervenors stated the response was satisfactory.

Request 139. On July 29, US West had not responded other than referring to Montana material. On July 30, intervenors stated they would see if the four boxes of material satisfied the request.

Request 140. As of July 29, intervenors stated the response was satisfactory.

Request 141. On July 29, US West had not responded other than referring to Montana material. On July 30, intervenors stated they would see if the four boxes of material satisfied the request.

Request 142. As of July 30, intervenors stated the response was satisfactory. US West stated that it would furnish more information if and when the same became available.

Request 143. On July 30, intervenors stated the response was satisfactory.

Request 144. On July 29, intervenors stated the response was satisfactory.

Request 145. On July 29, intervenors stated the response was satisfactory.

Request 146. On July 29, US West had not responded other than referring to Montana and Wyoming materials. On July 30, intervenors stated they would see if the four boxes of material satisfied the request.

Request 147. On July 29, US West had not responded other than referring to Montana and Wyoming materials. On July 30, intervenors stated they would see if the four boxes of material satisfied the request.

Request 148. As of July 29, intervenors stated the response was satisfactory.

Request 149. US West did not furnish any information pursuant to this request, but objected based upon the attorney-client, work product, and self-evaluation privilege. It subsequently furnished to the Special Master three reports for an in camera review. The same have been reviewed, and the Special Master finds that material contained therein is subject to the attorney-client and work product privilege, and need not be produced. That is because these reports were made to facilitate the rendition of legal services to US West. The primary motivation for the surveys was to aid in pending and anticipated litigation. The material furnished will be sealed subject to appellate review, as per Greenwalt v. Wal-Mart Stores, 253 Neb. 32, 567 N.W.2d 560 (1997). However, the underlying facts upon which the surveys were based are not privileged, simply because they were incorporated in the reports.

Request 150. On July 30, intervenors stated this response was satisfactory.

Request 151. On July 29, intervenors stated this response was satisfactory.

Request 152. On July 29, intervenors stated this response was satisfactory.

Request 153. Joint intervenors withdrew their motion to compel as of July 29, and no further response by US West is required.

Request 154. Joint intervenors withdrew their motion to compel as of July 29, and no further response by US West is required.



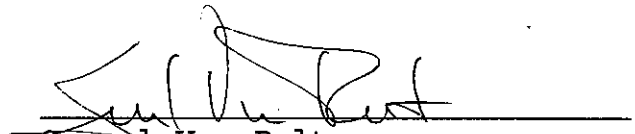
Request 155. Joint intervenors withdrew their motion to compel as of July 29, and no further response by US West is required.

Request 156. Joint intervenors withdrew their motion to compel as of July 29, and no further response by US West is required.

Request 157. On July 29, intervenors stated this response is satisfactory.

Request 158. Joint intervenors withdrew their motion to compel as of July 29, and no further response by US West is required.

IT IS SO ORDERED, this 14th day of August, 1998.

  
Samuel Van Pelt  
Special Master

uswest2.svp  
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SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

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