

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of US West Com- ) Application No. C-1830  
munications, Inc., filing of )  
its notice of intention to ) Procedural Progression  
file Section 271(c) applica- ) Order #3  
tion with the FCC and request ) for Production for In Camera  
for Commission to verify USW ) Review  
compliance with Section 271(c). ) Entered: July 31, 1998

BY THE SPECIAL MASTER:

O P I N I O N   A N D   F I N D I N G S

On July 21, 1998, the Nebraska Public Service Commission entered an order appointing Samuel Van Pelt as special master to hear and rule upon discovery and other related issues in the above-captioned docket (Progression Order #2).

Among the requests for information, filed by the joint intervenors were request numbers 37, 38, 41, 42, and 149. US West Communications, Inc. (USW) objected to such requests on the grounds that they violate the attorney-client privilege, work product doctrine, and self-evaluation privilege. Intervenors thereafter filed motions to compel production.

At hearings conducted on July 28, 1998, and July 30, 1998, USW submitted information in support of its objections, and all parties have submitted oral and written arguments in support of their respective positions. Based upon the same, the special master finds:

1. The case of Greenwalt v. WalMart Stores, 567 N.W.2d 560, 253 Neb. 32 (Neb. 1997) provides guidelines for asserting and determining claims of attorney-client privilege and work product doctrine.

2. The party asserting the privilege must first file, in response to the motion to compel, a motion for protective order in affidavit form verifying the facts critical to the assertion of the privilege. Although no filing so designated was made by USW, it did submit several documents and affidavits which the special master construes as meeting the substantive requirements of Greenwalt, supra. Intervenors have had a fair and full opportunity to respond. Upon consideration of the same, it is found that USW has met its prima facie burden.

3. Consequently, the alleged protected material should be produced to the special master, who will review the same outside of the presence of counsel for the parties. Neither the public service commissioners and staff, nor anyone other than the special master shall review or have access to the material. Thereafter, the special master will make a written

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determination whether the material is protected, and either order the same produced to the requesting parties, or seal the same for the purposes of appellate review.

4. As the requested material is being submitted pursuant to this order, USW shall in no way be deemed to have waived any of its rights or privileges respecting the same, by its compliance with this order and submission of the requested material.

O R D E R

IT IS THEREFORE ORDERED by the special master that US West Communications, Inc. submit all material which it claims is protected by the attorney-client privilege, the work product doctrine, and self-evaluation privilege, in accordance with the opinions and findings set out above.

IT IS FURTHER ORDERED that such materials shall be submitted to the special master at Suite 100, Mayfair Building, 625 So. 14th Street, Lincoln, NE 68508, on or before August 5, 1998.

Dated this 31st day of July, 1998.

  
Samuel Van Pelt  
Special Master