



0000009133

BEFORE THE ARIZONA CORPORATION COMMISSION RECEIVED

CARL J. KUNASEK
Chairman
JAMES M. IRVIN
Commissioner
WILLIAM MUNDELL
Commissioner

2000 JUL 2 Arizona Corporation Commission

DOCKETED

AZ CORP COMMISSION
DOCUMENT CONTROL 21 2000

IN THE MATTER OF THE INVESTIGATION
INTO U S WEST COMMUNICATIONS, INC.'S
COMPLIANCE WITH § 271(C) OF THE
TELECOMMUNICATIONS ACT OF 1996

DOCKET NO. T-00000B-97-0238

DOCKETED BY

**QWEST'S RESPONSE TO AT&T'S
REQUEST FOR CLARIFICATION OF
PROCEDURAL ORDER DATED
JUNE 12, 2000**

Introduction

In the guise of a petition for "clarification," AT&T is asking that the Hearing Division reverse itself on an issue that has already been decided. AT&T is again attempting to delay these proceedings by postponing the review of performance data and the underlying performance indicator definitions (PIDs) until after the completion of the operations support systems (OSS) test. Judges Rudibaugh and Nally rightly rejected this ploy orally on June 9, 2000 and in the June 12 Procedural Order. AT&T has not stated a legitimate reason to reverse that decision. Indeed, there are many reasons why the June 12 Procedural Order should not be changed. The procedure set forth in the June 12 Procedural Order is consistent with the practice being followed in states across the country, including New York and Texas, and the FCC found that procedure to be satisfactory.

Background

On May 26, 2000, Staff and Qwest Corporation (“Qwest”)¹ filed a Joint Motion for Workshops on Remaining Section 271 Issues. As part of the Joint Motion, Staff and Qwest advocated that performance data should be “addressed in workshops before the conclusion of the OSS Test.” In particular, the Joint Movants stated:

Another issue that needs to be addressed for each Checklist Item is whether U S WEST is currently furnishing, or is ready to furnish, the Checklist Item in quantities that competitors may reasonably demand and at an acceptable level of quality. This issue also should be addressed as soon as possible. While this issue is impacted somewhat by the outcome of the OSS Test, the parties can address all issues contingent upon the results of the OSS Test, as has been done in other States.

Joint Motion at 7. The Joint Movants further observed that “[b]oth New York and Texas addressed all Section 271 issues before the conclusion of OSS testing.” Id. at 8. The result in those states

“was that there was no unnecessary delay between the conclusion of OSS testing and the consideration of its results by the FCC. In both New York and Texas, the BOC was able to file with the FCC shortly after the conclusion of OSS testing. If the Arizona Commission waits until the OSS Test is concluded to conduct workshops on the remaining Section 271 issues, it is anticipated that at least six months will elapse before the test results will be presented to the FCC. Delaying workshops will run the risk that some parties will argue that the test results are out of date. More importantly, waiting to address the remaining OSS issues will deny Arizona consumers the benefits of a completely competitive market.

Id. at 12.

In response, AT&T and WorldCom stated they “oppose any proposal to address performance measure data during the workshops prior to the completion of OSS testing” because it “will only require the parties to expend unnecessary resources.” Joint Response to Joint Motion at 7. AT&T also argued against the Joint Movants’ approach based on the possibility

¹ Qwest is the successor to U S WEST Communications, Inc. Qwest filed an Authority to Transact Business application with the Commission on July 6, 2000. That application is pending.

that the PIDs may change. Id.

The Hearing Division held a hearing on June 9, 2000 on the Joint Motion. At that hearing, AT&T reiterated the arguments in its Joint Response regarding the timing for consideration of PIDs and performance data and wrongly stated that data did not yet exist. Tr. at 27:17-29:1. Commission Staff and Qwest emphasized, in addition to the arguments in the Joint Motion, that three months of historical data already existed and that the consultants had already commenced work on an audit plan. Tr. at 24:11-25, 25:13-15, 56:5-10. In the end and after a full airing of the issue, Judge Rudibaugh granted the Joint Motion. Tr. at 57:1-2. That ruling was memorialized in the June 12 Procedural Order.

Argument

Now, AT&T raises exactly the same issue again. It has not added to its arguments; nor has it shown any error in the prior ruling. It simply is taking another bite at the apple. Although the pleading is entitled “Request for Clarification,” it is more properly considered a motion for reconsideration. Such motions must raise new evidence unavailable at the time of the initial ruling or show some sort of error in the initial decision. They cannot simply reiterate the same arguments made previously, as AT&T does here. On that ground alone, the Request for Clarification must be denied.

In addition, the reasons why it is reasonable to consider performance results in the workshops have not changed. In fact, they have been validated by the FCC in its order granting SBC’s 271 application for Texas.² In the Texas Order, the FCC rejected a contention very similar to AT&T’s argument that performance data cannot be considered before completion of an audit. Indeed, the FCC went even further, ruling that performance data need not be audited to satisfy the evidentiary requirement regarding the quality of provisioning of checklist items. The FCC further stated that subjecting such data to review in the state collaborative process was

² Memorandum Opinion and Order, Application by SBC Communications Inc. et al for Provision of In-Region, InterLATA Services in Texas, FCC 00-238 (June 30, 2000) (“Texas Order”).

sufficient:

We reject the contention that SWBT's data are generally invalid because they have not been audited, and thus cannot be relied upon to support its application. We note that the data submitted by SWBT in this proceeding have been subject to scrutiny and review by interested parties.

Texas Order, ¶57.

Thus, the FCC confirmed the sufficiency of the Texas process of reviewing all checklist issues including performance before completion of the OSS test, and it eschewed the need for an audit so long as parties were permitted to address performance in the workshop process.

The current procedure in this docket is consistent with the FCC's ruling in the Texas Order, as well as the overarching goal of the Act of streamlining the consideration of 271 applications. In the Texas Order, the FCC emphasized the Congressional directive to promptly resolve 271 applications without unreasonable delays when it characterized 271 dockets as "fast-track, narrowly focused adjudications." Id. at ¶25. In contrast, AT&T's suggestion would clearly lengthen the 271 process and postpone competition.

In addition, the Arizona approach is consistent with the approach decided on by the Colorado Commission. In Colorado, the commission dealt with the issue in the following manner:

[O]nce an issue [regarding performance] has been concluded in the ROC OSS testing process, the issue may be presented and debated in the Colorado technical workshops.

In the Colorado technical workshops, participants in the ROC OSS testing process should identify issues under consideration in the ROC OSS testing process; should raise Colorado-specific OSS-related issues (if any); should identify issues (if any) with the performance measures and standards adopted in the ROC OSS testing process; and should put other participants on notice with respect to any disagreement with decisions made in the ROC OSS testing process.

Participants in the Colorado technical workshops who are not participating in the ROC OSS testing process may raise any issue pertaining to performance measures and standards and the audit of U S WEST's performance under those standards and measures. The ROC OSS testing process participants have an

obligation to listen to the issues and concerns raised by those who are not participants in the ROC OSS testing process, to reach consensus on the issues if possible, and to refer the issues for dispute resolution if consensus is not reached.

Colorado Procedural Order, ¶¶25-27 (6/5/00). In other words, once a PID or a set of performance data exists, it is fair game in the workshops.

There is no valid reason to delay consideration of performance measure results. All available evidence should be considered in the workshops, and all parties should raise any concerns or issues with Qwest's performance in the workshops.

Conclusion

For the reasons stated above, the Request for Clarification should be denied.

Respectfully submitted this 21st day of July, 2000.

By: 
Andrew D. Crain
Charles W. Steese
Thomas M. Dethlefs
U S WEST Law Department
1801 California Street
Suite 5100
Denver, CO 80202
(303) 672-2995

FENNEMORE CRAIG, P.C.
Timothy Berg
3003 North Central Ave., Suite 2600
Phoenix, AZ 85012
(602) 916-5421

ATTORNEYS FOR QWEST CORPORATION

ORIGINAL and 10 copies of the foregoing filed
this 21st day of July, 2000 with:

Docket Control
ARIZONA CORPORATION COMMISSION
1200 W. Washington St.
Phoenix, AZ 85007

COPY of the foregoing hand-delivered
this 21st day of July, 2000, to:

Lyn Farmer
Maureen A. Scott
Legal Division
ARIZONA CORPORATION COMMISSION
1200 W. Washington St.
Phoenix, AZ 85007

Deborah Scott, Director
Utilities Division
ARIZONA CORPORATION COMMISSION
1200 W. Washington St.
Phoenix, AZ 85007

Jerry Rudibaugh, Chief Hearing Officer
Hearing Division
ARIZONA CORPORATION COMMISSION
1200 W. Washington
Phoenix, AZ 85007

COPY of the foregoing mailed
or e-mailed
this 21st day of July, 2000, to:

Steven H. Kukta
Darren S. Weingard
Sprint Communications Company, LP
1850 Gateway Drive, 7th floor
San Mateo, CA 94404-2567

Thomas Campbell
Lewis & Roca
40 N. Central Ave.
Phoenix, AZ 85004

...

Joan S. Burke
Osborn Maledon, P.A.
2929 N. Central Ave., 21st Floor
PO Box 36379
Phoenix, AZ 85067-6379

Thomas F. Dixon
Karen L. Clausen
MCI Telecommunications Corp.
707 17th Street # 3900
Denver, CO 80202

Scott S. Wakefield
Residential Utility Consumer Office
2828 North Central Ave., Suite 1200
Phoenix, AZ 85004

Michael M. Grant
Gallagher & Kennedy
2600 N. Central Ave.
Phoenix, AZ 85004-3020

Michael Patten
Brown & Bain
2901 N. Central Ave.
Phoenix, AZ 85012

Bradley Carroll, Esq.
Cox Arizona Telcom, LLC
1550 West Deer Valley Rd.
Phoenix, AZ 85027

Daniel Waggoner
Davis, Wright & Tremaine
2600 Century Square
1501 Fourth Avenue
Seattle, WA 98101-1688

Richard S. Wolters
Maria Arias-Chapleau
AT&T Law Department
1875 Lawrence Street # 1575
Denver, CO 80202

David Kaufman
e.spire Communications, Inc.

343 W. Manhattan Street
Santa Fe, NM 87501

Alaine Miller
NEXTLINK Communications, Inc.
500 108th Ave. NE, Suite 2200
Bellevue, WA 98004

Diane Bacon, Legislative Director
Communications Workers of America
5818 N. 7th St., Suite 206
Phoenix, Arizona 85014-5811

Nigel Bates
Electric Lightwave, Inc.
4400 NE 77th Ave.
Vancouver, WA 98662

Philip A. Doherty
545 South Prospect Street, Suite 22
Burlington, VT 05401

W. Hagood Bellinger
5312 Trowbridge Drive
Dunwoody, GA 30338

Joyce Hundley
U.S. Dept. of Justice
Antitrust Division
1401 H Street, NW, # 8000
Washington, DC 20530

Andrew O. Isar
Telecommunications Resellers Association
4312 92nd Ave., NW
Gig Harbor, WA 98335

Raymond S. Heyman
Randall H. Warner
Two Arizona Center
400 North 5th Street, Suite 1000
Phoenix, AZ 85004-3906

...
Craig Marks
Citizens Utilities Company

2901 North Central Avenue, Suite 1660
Phoenix, Arizona 85012

Douglas Hsiao
Rhythms Links, Inc.
6933 Revere Parkway
Englewood, CO 80112

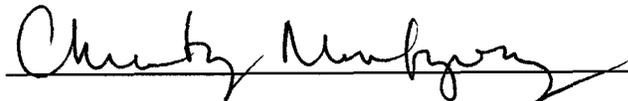
Mark Dioguardi
Tiffany and Bosco, PA
500 Dial Tower
1850 N. Central Avenue
Phoenix, AZ 85004

Thomas L. Mumaw
Snell & Wilmer
One Arizona Center
Phoenix, AZ 85005-0001

Richard Rindler
Morton J. Posner
Swider & Berlin
3000 K Street, NW, Suite 300
Washington, DC 20007

Charles Kallenbach
American Communications Services, Inc.
131 National Business Parkway
Annapolis Junction, Maryland

Patricia Van Midde
Assistant Vice President
AT&T
111 West Monroe
Suite 1201
Phoenix, AZ 85003

A handwritten signature in cursive script, appearing to read "Cheryl Mumby", written over a horizontal line.