



BEFORE THE ARIZONA CORPORATION COMMISSION

JIM IRVIN
Commissioner

WILLIAM MUNDELL
Commissioner

MARC SPITZER
Commissioner

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ARIZONA CORPORATION COMMISSION
REGISTRATION CONTROL

Arizona Corporation Commission
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**IN THE MATTER OF U S WEST
COMMUNICATIONS, INC.'S
COMPLIANCE WITH SECTION 271 OF
THE TELECOMMUNICATIONS ACT OF
1996**

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) **DOCKET NO. T-00000A-97-238**
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**QWEST'S OBJECTIONS TO THE COMMENTS OF AT&T AND
WORLDCOM ON STAFF'S COMPLIANCE REPORTS FOR
CHECKLIST ITEMS 3, 7, AND 10**

INTRODUCTION

Qwest commends the Staff for producing complete and accurate reports on Checklist Items 3, 7 and 10. Because Qwest had no significant concerns with the reports, it did not file comments.

Qwest Corporation submits these objections to the Comments of AT&T Regarding Staff's Compliance Reports and Proposed Findings of Fact and Conclusions of Law for Checklist Items 3, 7, and 10 ("AT&T Comments") and the Comments of WorldCom, Inc. Regarding Staff's Compliance Reports and Proposed Findings of Fact and Conclusions of Law for Checklist Items 3, 7, and 10 ("WCom Comments"). Qwest's principal objection is straightforward: through their comments on Staff's Reports, AT&T and WorldCom ("WCom") seek to raise issues with Qwest's compliance with checklist items 3, 7, and 10 that were never raised in Arizona, that the parties never discussed, and therefore, are nowhere

supported in the record of this proceeding. The record in these workshops is closed. Staff and the Commission should reject AT&T and WCom's attempt for a second bite at the workshop apple.

DISCUSSION

A. AT&T and WCom Cannot Raise Issues That They Did Not Raise In The Workshops.

Qwest has worked exhaustively to maintain and foster the collaborative environment of the workshop process. As Staff's Reports accurately reflect, where concerns were raised with Qwest's compliance with checklist items 3, 7, and 10 in Arizona, Qwest made significant changes to its SGAT and procedures to address the concerns the competitive local exchange carriers ("CLECs") raised. In addition, Qwest has acceded to many of the demands of CLECs even when their requests for changes in Qwest's SGAT had little or no relationship with whether Qwest meets the requirements of the competitive checklist.

Furthermore, Qwest agrees that when CLECs, including AT&T and WCom, have raised issues relating to checklist items 3, 7, and 10 in later proceedings in other states, Qwest has agreed to make changes to its SGATs to address their concerns. Even if those issues were not raised in Arizona, where those subsequent SGAT changes *resolve a dispute* and are *consensus* changes in the workshops in other states, Qwest will include those changes into its Arizona SGAT *provided* no Arizona CLEC objects. To accomplish this, Qwest will submit an updated version of the Arizona SGAT to reflect these consensus changes.

Qwest, however, views these accommodations as a two-way street. Specifically, this accommodation to include subsequently-adopted *undisputed, consensus* language in its Arizona SGAT is not an invitation for CLECs to raise disputed issues that they *never* raised in Arizona. A brief review of the AT&T and WCom comments shows that this is precisely what AT&T and WCom seek to do. Their comments are primarily a litany of issues that

AT&T and WCom seek to raise that were *not* raised in Arizona, and, for at least one WCom issue, not raised in *any* state. These new disputed issues are summarized below.

- AT&T and WCom now claim that Qwest must respond to all pole, duct, conduit, and right-of-way requests within 45-days even though they negotiated the schedule in Section 2.2 in these workshops.
- AT&T raises new issues regarding access to Qwest's agreements with multiple dwelling unit ("MDU") owners. Qwest notes that AT&T did not make demands for these agreements in Arizona. AT&T raised only subloop issues relating to access to MDUs, and it agreed to defer MDU access issues to the emerging services workshop. Those issues are being discussed in the emerging services workshop, and AT&T will have a full opportunity to raise its issues there. AT&T now also requests to keep checklist item 3 open indefinitely. Interestingly, although AT&T made a global demand for deferral of checklist item 3 in Colorado workshops, AT&T eventually agreed to defer MDU subloop issues to the emerging services workshop, precisely what happened in Arizona. AT&T raised MDU access as a checklist item 3 issue for the first time in Colorado.¹
- AT&T now disputes the definition of "ownership or control" and proposes SGAT language never reviewed in Arizona.
- For the first time in *any* workshop, WCom claims at page 9-11 of its comments that Qwest imposes alleged "restrictions" in Directory Assistance List Information.
- WCom raises new opposition to Sections 10.4.2.4, 10.5.1.1.2, and 10.6.2.1. Qwest notes that even though this is *not* an issue WCom raised in Arizona, WCom raised the issue of a "license" in subsequent workshops, and all parties (including WCom) reached consensus (without including the language from MCI's interconnection agreement).
- WCom raises a demand for "bulk transfer" of the ICNAM database never mentioned in Arizona. Because this issue was never raised in testimony or at a workshop, the record is devoid of any support for the alleged prejudice WCom

¹ AT&T miscites the Colorado workshop discussions. Qwest did not agree that MDU issues belong in checklist item 3. The portion of the record cited had nothing to do with that topic. Rather, it related only to whether property owners should consent to disclosure of their agreements with Qwest. Qwest's only point in this discussion was that property owners other than MDU owners could be interested in the issue. Furthermore, AT&T is not accurate when it claims Qwest has refused to provide such agreements in other states; rather, Qwest has requested that the landowner consent to disclosure of non-public agreements. Regardless, this is an issue raised for the first time in Colorado, and *not* in Arizona.

claims it will suffer if it is not granted this request. WCom also omits that two other state commissions have rejected its demand as inconsistent with FCC rules on access to call-related databases.

AT&T and WCom had more than ample opportunity to raise all of these disputed issues over the numerous workshops sessions on these checklist items. Neither Qwest nor the Facilitators imposed any limitation on their ability to raise issues in the workshops. Accordingly, there is no justification for permitting these sophisticated, and fully-represented, parties to raise issues a full year after the workshop has closed that they could and should have raised earlier.

Beyond simple fairness, permitting AT&T and WCom to raise new issues in this closed workshop will severely hamper the workshop process. In other words, if CLECs are permitted to continue to raise disputes they "discover" after a workshop is closed, there will never be an end to the process. The record will be confusing, checklist items will never close, and the 271 process will become a circular exercise from state-to-state. Accordingly, Qwest believes that equity and due process require that CLECs raise all of their disputed issues with Qwest's compliance with checklist requirements in Arizona in the Arizona workshop sessions and be bound by Arizona's list of disputes.

Moreover, Qwest is severely prejudiced if CLECs are permitted to lay in wait for a workshop compliance report to raise new issues that could have and should have been raised in the workshop process. Needless to say, Qwest's prefiled testimony cannot anticipate and address issues that CLECs fail to raise, nor can Qwest address the merits of those silent claims at the workshop. Thus, Qwest is denied any opportunity to respond to these new concerns on the record, and the record is devoid of any support for the CLECs' demands.

Nevertheless, even though AT&T and WCom's new disputes are woefully late in this proceeding, *if* Qwest and participating CLECs are able to reach *consensus* on any of these new issues in another state, Qwest will submit that consensus language in Arizona for approval of Arizona CLECs; if a single Arizona CLEC objects, however, Qwest will not

include the language. Qwest will not submit impasse issues from other states, nor will it agree to protracted or continued negotiations on these issues that could have, but were not, raised in these proceedings. Any other approach will encourage parties to withhold disputes and will disserve the Commission in its effort to make a fully informed recommendation on Qwest's compliance. For these reasons, Qwest requests that Staff and the Commission reject any attempt by AT&T and WCom to reopen the workshops on these checklist items or raise disputed issues these CLECs failed to raise in Arizona.

B. AT&T and WCom Should Not Be Permitted To Undo Deals They Struck.

Qwest is particularly opposed to AT&T and WCom's request to raise an issue with the timing that Qwest responds to pole/duct/conduit/right-of-way requests and WCom's attempt to foist its interconnection agreement language into the SGAT sections relating to directory assistance. Beyond failing to raise their current objections in the Arizona workshops, AT&T and WCom reached *consensus* with Qwest on these issues. On the response time for pole/duct requests, Qwest engaged in lengthy negotiations with WCom in the context of the Arizona workshops. Indeed, the current schedule in Section 2.2 of Exhibit D that WCom seeks to avoid *was suggested by WCom* in Arizona. Qwest agreed to WCom's schedule *without modification*, and AT&T subsequently concurred in *all* of the provisions, including this one, that Qwest and WCom negotiated. Qwest finds it particularly objectionable that AT&T and WCom seek to avoid this compromise in the state in which they negotiated it.

Regarding WCom's new objections to Sections 10.4.2.4, 10.5.1.1.2, and 10.6.2.1, Qwest, after the Arizona workshops on checklist item 7, Qwest, WCom and AT&T negotiated numerous amendments to Sections 10.4, 10.5, and 10.6 to address WCom's opposition to the term "license" and to clarify or resolve other DA and listings issues. In Colorado and Washington workshops, the parties reached consensus on this language, and Qwest will update the SGAT with the agreed language, if no CLECs object. Even though the

parties have reached consensus on language, WCom suggests the addition of entirely new language from its interconnection agreement. When Qwest and CLECs reach *consensus* on one of these issues, such as the terms of a CLEC's access to directory assistance list information, Qwest expects the CLECs to abide by their bargain as well.

In short, the Commission should not permit AT&T and WCom to avoid deals it has struck with Qwest.

C. AT&T's Request for A One-Day Workshop Is Entirely Inappropriate.

Realizing that it raises disputes that are new and, therefore, unsupported in the record, AT&T requests that the Commission hold a one-day workshop to "catch up" on the SGAT changes on checklist items 3, 7, and 10 in other states. AT&T Comments at 3. This is inappropriate *and* unnecessary. As discussed above, the record is closed on these checklist items, and it has been closed for quite some time. Nothing precluded AT&T and WCom from raising any of the issues they now raise in the multiple workshops on these checklist items.

Neither Qwest, Staff, nor the CLECs are limitless in their resources. All parties have moved on to other checklist items and other workshops in Arizona and elsewhere with the understanding that the record on these checklist items is closed. Reopening the record now is overly burdensome on *all* parties. Furthermore, reopening the record simply encourages parties to withhold disputes until *after* Staff has gone to the time and effort to prepare compliance reports.

Qwest intends to submit consensus language from other workshops relating to these checklist items, and that SGAT language will bring the Commission up-to-date on consensus language. Since the "disputes" AT&T and WCom seek to raise were not raised in Arizona, there is no reason to "update" the Commission on their status.

D. Other Issues Regarding AT&T and WCom's Comments

a. Reciprocity for Access to Poles, Ducts, and Rights-of-Way.

Staff's Report on checklist item 3 accurately reflects that Qwest will be bound in Arizona by the Ninth Circuit's decision on reciprocal access to poles, ducts, and rights-of-way. Qwest's updated SGAT will delete references to reciprocity, although Qwest reserves any rights it may have under state law to request access to other carrier's poles, ducts, conduits, and rights-of-way.

b. AT&T Comments on Section 10.6 and 9.23.3.9.1

AT&T references changes to Section 10.6 that it claims Qwest agreed to make and which Qwest included in the Second Revised SGAT filed April 7, 2000. AT&T Comments at 25-26. Qwest does not oppose Staff reflecting those changes in its Report.

AT&T also states that paragraph 100 of Staff's Report on checklist item 7 and 10 should be revised to reflect that Qwest revised Section 9.23.3.9.1 to accommodate concerns AT&T raised. AT&T Comments at 26. Qwest does not oppose reflecting those changes in its Report.

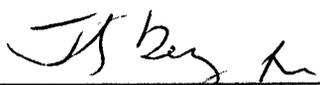
c. Deferral of 911 Number Porting Issues.

AT&T's comments suggest that Staff should change its Report on checklist item 7 to reflect a deferral of an LNP issue to workshops on checklist item 11. AT&T Comments at 25. Qwest notes, however, that the transcript discussion that AT&T cites in support relates not number portability and 911 service, but to reassignment of ported numbers, an issue that arose in workshops on checklist item 9. The Commission has already approved Qwest's compliance with checklist item 9.

CONCLUSION

Staff's Compliance Reports accurately reflected that after several workshop and negotiation sessions, CLECs in Arizona had no dispute with Qwest's compliance with Sections 271(c)(2)(B)(iii), (vii), and (x). The Commission should adopt those conclusions and recommend that Qwest meets the requirements of checklist items 3, 7, and 10.

RESPECTFULLY SUBMITTED this 26th day of January, 2001.

By  _____

Andrew D. Crain
Charles W. Steese
Qwest Corporation
1801 California Street, Suite 4900
Denver, CO 80202
(303) 672-2926

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

Attorneys for Qwest Corporation

ORIGINAL and 10 copies filed
this 26th day of January, 2001, with

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

Lyn Farmer, Chief Legal Counsel
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

Chris Kempley, Chief Hearing Officer
Hearing Division
ARIZONA CORPORATION COMMISSION
1200 W. Washington
Phoenix, AZ 85007

COPIES mailed by regular mail
this 26th day of January, 2001, 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
2575 E. Camelback Rd.
Phoenix, AZ 85016-9225

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

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

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 85004-0001

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

Mark J. Trierweiler
Vice President – Government Affairs
AT&T
111 West Monroe
Suite 1201
Phoenix, AZ 85003

Gena Doyscher
Global Crossing Services, Inc.
1221 Nicollet Mall
Minneapolis, MN 55403-2420

Karen L. Clauson
Eschelon Telecom, Inc.
730 Second Avenue South, Suite 1200
Minneapolis, MN 55402

Mark N. Rogers
Excell Agent Services, LLC
2175 W. 14th Street
Tempe, AZ 85281

Janet Livengood
Regional Vice President
Z-Tel Communications, Inc.
601 S. Harbor Island Blvd.
Tampa, FL 33602

Jonathan E. Curtis
Michael B. Hazzard
Kelly Drye & Warren, LLP
1200 19th Street, NW, Fifth Floor
Washington, DC 20036

Andrea P. Harris, Senior Manager, Regulatory
Allegiance Telecom, Inc.
P.O. Box 2610
Dublin, CA 94568

Gary L. Lane, Esq.
6902 East 1st Street, Suite 201
Scottsdale, AZ 85251

J. David Tate
Senior Counsel
SBC Telecom, Inc.
5800 Northeast Parkway, Suite 125
San Antonio, Texas 78249
