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

Docket No. T-00000A-97-0238

QWEST'S RESPONSE TO AT&T'S
MOTION TO AMEND AND
SUPPLEMENT PROCEDURAL
ORDER

Qwest Corporation respectfully submits the following response to the Motion to Amend and Supplement Procedural Order ("Motion to Amend") filed by AT&T Communications of the Mountain States, Inc. and TCG Phoenix (collectively "AT&T").

I. INTRODUCTION

The June 12, 2000 Procedural Order established a series of workshops to address the remaining checklist items to be considered in this docket and a process for the determination of disputed issues by the Arizona Corporation Commission ("ACC"). Essentially, the process allows the parties to raise issues regarding particular checklist items at the workshops scheduled to address those items. At the close of each workshop, the Staff submits a report regarding undisputed issues to the Commission for consideration. The Staff also submits a report regarding disputed issues, along with

recommendations for resolving them, to the Hearing Division, which ultimately submits a proposed order resolving the issues to the Commission.

AT&T now seeks to add unnecessary complexity and delay to the process by allowing parties to raise new issues after the workshop on a particular checklist item is closed. Under AT&T's proposal, the parties no longer have the ability to focus on and fully address each checklist item in an orderly manner. Instead, a party could raise issues long after the workshop closed, requiring all other parties to refocus their attention and resources to address new issues regarding closed checklist items. The result would be a fractured approach that would force all parties and the Staff to address issues without rhyme or reason. Because the record on any particular checklist item could be scattered across several workshops, including those scheduled to address other items, the Staff would be forced to comb through massive volumes of transcripts to prepare a comprehensive report regarding a particular checklist item.

AT&T's proposal would unnecessarily complicate and delay this proceeding and add layers of complexity to the process.

II. ARGUMENT

A. The Workshop Process Provides CLECs with a Full and Fair Opportunity to Develop the Record regarding the Every Issue they Raise.

The ACC established the workshop process to facilitate the orderly development of the record regarding Qwest's compliance with the checklist items. All of the CLECs, including AT&T, have had the unrestricted opportunity to raise any and all issues in the checklist item workshops and to fully develop the record as to those issues. At the

conclusion of each workshop, the Staff submits a report and, if there are disputed issues, identifies and makes recommendations regarding those issues.

This is a standard process for resolving disputes. The parties are allowed a period of time to raise issues and establish a record, then the issues are decided based on the record. The process allows the parties a full and fair opportunity to focus on and raised issues relating to the designated checklist items, develop the record in the workshops, and move on to other issues.

AT&T's seeks to dispose entirely of this orderly process. In its place, AT&T seeks to impose a fractured process that would leave all issues open. Indeed, AT&T apparently seeks the unlimited ability to require supplemental workshops and supplement Staff reports up to the date on which Qwest files its application with the Federal Communications Commission ("FCC").

Furthermore, it is not necessary to address in this docket issues that were not raised at the workshops. It is not necessary to resolve all issues before Qwest proceeds to the FCC. The FCC has held that it will not deny an application based upon unresolved interpretive disputes, and that such issues are more appropriately addressed in arbitrations, rulemakings, or complaint cases:

[D]espite the comprehensiveness of our local competition rules, there will inevitably be, in any Section 271 proceeding, new and unresolved interpretive disputes about the precise content of an incumbent LEC's obligations to its competitors that our rules have not yet addressed and that do not involve *per se* violations of self-executing requirements of the act. The Section 271 process simply could not function as Congress intended if we were generally required to resolve all such disputes as a precondition to granting a Section 271 application. (FCC Kansas/Oklahoma Section 271 Order, para. 19).

B. AT&T's Proposal would Transform this Arizona Proceeding into an Unending Process Dependent upon Consideration of Issues in other Jurisdictions.

AT&T's proposal to eliminate the orderly consideration and closure of issues is unworkable for many reasons.

First, if AT&T's proposal were instituted, the workshop process could never end. AT&T apparently hopes to import every issue that is raised in any jurisdiction into every other jurisdiction, including Arizona, effectively turning this proceeding into a multi-state proceeding that includes parties that are not even engaged in business in Arizona. The record would become an amalgamation of issues and materials from various jurisdictions. The Staff and Commission may then be required to analyze and decide issues that may have little or no relevance in Arizona and may have been raised by entities that are not even parties to this docket.

Moreover, AT&T's proposal would eliminate the incentive for parties to disclose all issues relating to a checklist item at the scheduled workshop. If any issue could be raised at any time, the CLECs would have no incentive to raise issues and fully develop the record during the time allocated for discussion of specific checklist items. The procedural schedule in this docket would be meaningless because the CLECs would have no interest in maintaining the current schedule of checklist item workshops unless it happens to coincide with workshops on those topics in other jurisdictions.

As a practical matter, adopting AT&T's proposal would be a procedural nightmare resulting in inefficiencies for all of the parties and the Commission. Parties

could raise widely divergent issues at random times, so that no party can efficiently address all of the issues relating to a particular checklist item. The Staff would be caught in an unending cycle of scheduling supplemental workshops and issuing supplemental reports as new issues are raised. This docket would become hopelessly ensnarled with the schedules and issues raised in proceedings in other jurisdictions.

C. **Qwest has Agreed to Offer the Benefits of the Progress made in Other Jurisdictions to the Parties to this Arizona Proceeding.**

AT&T urges this Commission to accept the benefits from this "multi-jurisdictional process." AT&T's Motion to Amend at 3. The existence of proceedings in other jurisdictions does not negate the need for an orderly and efficient process for raising, discussing, and deciding issues in this docket. While many of the parties to this docket are discussing the same issues in other jurisdictions, the ACC must make its decisions and recommendations based on the record developed in this proceeding. However, as discussed above, AT&T has not proposed a workable way for the Commission to benefit from the processes underway in other states.

As an initial matter, setting standard restrictions on the development of the checklist item record in this docket is not inconsistent with the Commission's role of developing a factual record in this proceeding. The workshop process satisfies the due process requirement for a full and fair hearing. At the same time, as in any other proceeding, there must be some limit set on the time for raising issues so that all issues can be resolved in an orderly manner. It would be fundamentally unfair and would disserve every party to this proceeding if the Commission were to allow this proceeding to devolve into a procedural free-for-all by allowing any issue to be raised at any time.

Further, the CLECs will not forever be foreclosed from raising new issues in Arizona. The CLECs can raise new issues in complaint or arbitration proceedings. Moreover, AT&T admits in its Motion to Amend at 7-8, Qwest's compliance with the checklist items will be subject to a performance assurance plan. Thus, any issue -- regardless of whether the CLECs raise the issue in this docket -- that results in Qwest's inability to perform at the required level will be addressed by that performance assurance plan.

Qwest recognizes that many of the parties to this docket are also involved in proceedings in other jurisdictions that address many of the same issues. However, for the reasons discussed above, it would be impractical, inefficient, and extremely time-consuming to attempt raise every issue that arises in every jurisdiction. Therefore, Qwest has agreed to implement a procedure that will allow the parties to this proceeding to benefit from the progress made in other states without losing ground on issues that have been decided in this docket.

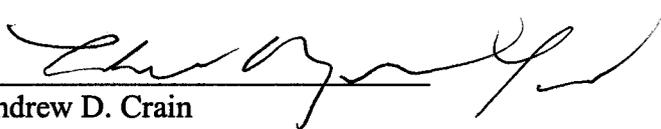
Qwest will incorporate into the Arizona SGAT the language to which the parties agreed in other jurisdictions, so long as no party to the Arizona proceeding objects. Not all of the parties to this Arizona proceeding participate in all of the proceedings in other jurisdictions. It would, therefore, be unfair to impose an agreement in this proceeding if any party to this proceeding objects. If a party objects to incorporating consensus language from another jurisdiction into the Arizona SGAT, the language will not be incorporated. This way, the Arizona proceeding will receive all of the benefit of the agreements reached in other jurisdictions relating to new issues, without reopening issues in this docket.

III. CONCLUSION

Qwest respectfully requests that AT&T's Motion to Amend the June 12, 2000

Procedural Order be denied.

RESPECTFULLY SUBMITTED this 14th day of February, 2001.

By 

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