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BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

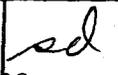
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MAR 26 2001

AZ CORP COMMISSION
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5 IN THE MATTER OF U S WEST
6 COMMUNICATIONS, INC.'S COMPLIANCE
7 WITH § 271 OF THE TELECOMMUNICATIONS
ACT OF 1996.

DOCKET NO. T-00000A-97-0238

PROCEDURAL ORDER

8 **BY THE COMMISSION:**

9 On June 12, 2000, the Hearing Division issued a Procedural Order that established a
10 procedure instituting workshops to address the remaining issues in this proceeding. The procedure
11 contemplates that at the conclusion of the workshops of each checklist item, Arizona Corporation
12 Commission ("Commission") Staff ("Staff") prepares a report. The parties have ten days to file
13 comments on Staff's report. Staff then issues a final report. If the checklist item is undisputed, Staff
14 submits its report to the Commission for approval at an Open Meeting. If Staff's report indicates
15 there are disputed items, Staff submits its report to the Hearing Division, with a procedural
16 recommendation for resolving the dispute. The Hearing Division may, upon its own motion or upon
17 motion of any party, set the matter for evidentiary hearing or oral argument, or set a briefing schedule
18 regarding the disputed item. The Hearing Division will then submit a Recommended Order to the
19 Commission.

20 On February 2, 2001, AT&T Communications of the Mountain States, Inc. and TCG Phoenix
21 (collectively "AT&T") filed a Motion to Amend and Supplement Procedural Order. AT&T argued
22 that the June 12, 2000 Procedural Order does not provide a procedure for situations where a party
23 wishes to raise new issues or bring forward issues raised in other states and develop a record in
24 Arizona after the Arizona workshops are completed on an issue. AT&T claims that because there are
25 numerous jurisdictions conducting workshops on the Section 271 checklist items, there may be
26 situations when after the record is closed in Arizona, a issue will be raised for the first time in another
27 jurisdiction that was not considered in Arizona. AT&T believes it is important to be able to
28 supplement the record in Arizona to address new issues.

1 WorldCom, Inc. ("WCom") filed a Concurrence with AT&T's Motion on February 7, 2001.

2 On February 14, 2001, Qwest Corporation ("Qwest") filed a Reply to AT&T's Motion to
3 Amend and Supplement Procedural Order. Qwest opposed AT&T's Motion because Qwest was
4 concerned that AT&T's proposal would unnecessarily complicate and delay the process. The
5 workshop process provides the parties with a full and fair opportunity to develop the record of every
6 issue they raise, and Qwest believes that AT&T's proposal would leave all issues open. In addition,
7 Qwest argues that AT&T's proposal would eliminate the incentive for parties to disclose all issues
8 relating to a checklist item at the scheduled workshop. Qwest notes that it has agreed to incorporate
9 into the Arizona SGAT the language to which the parties agreed in other jurisdiction, so long as no
10 party to the Arizona proceeding objects. Under Qwest's proposal, if a party objected to incorporating
11 consensus language from other jurisdictions into the Arizona SGAT, the language would not be
12 included.

13 On February 21, 2001, Staff filed a Response to AT&T's Motion. Staff explained that
14 AT&T's Motion arises out of the experience with Checklist items 3, 7 and 10. Arizona had
15 concluded its workshops on these checklist items, and when it filed its report, AT&T and WorldCom
16 submitted comments stating that issues had come up in other region workshops which they wanted to
17 address in Arizona. In the case of checklist items 3, 7 and 10, the parties agreed that Staff should
18 proceed to file its reports using the process for "undisputed" checklist items, and the parties would
19 defer the issue of whether it was appropriate to address the disputed issues from other region
20 workshops to the Hearing Division's ruling on AT&T's Motion.¹

21 Staff explained that the multi region workshops have evolved so that workshops in each state
22 build upon one another with the findings and agreements reached in prior workshops in other states
23 being used as the foundation or starting point of discussion in subsequent workshops in other states.
24 Staff believes that some review of disputed issues arising in other region workshops is appropriate,
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27 ¹ The Commission adopted Staff's final reports on checklist items 3, 7 and 10, in Decision Nos. 63419 (March 9, 2001),
28 63385 (February 16, 2001) and 63384 (February 16, 2001), respectively. In these Decisions, the Commission approved Staff's final report on these checklist items with the understanding that the Hearing Division would rule on AT&T's Motion.

1 but that such review should be narrowly tailored so as not to reopen issues unless necessary to ensure
2 Qwest compliance with Section 271.

3 On February 20, 2001, AT&T filed a Reply to Qwest's and Staff's Responses to its Motion.

4 Oral argument was held on March 5, 2001, at which time Staff and AT&T presented a joint
5 proposal for handling disputed items from other jurisdiction workshops. Staff believed that to be
6 considered in Arizona after the record is closed, any new issues must be "271 or 252 affecting,"
7 meaning it must call into question Qwest's compliance with either Section 271 or 252 of the Act.
8 Further, Staff believes that the Commission could and should use the impasse record developed in the
9 other jurisdiction's workshop to resolve the issue. Under the joint Staff/AT&T proposal, a party
10 wishing to raise an issue that has reached an impasse in another region's workshop, must file a brief,
11 attaching the transcript from the jurisdiction, within 10 business days of the issue being declared at
12 impasse. Other parties would have 7 business days to file replies, and then Staff would issue its
13 supplemental report, including a recommendation for resolution of the issue, to the Hearing Division
14 within 10 days.

15 Qwest opposes reopening the record in Arizona for issues that weren't addressed the first
16 time, although Qwest did agree that it is appropriate for the Commission to consider new issues when
17 the dispute arises from new facts or a change in law. Qwest argued that the Staff/AT&T proposal
18 creates an incentive not to be diligent in raising all the issues in the Arizona workshop.

19 AT&T argued that the process would not be significantly delayed because all workshops are
20 currently scheduled to conclude by August of this year and that the OSS test in Arizona is not
21 scheduled to be completed before July. Thus, AT&T did not believe that the 271 approval process
22 would be slowed. Further, AT&T noted, if Arizona does not address an issue, the FCC would not be
23 able to defer to Arizona's resolution on that issue, and the parties can raise the issue at the FCC.

24 Current experience with checklist items 3, 7 and 10, shows that after Arizona has completed a
25 checklist item workshop, an issue that potentially affects Qwest's compliance with Sections 252 or
26 271 of the Act, could arise out of workshops in other jurisdictions. It is impossible to tell in advance
27 whether these issues would affect Qwest's compliance with Sections 252 or 271 in Arizona. Arizona
28

1 should at least have the option of using the experiences and work of other jurisdictions' workshops,
2 as they have built upon work from Arizona's workshops. Further, Arizona should not be foreclosed
3 from addressing potentially important issues prior to FCC review. There needs to be a process for
4 determining whether the disputed issues could impact Qwest compliance with the Act. Staff presents
5 a reasonable compromise that should not unnecessarily prolong the process.

6 IT IS THEREFORE ORDERED that a party may request to supplement the record in Arizona
7 on a checklist item by filing a brief within 10 business days from the date the issue is first declared at
8 impasse in another jurisdiction.

9 IT IS FURTHER ORDERED that the party filing the request to supplement the record shall
10 have the burden of demonstrating that the issue affects Qwest's compliance with Sections 252 or 271
11 of the Act. The request shall include a copy of the transcript pertaining to the issue from the other
12 jurisdiction.

13 IT IS FURTHER ORDERED that all other parties may file replies to the request within 7
14 business days, and Staff shall file a report, including its procedural and substantive recommendations
15 for the resolution of the dispute. The Hearing Division may set the matter for oral argument or
16 request additional briefing regarding the disputed item, and shall submit a Proposed Order to the
17 Commission with all reasonable speed.

18 IT IS FURTHER ORDERED that with respect to disputes affecting checklist items 3, 7, and
19 10, a party that seeks to supplement the record with new issues that have already been declared at
20 impasse in other jurisdictions, shall file such request that complies with the procedures established
21 herein within 10 days of the date of this Procedural Order.

22 DATED this 26th day of March, 2001.

23
24
25  for
26 JANE L. RODDA
27 ACTING ASSISTANT CHIEF ADMINISTRATIVE LAW
28 JUDGE

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