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April 17, 2001

Arizona Corporation Commission
DOCKETED
APR 17 2001
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VIA HAND DELIVERY

Docket Control
ARIZONA CORPORATION COMMISSION
1200 West Washington
Phoenix, Arizona 85007

Re: U S WEST Communications, Inc.'s Compliance with Section 271 of the Telecommunications Act of 1993, Docket No. T-00000A-97-0238

To Whom It May Concern:

Enclosed for filing in the above matter are the original and ten copies of the Affidavit of David L. Teitzel. If you have any questions, please do not hesitate to contact me.

Very truly yours,

Jennifer Prentiville for

Timothy Berg

TB/dp
Enclosure

cc: All parties of record

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CASE/. 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

NATURE OF ACTION OR DESCRIPTION OF DOCUMENT Please mark the item that describes the nature of the case/filing:

___ **01 NEW APPLICATIONS**

___ NEW CC&N
___ RATES
___ INTERIM RATES
___ CANCELATION OF CC&N
___ DELETION OF CC&N TERRITORY
___ EXTENSION OF CC&N (TERRITORY)
___ **TARIFF-NEW (NEXT OPEN MEETING)**
___ REQUEST FOR ARBITRATION (Telecommunication Act)
___ FULLY OR PARTIALLY ARBITRATED INTERCONNECTION AGREEMENT (Telecom. Act)
___ VOLUNTARY INTERCONNECTION AGREEMENT (Telecom. Act)

___ MAIN EXTENSION
___ CONTRACT/AGREEMENTS
___ COMPLAINT (Formal)
___ RULE VARIANCE/WAIVER REQUEST
___ SITING COMMITTEE CASE
___ SMALL WATER COMPANY-SURCHARGE (Senate Bill 1252)
___ NOTICE OF OPPORTUNITY
___ SALE OF ASSETS & TRANSFER OF OWNERSHP
___ SALE OF ASSETS & CANCELLATION OF CC&N
___ FUEL ADJUSTER/PGA ***in compliance with Dec. 61009***
___ MERGER
___ FINANCING
___ MISCELLANEOUS
Specify______________

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___ **02 REVISIONS/AMENDMENTS TO PENDING OR APPROVED MATTERS**

___ APPLICATION
COMPANY______________
DOCKET NO.______________

___ TARIFF
___PROMOTIONAL
DECISION NO.______________
DOCKET NO.______________
___COMPLIANCE
DECISION NO.______________
DOCKET NO.______________

MISCELLANEOUS FILINGS

___ 04 AFFIDAVIT
___ 12 EXCEPTION
___ 18 REQUEST FOR INTERVENTION
___ 48 REQUEST FOR HEARING
___ 24 OPPOSITION
___ 50 COMPLIANCE ITEM FOR APPROVAL

___ 29 STIPULATION
___ 38 NOTICE OF INTENT (Only notification of future action/no action necessary)
___ 43 PETITION
___ 46 NOTICE OF LIMITED APPEARANCE
X 39 **OTHER**
Specify: Affidavit of David L. Teitzel

Date: March 28, 2001

Timothy Berg/U S WEST Communications, Inc.
Print Name of Applicant/Company/Contact Person

PHX/JHERRON/1164970.1/67817.150

(1/98) 9/15/98

BEFORE THE ARIZONA CORPORATION COMMISSION

WILLIAM A. MUNDELL
Chairman
JIM IRVIN
Commissioner
MARC SPITZER
Commissioner

IN THE MATTER OF U S WEST COMMUNICATIONS, INC.'S COMPLIANCE WITH SECTION 271 OF TELECOMMUNICATIONS ACT OF 1996	**DOCKET NO. T-00000B-97-238**

EXHIBITS OF

DAVID L. TEITZEL

RE: PUBLIC INTEREST AND TRACK A

QWEST CORPORATION

APRIL 17, 2001

BEFORE THE ARIZONA CORPORATION COMMISSION

WILLIAM A. MUNDELL
Chairman
JIM IRVIN
Commissioner
MARC SPITZER
Commissioner

IN THE MATTER OF U S WEST COMMUNICATIONS, INC.'S COMPLIANCE WITH SECTION 271 OF TELECOMMUNICATIONS ACT OF 1996	]	**DOCKET NO. T-00000B-97-238**

AFFIDAVIT OF

DAVID L. TEITZEL

RE: PUBLIC INTEREST AND TRACK A

QWEST CORPORATION

Contains Proprietary and Confidential Information
(Redacted Version)

APRIL 17, 2001

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I. EXECUTIVE SUMMARY

Section 271 of the Act requires Qwest Corporation ("Qwest") to demonstrate that it has entered into one or more interconnection agreements under which facilities-based providers have entered Qwest markets and are providing competitive local service in the state of Arizona ("Track A")[1]. My affidavit will demonstrate that Qwest currently satisfies Track A requirements in Arizona.

The Act also requires Qwest to demonstrate that Qwest's entry into the interLATA long distance business in Arizona is in the public interest[2]. As discussed in this affidavit, there is clear evidence in states in which the FCC has granted the incumbent Local Exchange Carrier Section 271 relief that competitive intensity in the local market is stimulated immediately following relief, and consumers are thereby presented an expanded array of competitive choices. A similar response can be anticipated in Qwest's service territory, and the public interest will thereby be served by Qwest's entry into the interLATA long distance market in Arizona.

Qwest Satisfies Track A of the Act

[1] Section 271(c)(1)(A).
[2] Section 271(d)(3)(C).

Section 271 of the Act provides two options or "tracks" for meeting its requirements. Track A is available when, as in Arizona, facilities-based competitors have entered the local exchange markets in the state and are providing services to residential and business customers. Track A requires Qwest to establish that competitors are serving both business and residential customers over their own facilities. Additionally, the FCC has stated that they will evaluate and consider the existence of resale-based competition in determining whether Track A requirements are met.[3] CLECs are using both their own facilities, Qwest's unbundled loops, and resale to provide local service in Arizona. The presence of successful facilities-based competitors shows that Qwest has opened its markets to competition and that competition has arrived in these specific markets. This concentrated competitive activity has already resulted in significant losses of both business and residential customers for Qwest within Arizona. Conservatively, over 36,000 residence and over 177,000 business access lines are currently served by Qwest's competitors in Arizona. Table 3 shows that about 165,000 of these access lines are provided by facilities-based providers, with the remainder provided via resale. Later in this affidavit I will describe in more detail why the above estimates of CLEC access lines are very conservative.

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[3] *Joint Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Kansas and Oklahoma*, CC Docket No. 00-217, Memorandum Opinion and Order, FCC 01-29 (rel. January 22, 2201), n. 101 (hereinafter "SBC-Kansas/Oklahoma Order")

All of these facts -- existing interconnection agreements, substantial network deployment by CLECs, and competitive losses to both facilities-based providers and resellers demonstrate that Qwest has satisfied the prerequisites of Track A and should be granted entry into the interLATA market in the state of Arizona.

Qwest's Entry is in the Public Interest

CLECs have entered the market in Arizona in virtually every size market, but often target the more concentrated business areas and select residential communities.[4] Thus, while many customers enjoy the opportunity to choose a single local service carrier to provide all their telecommunications services, many customers outside of the targeted communities do not have the same choice. Full service, one-stop shopping is not available to everyone because Qwest is not allowed to offer in-region, interLATA long distance services even though it has fully opened its local markets to competition. These customers are located in geographic areas that competitors have elected not to serve at this time. Until Qwest obtains Section 271 authority, these customers will

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[4] In the Bell Atlantic New York and SBC Texas orders, the FCC determined that the concentration of competition in densely populated urban areas would not warrant a finding that the local telecommunications market was not open or that competition had not sufficiently taken hold. *Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York,* CC Docket No. 99-295, Memorandum Opinion and Order, FCC 99-404 (rel. Dec. 22, 1999), ¶426 (hereinafter "BANY Order"); *Application by SBC Communications, Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas,* CC Docket No. 00-65, Memorandum

continue to be denied the benefits of one-stop shopping, a benefit which flows directly from the 1996 Telecommunications Act.

Qwest is prepared to offer the benefits of one-stop shopping to customers when the Arizona Corporation Commission ("ACC") and, ultimately, the FCC approve Qwest's Section 271 application to provide interLATA service in Arizona. Such approval is the final step in fulfilling the express purpose of the Act, the opening of all telecommunications markets to all competitors, to the benefit of all consumers. As Senator Pressler stated when the Act was signed into law, "This bill attempts to get everybody into everybody else's business and let in new entrants." Later in this affidavit, I will explain how competitive options for all customers will occur only after Qwest is allowed into the interLATA business.

In addressing the public interest standard, this affidavit briefly discusses the analysis conducted by the FCC to determine if a Regional Bell Operating Company's entry into the interLATA long distance business is in the public interest. Further, this affidavit establishes that sufficient safeguards exist to protect competitors and prevent Qwest from engaging in discriminatory actions. These safeguards include the implementation of a Performance Assurance Plan to prevent "backsliding" once the local markets are open as well as the

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Opinion and Order, FCC 00-238 (rel. June 30, 2000), ¶419 (hereinafter "SBC-Texas Order").

creation of a separate subsidiary, as required by Section 272 of the Act, which will offer Qwest's interLATA long distance services.

In light of the evidence presented, Qwest requests that the ACC issue a recommendation advising that:

- Qwest has satisfied the threshold requirements of Track A, and
- It would be in the public interest to grant Qwest authority to enter the interLATA long distance market in Arizona.

II. IDENTIFICATION OF WITNESS

My name is David L. Teitzel. I am employed by Qwest Corporation ("Qwest"), formerly known as U S WEST Communications, Inc., as Director-Product and Market Issues. My business address is 1600 7th Avenue, Room 2904, Seattle, Washington, 98191.

I was awarded a Bachelor of Science degree from Washington State University in 1974. Since then, I have been continuously employed by Qwest and its predecessor company, U S WEST Communications, Inc. I have held a number of management positions in various departments, including Regulatory Affairs, Network, and Marketing. As a Marketing Product Manager, I was responsible for product management of basic exchange (local), CENTREX, and intraLATA long distance services. I have also served as a Market

Manager for Qwest Dex (formerly U S WEST Dex). I was named to the Director-Product and Market Issues position in March, 1998.

III. PURPOSE OF AFFIDAVIT

The purpose of my affidavit is to support Qwest's Section 271 filing by:

- describing the status of local exchange competition in the state of Arizona;
- showing that Qwest has met the requirements of "Track A" as outlined in 47 U.S.C. § 271(c)(1)(A) of the Telecommunications Act of 1996 ("the Act");
- discussing the benefits of competition in all telecommunications markets;
- explaining why the public interest will be served by Qwest's entry into the interLATA long distance market; and,
- briefly describing the FCC's public interest analysis and the various safeguards in place to ensure that competition in the interLATA market will not be harmed by Qwest's entry into the interLATA long distance market.

First, I will describe the Track A requirements and the evidence which establishes that Qwest has met those requirements, thus making it eligible for entry into the interLATA long distance market in Arizona. Second, I will briefly describe the FCC's public interest analysis as well as safeguards in place to ensure not only that the local markets will remain open after Qwest's entry into the interLATA long distance business but that Qwest's entry into the interLATA long distance business will raise no significant risk to competition in the local exchange or long distance markets. Finally, I will discuss the benefits of competition in all telecommunications markets and why the public interest would be served by Qwest's entry into the interLATA long distance market.

IV. TRACK A REQUIREMENTS AND EVIDENCE

To secure Section 271 approval from the FCC and the ACC, Qwest must first establish that one of two thresholds in Section 271, referred to as "Track A" or "Track B", has been reached. Track A is available when, as in Arizona, facilities-based competitors have entered local telecommunications markets in the state. Section 271 (c)(1)(B) - or Track B - would be available if competitors were not seeking to compete with Qwest in Arizona. The Track A threshold, set forth in Section 271 (c)(1)(A), requires that Qwest has entered into at least one interconnection agreement under which at least one facilities-based competitive local exchange carrier ("CLEC") is providing local exchange service to both residential and business customers.[5] A facilities-based provider is one that predominantly uses its own facilities, including Qwest's UNEs or ancillary services, to provide local exchange service.[6] If no CLECs had entered into an interconnection agreement with Qwest and no CLECs were providing local service to residence and business customers, then Track B requirements would apply.

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[5] SBC-Texas at ¶59.

[6] SBC-Kansas/Oklahoma Order at ¶40-¶41.

Qwest makes this Section 271 filing under Track A because competitors with whom Qwest has approved interconnection agreements are providing facilities-based local service to residential and business subscribers in various markets throughout Arizona.

Qwest files this Section 271 application under Track A because facilities-based local service providers have already entered local markets in Arizona.

Section 271(c)(1)(A) reads in its entirety:

> PRESENCE OF A FACILITIES-BASED COMPETITOR.--A Bell operating company (BOC)[7] meets the requirements of this subparagraph if it has entered into one or more binding agreements that have been approved under section 252 specifying the terms and conditions under which the Bell operating company is providing access and interconnection to its network facilities for the network facilities of one or more unaffiliated competing providers of telephone exchange service (as defined in section 3(47)(A), but excluding exchange access) to residential and business subscribers. For the purpose of this subparagraph, such telephone exchange service may be offered by such competing providers either exclusively over their own telephone exchange service facilities or predominantly over their own telephone exchange service facilities in combination with the resale of the telecommunications services of another carrier. For the purpose of this subparagraph, services provided pursuant to subpart K of part 22 of the Commission's regulations (47 C.F.R. 22.901 et seq.) shall not be considered to be telephone exchange services.

[7] Within the context of Section 271 requirements, Qwest will comply with "BOC" guidelines.

The FCC has clarified that in the context of Track A compliance, they will evaluate and consider the existence of competitors' service to residential customers through resale.[8] In addition, the FCC said, "[I]f all other requirements of Section 271 have been satisfied, it does not appear to be consistent with congressional intent to exclude a BOC from the in-region, interLATA market solely because the competitors' service to residential customers is wholly through resale."[9] Even though Arizona has multiple carriers providing facilities-based competition, the Commission should still consider competition from resellers in evaluating the extent of competitive presence and compliance with Track A.

In its review of the Ameritech-Michigan Section 271 application, the FCC divided the Track A requirement into four sub-parts.[10] In that application, the FCC found that Ameritech satisfied Track A. The FCC's four-part Track A analysis consists of the following:

- existence of one or more binding agreements that have been approved under Section 252,

[8] SBC-Kansas/Oklahoma Order, n. 101.
[9] SBC-Kansas/Oklahoma Order, n. 101 (citing BellSouth LA II, ¶48); see also BANY-Order at ¶427.
[10] The FCC released its Memorandum Opinion and Order in CC Docket No. 97-137 (Ameritech-Michigan Order) on August 19, 1997. Although the FCC denied Ameritech's Section 271 Application, it found that Ameritech had fully satisfied the Track A requirement.

- provision of access and interconnection with unaffiliated competing providers of telephone exchange service,[11]

- provision by competitors of telephone exchange service to residential and business subscribers somewhere in the state, and

- offer by competing providers of telephone exchange service either exclusively or predominately over their own telephone exchange service facilities in combination with resale.[12]

I will review each of these four requirements in more detail in the following sections.

A. Binding Interconnection Agreements

Qwest has entered into a large number of binding interconnection agreements. As of February 28, 2001, the ACC has approved, in accordance with Section 252 of the Act, 56 wireline interconnection agreements[13]. The FCC concluded in the Ameritech-Michigan order that agreements approved by a state commission are "binding" and define the obligations of each party.[14] Thus, these 56 ACC-approved interconnection agreements are binding on Qwest.

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[11] It is also significant that the FCC recognized that Congress prohibited it from requiring any specific level of geographic penetration by a competing provider and imposing a geographic scope requirement. In other words, the Act prohibits imposition of a market share loss test. SBC-Texas at ¶419; BANY at ¶427.
[12] Ameritech-Michigan Order at ¶70.
[13] In addition, there are 18 approved wireless, paging, and EAS interconnection agreements as well as 41 approved resale interconnection agreements.
[14] Ameritech-Michigan Order at ¶72.

In the Ameritech-Michigan decision, several parties argued that Ameritech's agreements did not satisfy Track A because not every checklist element was contained within each approved agreement. The FCC dismissed this argument and determined that Track A does not contain such a requirement.[15] Moreover, in addition to the Commission-approved interconnection agreements, Qwest submitted a comprehensive Statement of Generally Available Terms ("SGAT") in Arizona that contain terms, conditions, and prices applicable to the provision of all of the checklist items. Qwest relies on all of these documents as the basis for its Section 271 application. Finally, the ACC has approved either Qwest's requirements through its cost docket or its interconnection agreements with CLECs which contain terms, conditions, and prices applicable to the provision of network interconnection, access to unbundled network elements, ancillary network services, and telecommunications services available for resale in the state of Arizona.

Qwest has met the first subpart requirement of Track A because it has entered into over 56 binding and approved interconnection agreements pursuant to Section 252 of the Act in Arizona. Qwest also relies on its SGAT filed in Arizona to establish compliance with the Track A requirements.

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15 Ameritech-Michigan Order at ¶72.

B. Unaffiliated Competing Providers

Qwest fulfills the next part of the FCC's analysis of Track A requirements because it provides access and interconnection with unaffiliated competing providers of telephone exchange service. Of its Commission-approved interconnection agreements, 63 are with unaffiliated CLECs in the state of Arizona.

The FCC determined that a CLEC qualifies as a "competing provider" so long as it provides service "somewhere in the state."[16] Furthermore, the FCC found that Track A does not impose minimum geographic scope requirements before CLECs are deemed competing providers. No set market share losses are required.[17] The FCC rejected arguments that the majority of customers in the state must have a choice of local service providers.[18]

Based upon the FCC's definition of a "competing provider," there are such competitors providing local exchange service in Arizona. Confidential Exhibit DLT-1C lists the CLECs in Arizona that are actively providing service "somewhere in the state". In addition, Confidential Exhibit DLT-1C indicates the type of service the CLEC is purchasing from Qwest, including residential or business resale. For purposes of this affidavit, any CLEC purchasing a UNE is

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16 Ameritech-Michigan Order at ¶76.
17 Ameritech-Michigan Order at ¶77.
18 Ameritech-Michigan Order at ¶77 and ¶78.

considered a facilities-based provider. This is consistent with the FCC's decision.[19]

Unaffiliated competing providers fall into two basic categories: facilities-based competitors (both UNE-based and full facility-based) and resellers. In the following sections, I'll discuss firms who fall into these two basic competitor categories as well as some of the data local exchange carriers ("DLEC") who are a subset of facilities-based competitors. I'll begin with facilities-based competitors.

1. Facilities-based Competitors

As I described earlier in this affidavit, a facilities-based competitor is a carrier that predominantly uses its own facilities, including Qwest's UNEs or ancillary services, to provide local exchange service.

Under Commission-approved interconnection agreements, Qwest offers and provides local interconnection trunks, unbundled loops, unbundled transport and switching, unbundled directory assistance services and operator services, 911 service, collocation, poles, ducts, conduits, right-of-way, number portability, and/or white page listings to facilities-based CLECs.

[19] Ameritech-Michigan Order at ¶94 - ¶101.

AT&T/TCG

AT&T's $11.3 billion takeover of Teleport Communications Group ("TCG") was approved by the FCC on July 23, 1998, providing it with direct access to the facilities-based local exchange and high capacity markets in Phoenix and other major urban centers across the nation. Before the merger, TCG was majority-owned by three cable companies – TCI, Comcast, and Cox. AT&T's purchase may be seen as a stepping stone to its entry into cable-provided local telephony. AT&T has stated that the merger will enable it to sell all-in-one packages of local, long distance, and data communications to businesses.[20] In a press release issued July 23, 1998, AT&T Chairman C. Michael Armstrong stated, "Completion of this merger accelerates our entry into the $21 billion business local service market because we're reducing our dependence on the Bell companies for direct connections to business. We're giving customers simplicity, convenience, and choice. It's one-stop shopping for local and long distance services, just for starters."[21]

AT&T's merger with TCG provided it with access to TCG's 300 route miles of fiber in Phoenix (the largest CLEC fiber network in Arizona),

20 "AT&T's Teleport Takeover OK'd," *Arizona Republic*, July 24, 1998.
21 "AT&T Completes TCG Merger; TCG Now Core of AT&T Local Services Network Unit" www.tcg.com/tcg/media/PRcurrent/afffinal.html, November 12, 1998.

connecting between 120 and 150 single and multi-tenant buildings.[22] The vast majority of these buildings are located in Phoenix and Tempe. TCG's network is composed of 11 self-healing SONET (synchronous optical network) rings and is capable of providing facilities-based service to the majority of the Phoenix Metropolitan Statistical Area ("MSA") business-intensive localities.[23] TCG offers facilities-based service in the following communities: Downtown Phoenix, Phoenix Sky Harbor International Airport, Chandler, Mesa, Tempe, Paradise Valley, Scottsdale, Tolleson, and Glendale.

The AT&T/TCG merger allows the two companies to capitalize on the strengths of each. Traditionally, TCG has directed its marketing efforts toward the large business market and rapidly accumulated a list laden with Fortune 500 companies. Conversely, AT&T's traditional strengths have been the small business and consumer markets. With the merger, AT&T has reasserted its influence among large business customers while TCG has expanded its focus to include the small business market. TCG also acquired additional resources from the merger to allocate toward network expansion in the Phoenix MSA.

MCI WorldCom

[22] This information was obtained from various sources including the Internet, magazine and newspaper articles, and studies of the Phoenix and Tucson markets performed by Quality Strategies.
[23] *Id.*

In September, 1998, the FCC granted approval for a $37 billion merger between WorldCom and MCI. WorldCom had previously acquired Brooks Fiber in 1997, adding 44 local facilities-based networks to its portfolio.[24] Phoenix FiberLink, SkyTel Communications, Compuserve, and ANS are also part of the MCI WorldCom family.[25]

In Phoenix, WorldCom's network has been operational since 1995 when it initiated service to several large end users and every major carrier in the central business district. Since then, the network has expanded to encompass a much broader geographic area. In 1997, WorldCom installed a central office switch in Phoenix that has allowed it to diversify its product offering with the rollout of local exchange services. Geographic areas covered by WorldCom fiber in the greater Phoenix area include: Downtown Phoenix, Camelback Road/Indian School road areas between Central Avenue and 46th Street, Lincoln Road, Phoenix Sky Harbor International Airport, Van Buren Street, and Tempe.[26]

MCI has built a small fiber network (20-40 miles) in Phoenix's central business district to transmit voice and data traffic. In contrast with several other competitors, MCI has not invested heavily in fiber facilities to serve end users in suburban Phoenix areas. Instead, it has limited the scope of its

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24 *Id.*
25 www.sec.gov/Archives/edgar/data/723527/0000931763-00-000735-index.html, April 13, 2001.

network to the city's downtown area and connected the buildings that house its largest long distance accounts to provide facilities-based high capacity service.[27] Traditionally, MCI has targeted the large business segment for voice and data services, e.g., long distance, high capacity, data, and local exchange.

Electric Lightwave, Inc.

Having turned up its network in 1994, Electric Lightwave, Inc. ("ELI") was one of the first providers of competitive telecommunications services in the greater Phoenix area, originally providing alternatives to interexchange carriers for Qwest's switched access and private line services. Like WorldCom, ELI originally limited the scope of its network to Phoenix's central business district. However, it decided to expand its network as the suburban demand for communications services increased. In 1997, ELI entered into a strategic alliance with the Salt River Project ("SRP"). Under the terms of the agreement, ELI leased substantial amounts of SRP dark fiber. The combined ELI-SRP network now encompasses over 400 route miles and is capable of delivering facilities-based service to Phoenix, Tempe, Scottsdale, Chandler, and Gilbert, among others. ELI also claims to have invested $37 million in new facilities in Phoenix.[28] Far from being a start-up, ELI is a subsidiary of Citizens Utilities

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26 *Id at 22.*
27 *Id.*
28 www.eli.net/media/releases/phxswitch.shtml, April 13, 2001.

Company, a large utility company and full-service telecommunications provider.[29]

ELI's operations are designed to significantly compete with the ILECs, such as Qwest, in each of its facilities-based markets.[30] One of its primary overall strategies is to establish several communications networks in the western United States and become a regional provider of communications services.[31] At present, ELI serves 99 municipalities[32], enabling ELI to effectively market service to businesses operating in one or more of these markets. It is a full service provider, offering integrated communications service packages including local service, switched and dedicated long distance, private networks, advanced data and Internet access services, nationwide videoconferencing, an prepaid services to customers in Phoenix as well as Boise, Salt Lake City, Portland, Spokane, and Seattle.[33]

Cox Communications

Cox Communications ("Cox") is perhaps the most diversified of the CLECs in Arizona, currently offering customers integrated packages of television, local and long distance telephone service, and Internet services.

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29 www.onlineproxy.com/citizens/2001/, April 13, 2001.
30 http://www.onlineproxy.com/citizens/2001/ar/business-eli.html, April 13, 2001.
31 *Id* at 22.
32 www.electriclightwave.com/about/index.shtml, April 5, 2001.
33 *Id.*

Cox is also the first facilities-based competitor to offer telephone service to residential customers on a wide geographic basis. Cox entered the telecommunications market focusing on multiple dwelling units ("MDU"). However, they have since expanded their offerings to the single family residential market and are offering basic local service in several residential areas in Arizona in direct competition with Qwest.[34]

At this time, Cox Digital Telephone is available in Chandler, parts of North Phoenix, Scottsdale, and Peoria.[35] Cox recently received approval for a competitive telecommunications license from the Mesa City Council which will enable it to deploy digital telephone service in that city.[36] Although Cox telephone service is already available to about 50,000 homes in West Mesa, it didn't have a formal license to market the service when its service was deployed.[37] The license will allow Cox to more aggressively market to more than 20,000 additional homes in that community.[38] The service will include the same bundled features customers currently received from Qwest such as Caller ID; in addition, customers may select local and long distance calling plans as well. Cox customers pay $11.75 per month for the first line with an

[34] Direct Testimony of Joel Reiker, Senior Rate Analyst, Utilities Division, *In the Matter of the Application of Midvale Telephone Exchange, Inc., for Authority to Increase Rates and for Disbursement from the Arizona Universal Service Fund*, Docket No. T-02532A-00-0512, March 15, 2001, pages 6 and 7.
[35] www.cox.com/Phoenix/RNAV_DIGTEL_FAQ's.asp, April 12, 2001.
[36] "Digital Service Expands", *The Business Journal*, March 9, 2001, page 23.
[37] "Cox Expands E. Valley Phone Service", *The Tribune Newspaper*, March 9, 2001, page B1.
[38] *Id.*

installation cost of $10.00; the largest feature package offers 16 features for $14.95 per month.[39] Cox began offering telecommunications services in Chandler a few years ago. It has targeted 2002 to complete most of the rebuild in the East Valley; most areas should have Cox telecommunications services by the end of 2003.[40] Cox has stated that its services will continue to roll out based on the installation of fiber optic cable and the hardware required to facilitate the return of the digital signal back to the serving Head End.[41] Further, Cox Communications plans to aggressively pursue the installation of these facilities and has committed millions of dollars over the next three years to complete the process Valley wide.[42] It started rebuilding its network eight years ago, involving updating more than 8,000 miles of existing coaxial cable and installing 3,000 miles of new fiber-optic lines.[43] According to spokewoman Kelly Grysho, Cox hopes to have digital telephone service available to 600,000 homes by the end of this year.[44]

e.spire

e.spire, formerly ACSI, completed construction of its original network serving Tucson's central business district in the first quarter of 1996. The

39 *Id.*
40 *Id.*
41 www.cox.com/Phoenix/RNAV_DIGTEL_FAQ's.asp, April 12, 2001.
42 *Id.*
43 http://phoenix.bcentral.com/phoenix/stories/2001/03/19/story1.html, April 12, 2001.
44 *Id.*

Tucson network was one of e.spire's first networks and is thus one of its most mature. Although its network was originally constructed in 1996, it did not roll out local switched services until the first quarter 1997. Before the rollout of local switched services, e.spire had generated revenues by offering private line and data services to large businesses in the greater Tucson area and by offering alternatives to Qwest's local exchange service to major interexchange carriers. e.spire was the first facilities-based CLEC to offer local services to the Tucson business community.[45]

Sprint

Sprint Corporation ("Sprint") is another CLEC providing local service to residential customers in the Phoenix area. It began offering its ION Service package in July, 2000, and recently announced that it is expanding this service to include a package called Sprint ION xt1 consisting of unlimited local telephone service, enhanced features such as Caller ID and voice mail, high-speed Internet access and 200 minutes of domestic long distance for $99.99 per month[46]. Previously, a residential customer needed at least two telephone lines to subscribe to ION, but with this new package, a customer needs only a

[45] *Id* at 22.
[46] "Sprint Expands its Ion Service", *The Tribune Newspaper*, March 14, 2001, pages B1 and B2.

single line, which will greatly expand ION's potential market and increases competition for Qwest in the residential local telephone market.[47]

Sprint also announced on April 4, 2001, that it is introducing enhanced Sprint ION in Phoenix, an offering that will give small businesses more flexibility in building customized voice and data services.[48] Enhanced Sprint ION offers an a la carte structure which will allow customers to build about 180 different packages on one to four voice lines using different bundles of minutes for long distance, unlimited local calling, an international calling plan, and data services on one to four voice lines. To further address business needs, Sprint also announced that it is also offering Sprint Business DSL in Phoenix that is aimed at customers who don't need Sprint's voice offerings.

SBC Telecom

SBC Telecom, a subsidiary of SBC Communications, Inc., a Bell Operating Company, also plans to enter the Phoenix residential and business market. According to SBC spokesman John O'Connor, "SBC Telecom has a goal of obtaining a 3 percent share of the Valley residential and business market within its first year of operation."[49] The Phoenix market is one of 30 across the country where the facilities-based SBC Telecom plans to offer local,

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[47] *Id.*
[48] www.x-changemag.com/hotnews/14h275636.html, April 12, 2001.
[49] SBC Telecom Ready to Enter Valley, Add to Competition", *The Business Journal*, October 13, 2000,

voice, and data services to business and residential customers. It also has plans to expand into Tucson by first quarter 2002.[50] SBC Telecom's regional vice president, Larry Barnes, was quoted as saying that the company's strategy is to become a one-stop-shop for all voice and data network services for customers and plans to set rates 15 percent below the incumbent local exchange carrier.[51] Barnes also said that SBC Telecom plans to collocate its data switches in Qwest's Phoenix central offices with the fiber backbone provider within the city yet to be determined.

Eschelon Telecom

Eschelon Telecom ("Eschelon"), formerly Advanced Telecommunications, Inc., is an integrated communications provider of voice, data, and Internet services operating primarily in the northwest and southwest United States. It focuses on small to medium businesses, providing a comprehensive line of telecommunications products and services, including local service. After originally using leased facilities to provide service, Eschelon has recently been installing its own switches and other facilities. According to its press release of November 13, 2000, announcing completion of its network facilities installation in Phoenix, "This investment allows Eschelon to be one of the few competitive local exchange carriers (CLECs) in Arizona

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pages 1 and 52.
50 *Id.*

able to offer voice, data and Internet services over its own network facilities."[52] The network in Phoenix moves Eschelon toward its stated goal of expanding the company's service footprint to a total of 26 markets including cities in Minnesota, Washington, Oregon, Utah, Arizona, Idaho, Colorado, Montana, New Mexico, Nebraska, Nevada, and North Dakota.[53] Further, it adds to Eschelon's existing base of network facilities in Minneapolis/St. Paul, Seattle, and Portland. Subsequent to its November statement, Eschelon formally announced on April 21, 2000, that it was launching its full range of telecommunications services in Phoenix and would offer business customers a single point of contact for their telecommunications service needs at competitive rates.[54]

In November, 2000, Eschelon and Qwest signed an agreement for voice and data communications services which ultimately benefits small and medium business customers in Qwest's service territories.[55] The five-year agreement not only provides Eschelon with the ability to sell additional features and information services that Qwest had not previously offered to CLECs such as

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51 *Id.*

52 "Eschelon Telecom, Inc. Completes Installation of Network Facilities in Phoenix", Source: www.businesswire.com/webbox/bw.111300/203184909.htm, April 4, 2001.

53 *Id.*

54 "Eschelon Telecom, Inc. Announces Expansion into Phoenix, Arizona", Source: www.businesswire.com/webbox/bw.042100/201124918.htm, April 4, 2001.

55 "Qwest Communications and Eschelon Telecom Announce $150 Million Wholesale Contract for Voice and Data Services", Source: www.businesswire.com/webbox/bw.111600/203214892.htm, April 4, 2001.

voice messaging and DSL services but also allows Eschelon to expand its market coverage within Qwest's 14-state region.

XO Communications

XO Communications, formerly known as NEXTLINK, operates as a facilities-based provider in Phoenix and Tucson. The company has established a high capacity metro fiber network in Phoenix, designed to serve both downtown areas as well as other metropolitan and suburban areas.[56] XO aggressively markets data and voice services to small and medium-sized business customers. Voice offerings include bundles of local and long distance services targeted to small and medium-sized business customers, although the company is expanding its reach to serve larger businesses as its network capacity increases. It also provides Shared Tenant Services ("STS").[57] In September, 2000, XO began offering small and medium-sized business customers an integrated flat-rated package of local and long distance voice, Internet access, and web hosting services. XO has expressed an intent to partner with other carriers, including Adelphia Business Solutions, Americom, Inc., and McLeodUSA, in financing the construction of a 32-mile fiber loop from downtown Phoenix to Bell Road along Interstate 17. The project, sponsored

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[56] www.sec.gov/Archives/edgar/data/1111634/000095013301500362/w47115e10-k.htm, April 6, 2001.
[57] In November, 1997, NEXTLINK acquired Start Technologies, a shared tenant services provider offering local and long distance services, Internet access, and customer premises equipment management in Texas and Arizona. (Source: NEXTLINK 1999 Annual Report, Pages 34-35,

by the city's Community and Economic Development Department, is designed to enhance the telecommunications options for businesses located in that section of Phoenix. "From a business development standpoint, the city is smart to want to be there," said George Stewart, vice president and general manager of XO, in an interview with the Business Journal of Phoenix. "On our own, there is not enough business today to justify going up there. So if we partner with somebody, it makes it economically feasible to do it."[58]

In addition to extending its market through partnerships with other providers, XO is also deploying alternative technologies to reach businesses where it is not economically feasible to construct a fiber network. For example, XO holds a license for a 1150 MHz local multipoint distribution service ("LMDS") fixed wireless spectrum in Tucson. XO has stated, "We believe that, for many locations, broadband wireless connections from customer buildings to our local fiber optic networks will offer a lower cost solution for providing high-quality broadband services than fiber or copper connections."[59] The company's strategy is apparently working, as its overall revenue for voice services increased 76.3% in 2000 from 1999 levels.[60] This figure does not account for revenue derived from bundles of data and voice offerings.

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www.xo.com/investors/reports/, April 16, 2001))
58 http://phoenix.bcentral.com/phoenix/stories/2001/02/05/story8.html, April 6, 2001.
59 www.sec.gov/Archives/edgar/data/1111634/000095013301500362/w47115e10-k.htm, April 6, 2001.
60 *Id.*

2. Data Local Exchange Carriers

Data Local Exchange Carriers ("DLEC") are a type of facilities-based provider. They are more recent entrants to the market who focus primarily on providing data services over their local exchange networks. Qwest offers and provides access and interconnection to these competitors under Commission-approved interconnection agreements. These DLECs purchase mainly digital unbundled local loops from Qwest. The range of DLECs providing service in Arizona include Eschelon and Level 3.

3. Resellers

The other category of unaffiliated competing providers is resellers. As the term implies, resellers provide service to their end-user customers using telecommunications services they have purchased from Qwest using resale percentage amounts approved by the ACC in Qwest Cost Docket, Decision No. 60635.

McLeodUSA and CapRock

McLeodUSA ("McLeod") and CapRock are both reselling residential and business services to provide local service in the state. Resale at discounted Qwest rates enables competitors like McLeod and CapRock to test market areas without substantial risk and to establish a customer base prior to investing in the deployment of facilities. While CapRock currently resells

Qwest services to customers in Arizona, it is aggressively building a 7,500 mile advanced fiber network that will connect cities in Texas, Louisana, Arkansas, Oklahoma, New Mexico, and Arizona.[61]

CapRock has also entered into strategic alliances to extend its customer reach and will be merging with McLeod.[62] According to the press release announcing the merger, CapRock will become a wholly-owned subsidiary of McLeodUSA Incorporated and will operate under the McLeod name. Steve Gray, McLeodUSA President and COO, commented on the strategic advantages the merger brings to his company:

> "There are four primary reasons CapRock is a good fit for McLeodUSA. First their contiguous geography and emphasis on small to medium sized business customers in second and third-tier cities. Second, the quality of their people. Third, their aggressive construction of advanced fiber optic network and switching technology fits well with the McLeodUSA approach. And, finally, through operating and capital synergies, the combined company's business plan is fully funded, and the addition of CapRock is accretive to McLeodUSA EDITDA in 2001."[63]

Two of the states where CapRock operates as a CLEC overlap with the current McLeod CLEC marketplace – New Mexico and Arizona. Coupled with McLeod's previous acquisition of Splitrock Services, the CapRock merger significantly advances McLeod's corporate strategy of decreasing reliance on others' facilities as it expands the number of local access lines served.

[61] www.caprock.com/loc.html, March 19, 2001.
[62] www.caprock.com/news/CapMcleod.html, March 19, 2001.

According to New Paradigm Resources Group, McLeod sells a bundled product and 70% of its long distance customers are on five-year contracts. As a result, the average business customer is paying seven cents per minute and the average residential customer is paying eleven cents per minute for long distance service in the McLeod bundle. "McLeod earns significant profit from voice services by, for instance, landing Centrex customers via ILEC resale and migrating them to McLeod switches," according to New Paradigm.[64]

The fact that these facilities-based and resale competitors are operating in Arizona and providing local service to business and residence customers demonstrate that the local market is open to competition.

4. Track A Does Not Impose a Geographic Penetration or Market Share Test

While some intervenors may assert that even more competition is required before Qwest is granted interLATA relief, the FCC found that Track A does not allow it to impose a geographic penetration test or a market share loss test.[65] These arguments must be summarily rejected for the same reasons the FCC rejected them in its Ameritech-Michigan decision and other FCC decisions.

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63 *Id.*
64 CLEC Report 2001, New Paradigm Resources Group, Inc., 2001, Chapter 2, page 8.
65 Ameritech-Michigan Order at ¶76-¶77; BANY Order at ¶427; SBC-Texas Order at ¶419; SBC-Kansas/Oklahoma Order, n. 78.

Competing providers need only be in the market and operational. In other words, they need only be accepting requests for service and providing service for a fee.[66] In fact, in the Bell Atlantic-New York Order, the FCC specifically declined to require Bell Atlantic to demonstrate that all New York end users have a "realistic choice" between facilities-based local carriers.[67] Clearly the activities of the competitive providers listed in Confidential Exhibit DLT-1C meet the requirement.

5. Other Evidence Demonstrating CLEC Activity in Arizona

Qwest has substantial evidence available about the extent of CLEC operations in the state of Arizona. As stated above, Qwest conservatively estimates that CLECs serve more than 214,000 residential and business access lines as follows:[68]

- Estimated Number of Residential Lines Served by CLECs – 37,000
- Estimated Percentage of CLEC Residential Lines Provided Over CLEC's Own Facilities/UNEs – 40%
- Estimated Percentage of CLEC Residential Lines Provided by Resale – 60%
- Estimated Number of Business Lines Served by CLECS – 178,000
- Estimated Percentage of CLEC Business Lines Provided Over CLEC's Own Facilities/UNEs – 85%

66 Ameritech-Michigan at ¶78.
67 BANY Order, n. 1312.
68 Data derived from CLEC access line information shown in Confidential Exhibit DLT-2.

- Estimated Percentage of CLEC Business Lines Provided by Resale – 15%

These estimates are based on the information available to Qwest regarding competitive business activities in the state and are very conservative. These lines represent local exchange voice grade service only and do not include any data lines. Confidential Exhibit DLT-2C displays Qwest's estimates of the number of access lines served in aggregate by CLECs in Arizona as of February, 28, 2001. These quantities are comprised of actual counts of unbundled loops in service, resold access lines, and an estimate of the number lines provided by CLECs on the CLEC's own facilities, including unbundled loops provided by Qwest.

While Qwest has knowledge of the number of unbundled loops it provides to CLECs, Qwest has no direct knowledge of the number of CLEC-owned loops. To estimate the quantity of CLEC-owned loops, I have assumed each CLEC loop (both CLEC-owned and Qwest-provided unbundled loop) has been assigned two (2) ported telephone numbers. By dividing the number of ported numbers by two, and subtracting the number of Qwest-provided unbundled loops, I can estimate the quantity of CLEC-owned loops. This approach yields a conservative view of the total number of CLEC-owned loops currently in service.[69]

Based on these estimates, as of February 28, 2001, the CLECs have captured over 17% of the business access line market and nearly 7% of total access lines in Arizona as follows:

- Qwest/CLEC Residence Access Lines – 2,054,892
- Qwest/CLEC Business Access Lines – 1,018,855
- Qwest/CLEC Total Access Lines – 3,110,466
- CLEC Access Lines – 214,672
- % CLEC Access Lines – 6.9%

Qwest maintains a tracking process to identify customers who have left Qwest for a competitor. When a customer calls Qwest to disconnect service, he or she is asked the reason that service is being disconnected. If the customer volunteers that he/she is leaving Qwest for a competitor, or if a CLEC contacts Qwest on behalf of the customer to transfer service, the account records are marked as a competitive loss. Qwest maintains a record of the

[69] In the joint affidavit of J. Gary Smith and Mark Johnson filed in October, 2000, with the FCC in support of Southwestern Bell's Section 271 application in Kansas and Oklahoma, CLEC access line estimates were developed on the assumption that a ratio of 2.75:1 exists for CLEC access lines per local interconnection trunk in service. Application of that same ratio to the number of Qwest local interconnection trunks in service as of February 28, 2001, results in an estimate of CLEC market share in Arizona of approximately 12.9%. This is further evidence of the conservative nature of the market share estimates provided in my testimony.

number of accounts and associated access lines that customers have self-reported as having been lost to competition or that have been transferred to a CLEC via Qwest's wholesale channel.[70] However, customers do not always volunteer this information, and the account loss totals therefore do not reflect the overall number of competitive losses.

In Arizona, Qwest had the following reported residential and business accounts and associated access lines that left Qwest during 2000 for competitive alternatives:

- Residential Accounts – 14,192
- Residential Access – 17,246
- Business Accounts – 3,746
- Business Lines – 11,243

This discussion shows that CLECs are actively serving residential and business customers in Arizona, and that this competitive activity is occurring on both a resale and on a facilities basis.

C. Residential and Business Subscribers

The third Track A requirement states that at least one CLEC must be providing local exchange service to residential customers and at least one

[70] No carrier-specific detail is retained; the account is simply noted as a competitive loss.

providing service to business customers. As discussed in the previous section and summarized in Confidential Exhibit DLT-1C, CLECs are providing telephone exchange service to residential and business subscribers in Arizona. These CLECs often choose the largest, most concentrated markets in Arizona to offer local services to businesses and selected residential customers over their own facilities or by using facilities purchased from Qwest.[71] These areas are the most profitable and least costly areas to serve and typically contain a high concentration of medium to large businesses. However, I have provided evidence that CLECs also target smaller communities in Arizona when it is economically efficient for them to do so.

Although our opponents may argue that no single carrier is providing service to a substantial number of both business and residential subscribers, the Act does not require residential and business service to be provided by a single provider in order to comply with the Track A prerequisites. The FCC has already rejected this objection and stated:

> "In our view, this amendment gave the BOCs greater flexibility in complying with Section 271(c)(1)(A), by eliminating the requirements that one carrier serve both residential and business customers, and allowing instead, multiple carriers to serve such subscribers."[72]

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[71] Facilities purchased from Qwest can be defined as including unbundled network elements or resale.
[72] Ameritech-Michigan Order at ¶84.

In its Ameritech-Michigan analysis, the FCC further noted that requiring a single CLEC to serve both residential and business customers is not necessary to further Congress' objectives.[73] Even though it is not a requirement, Qwest does comply with the Track A requirement because CLECs such as Cox provide facilities-based telephone exchange service to both residential and business customers in Arizona.

D. Service Primarily Over Their Own Facilities

The fourth element of the FCC's Track A analysis requires competing providers to offer telephone exchange service either exclusively or predominantly over their own telephone exchange service facilities in combination with resale. As explained above, many CLECs in Arizona are providing local exchange service primarily over their own facilities. In the Ameritech-Michigan analysis, the FCC clarified that UNEs purchased from a BOC, like Qwest in Arizona, constitute facilities-based competition over a CLEC's own telephone exchange service facilities for purposes of Track A.[74]

According to the FCC, interpreting "own telephone exchange service facilities" to include UNEs will further Congress' objective of opening the local exchange market to competition.[75] Congress sought to ensure that CLECs would be able to take advantage of any, or all three, of the entry strategies

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[73] *Id.*

established by the Act: 1) resale, 2) unbundled network elements, and 3) construction of their own facilities, without disadvantaging one approach compared to another.[76] All three methods are currently employed by CLECs in the Arizona as previously addressed in resale affidavits filed by Ms. Lori Simpson and UNE affidavits filed by Ms. Lori Simpson and Ms. Karen Stewart on behalf of Qwest in this proceeding.

In Ameritech-Michigan, the FCC determined that one or more CLECs offering service exclusively or predominantly over their own facilities satisfied this Track A sub-part requirement. The FCC went on to clarify that it need not determine if other, or all, CLECs also offer service exclusively or predominantly over their own facilities. In other words, once the sub-part was met for the first CLEC or combination of CLECs, the FCC determined there was no need to determine if the requirement held for each and every CLEC.[77] Cox, AT&T, WorldCom and others provide telephone exchange service either exclusively or predominantly over their own facilities in Arizona.

As of February 28, 2001, Qwest was providing the following unbundled network elements and other services to CLECs in Arizona:

- Total Number of Unbundled Loops in Service – 17,196

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74 Ameritech-Michigan Order at ¶94.
75 Ameritech-Michigan Order at ¶99.
76 *Id.*
77 Ameritech-Michigan Order at ¶104.

- Number of CLECs Utilizing Unbundled Loops – 16
- Total Number of Unbundled Interoffice Transport ("UDIT") in Service – 275
- Total Number of CLECs Utilizing UDITs – 9
- Total Number of Switch Ports in Service – 302
- Total Number of CLECs Utilizing Switch Ports – 1

As shown by this data, CLECs in Arizona are actively utilizing unbundled loops and other unbundled network elements to provide service to customers. The FCC has ruled that use of unbundled network elements in providing retail services represents a form of facilities-based competition.

The preceeding discussion has demonstrated that the four-part Track A requirements are satisfied in Arizona because: 1) Qwest has one or more binding agreements with CLECs which have been approved under Section 252 of the Act, 2) Qwest provides access and interconnection with unaffiliated competing providers of telephone exchange service, 3) competitors provide telephone exchange service to residential and business subscribers in markets in Arizona, and 4) competing providers offer telephone exchange service either exclusively or predominantly over their own telephone services facilities (which includes UNEs) in combination with the resale of the telecommunications services of Qwest.

V. PUBLIC INTEREST

The FCC orders granting 271 relief outline the following three-step analysis for the public interest requirement:

- determination that the local markets are open to competition,
- identification of any unusual circumstances in the local exchange and long distance markets that would make the BOC's entry into the long distance market contrary to the public interest, and
- assurance of future compliance by the BOC.

A. Determination that the Local Markets are Open to Competition

1. Compliance with the 14-Point Checklist

The first aspect of the FCC's public interest analysis evaluates whether the local markets are open to competition. Based on previous FCC rulings in other 271 applications, compliance with the competitive checklist, also known as the 14-point checklist "is, itself, a strong indicator that long distance is consistent with the public interest."[78] Complying with the competitive checklist requirements, which embody the critical elements of market entry under the Act, means that "barriers to competitive entry in the local market have been removed and [that] the local exchange market today is open to competition."[79] As the FCC points out, this approach reflects the Commission's many years of experience that has shown that consumer benefits flow from competitive telecommunications markets.[80] Each of the checklist items is being examined in separate workshop proceedings where a rigorous analysis of checklist compliance has been, or is being, conducted. Qwest will defer discussion of compliance with the competitive checklist items to their respective workshops. Based on the record created from all the checklist workshops, Qwest will demonstrate that it is in compliance in Arizona with the competitive checklist as outlined in the Act. This will provide clear evidence that the local markets are open to competition and that Qwest's entry into the interLATA long distance market is in the public interest. Based on the FCC's analysis, compliance with the competitive checklist means that the local market is open to competition. Therefore, Qwest complies with the first element of the FCC's analysis.

2. State-Specific Data Demonstrating the Local Market is Open to Competition

The following facts demonstrate that Qwest has opened its local exchange markets to competitors in Arizona as intended by the Act:

- Qwest has 56 Commission-approved wireline interconnection agreements and 41 resale-only interconnections between itself and its competitors in Arizona (as of February 28, 2001)[81].

- Qwest has 38 interconnection agreements pending Commission approval in Arizona (as of February 28, 2001).

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[78] BANY Order at ¶422; SBC-Texas Order at ¶416.
[79] BANY Order at ¶426; SBC-Texas Order at ¶419.
[80] BANY Order at ¶422; SBC-Texas Order at ¶416.
[81] In addition, there are a total of 18 interconnection agreements with wireless, paging, and Extended Area Service ("EAS") providers in Arizona.

- Qwest has 65 competitors actively interconnecting with it in Arizona (as of December 31, 2000).

- Qwest has 37 competitors purchasing resold services using Commission-approved resale percentages in Arizona (as of February 28, 2001).

- Qwest filed a Statement of Generally Available Terms ("SGAT") on February 5, 1999, as well as updates on October 29, 1999, April 10, 2000, and July 21, 2000, that establish Qwest has a specific, concrete, and legal obligation to make the checklist items available upon request.

- Qwest estimates that 214,672 access lines are served by competitive providers and 165,271 access lines are served on a facilities basis in Arizona.

- Qwest has 23 CLECs interconnected with itself via 132,105 local interconnection trunks in Arizona (as of February 28, 2001).

- Qwest exchanged 1,123,624,413 minutes of usage ("MOU") between itself and CLECs over their local interconnection trunks in Arizona in January, 2001.

- Qwest has provisioned 17,196 unbundled loops for 16 carriers in Arizona (as of February 28, 2001).

- There are 37 carriers actively reselling Qwest's services in Arizona (as of February 28, 2001). 27 carriers are reselling to residential customers and 20 carriers are reselling to business customers for a total of 40,727 local exchange service access lines resold in Arizona.

- Qwest has 455 completed collocation arrangements with 32 CLECs in Arizona (as of February 28, 2001). 80 out of 137 Arizona central offices have completed collocation arrangements.

- Qwest directories contain 105,373 white page directory listings provided on behalf of competitors in Arizona (as of February 28, 2001).

- 100% of Arizona's access lines have local number portability ("LNP") available and 330,541 telephone numbers in the state are "ported" to competitors enabling customers to leave Qwest and retain their telephone number (as of February 28, 2001).

In addition, as of February 28, 2001, competitors had over 450 completed collocation arrangements. With these completed collocations, competitive providers in Arizona have access through collocation to over 94% of Qwest residential and business lines. See Exhibit DLT-3 for a summary of the Arizona-specific data discussed above.

B. Identification of Any Unusual Circumstances

The second part of the FCC's analysis examines any unusual circumstances surrounding competition in the local exchange and long distance markets that would make the BOC's entry into the long distance market contrary to public interest. The FCC has consistently held that BOC entry into the long distance market will benefit consumers and competition if the relevant local exchange market is open to competition consistent with the competitive checklist.[82] In fact, in the context of its public interest analysis, the FCC has identified factors previously raised by CLECs that do not warrant denial of the public interest standard as follows: 1) the low percentage of total access lines served by CLECs, 2) the concentration of competition in densely

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[82] BANY Order at ¶428; SBC-Texas Order at ¶419.

populated urban areas; 3) minimal competition for residential service; 4) modest facilities-based investment; and 5) prices for local exchange service at maximum permissible levels under the price caps.[83]

Rather than give consideration to such arguments from incumbent long distance providers, Section 271 approval is conditioned "solely on whether the applicant has opened the door for local entry through full checklist compliance, not on whether competing LECs actually take advantage of the opportunity to enter the market."[84] Additionally, the FCC specifically declined to adopt a market share or similar test for a BOC's entry into the interLATA long distance market.[85] Qwest will demonstrate that the markets are open to competition through successful completion of the checklist workshops in Arizona. Moreover, the current level of competition in this state, as I have reviewed in earlier sections of this affidavit, are ample evidence that the Arizona market is open to competition, and many CLECs and DLECs have successfully entered this market.

C. Assurance of Future Compliance

The final aspect of the FCC's public interest analysis is assurance of future compliance. The FCC has repeatedly explained that one factor it may consider as part of its public interest analysis is whether a BOC would continue

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83 BANY Order at ¶426; SBC-Texas Order at ¶419.

to satisfy the requirements of section 271 after entering the long distance market.[86] The FCC has consistently looked at three factors to provide assurance of future compliance:

- acceptable Performance Assurance Plan ("PAP")[87],
- the FCC's enforcement authority under Section 271(d)(6),[88] and
- liability risk through antitrust and other private causes of action if the BOC performs in an unlawfully discriminatory manner.[89]

1. Acceptable Performance Assurance Plan

A performance assurance plan ("PAP") is a performance monitoring and enforcement mechanism that provides a BOC, such as a Qwest, with a meaningful incentive to maintain a high level of performance after its 271 application is granted. It is designed as an anti-backsliding mechanism.

The theory behind backsliding is that once it enters the in-region, interLATA long distance market, a BOC such as Qwest will have no incentive to provide parity of service to CLECs. The purpose of the PAP is to provide incentive for the BOC to ensure service quality is maintained and backsliding does not occur.

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84 BANY Order at ¶427.
85 BANY Order at ¶427; SBC-Texas Order at ¶419.
86 BANY Order at ¶429; SBC-Texas Order at ¶420.
87 BANY Order at ¶429-¶430; SBC-Texas Order at ¶420-¶421.
88 BANY Order at ¶429-¶430; SBC-Texas Order at ¶421.
89 *Id.*

Qwest does have a PAP for Arizona. Qwest, CLECs, and the ACC have been engaged since July, 2000, in a series of Performance Assurance Plan ("PAP") collaborative workshops in Arizona. The purpose of these workshops is to discuss the adequacy of Qwest's PAP, with the goal being to gain as much consensus as possible. These workshops have now generally concluded, and the Staff is expected to release a draft recommendation in the near future.

While I am not an expert on the Qwest PAP, I do know that Qwest has developed its plan by adopting the statistical testing and payment structure elements of the SBC plans that have been reviewed and approved by the FCC in SBC's 271 applications in Texas, Kansas, and Oklahoma.

2. Three Other Factors that the FCC Considers for Assurance of Future Compliance

The FCC does not rely solely on the PAP for assurance of future compliance. It has repeatedly held that "it is not necessary that a state monitoring and enforcement mechanism alone provide full protection against potential anti-competitive behavior by the incumbent."[90]

While the FCC has considered other factors for assurance of future compliance, it has determined that the most significant factor, other than the

90 BANY Order at ¶430 and ¶435; ¶SBC-Texas Order at ¶421.

PAP, is the FCC's enforcement authority under Section 271(d)(6).[91] The FCC notes that Section 271(d)(6) already provides incentives for a BOC to ensure continuing compliance with its Section 271 obligations.[92] If at any time after the FCC approves a 271 application, it determines that a BOC has ceased to meet any of the conditions required for such approval, Section 271(d)(6) provides the FCC enforcement remedies including imposition of penalties, suspension or revocation of 271 approval, and an expedited complaint process. Finally, the FCC notes that the BOC risks liability through antitrust and other private causes of action if it performs in an unlawfully discriminatory manner.[93] These factors provide the ACC additional assurance of Qwest's future compliance.

D. Other Public Interest Considerations

Beyond the components of the FCC's public interest analysis, there is other data that the ACC should consider that support Qwest's contention that the local markets are open and Qwest's entry into the interLATA long distance business is in the public interest. It is clear that Qwest has opened its local exchange markets to competitors as required by the Act because there are many competitors who have chosen to enter certain local exchange markets and compete with Qwest for new and existing customers. Many customers are

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91 *Id.*
92 *Id.*

enjoying the opportunity to choose from among competing providers of local exchange and long distance services. These customers can choose to get all of their telecommunications services, local, long distance, and data services, from a single provider other than Qwest. Alternatively, they can choose to spread their purchases among several providers.

This competition has implications for both Qwest and its customers. Customers who make calls that cross Local Access and Transport Area ("LATA") and/or state boundaries are prohibited from selecting Qwest to carry these calls. Ironically, Qwest is the only local exchange carrier not allowed to compete for such intrastate, interLATA business. Qwest should not be barred from providing an additional choice to these customers. In fact, customers should be afforded the benefits of expanded choices, as intended by Congress when it drafted the Act.

Although there are already interLATA long distance providers in Arizona, public interest will still be served if Qwest is allowed to provide interLATA long distance services because, unfortunately, there is another side to the competitors' entry strategies that is not serving the public interest very well. Many customers do not have the opportunity to choose a single provider for all of their telecommunications needs in spite of the fact that the local exchange markets are fully open to competitors. These customers are located in

93 *Id.*

geographical areas that the CLECs have decided are not attractive to serve at this time. Since Qwest cannot yet provide interLATA long distance services, Qwest is precluded from offering these customers the flexibility of one-stop shopping, even though no other carrier appears to be willing to do so.

Upon receiving Section 271 approval, Qwest is poised to enter the interLATA market to give all of its customers the opportunity to select a full service provider of local and long distance services and enjoy one-stop shopping if the customer so chooses. This additional level of service and choice is clearly in the public interest. This proceeding initiates the actions that will ultimately lead to Section 271 approval. The ACC should support and encourage Qwest's interLATA entry to assure that all customers share in the benefits of competition.

Although some of our opponents might say that the interLATA long distance market is already fully competitive and thus there is little to be gained by allowing one more competitor like Qwest into the market, this is not the case. If there were nothing to gain by Qwest's entry, the other long distance competitors would be taking a neutral position regarding Qwest's 271 applications. In view of their opposition, the competitors must consider Qwest a threat to their market position and the profit margins they currently enjoy.

These concerns should confirm to the ACC that there are still significant gains to be had for residence and business customers.

1. Market Experience Demonstrating Consumer Benefits

Actual market experience in New York where Verizon (formerly Bell Atlantic), another BOC, has been permitted to provide interLATA long distance service demonstrates that competitive pressures increase consumers' benefits. For example, as a result of Verizon's entry into the interLATA long distance business a little more than a year ago, residential long distance prices have been reduced. According to the Telecommunications Research & Action Center ("TRAC") – an independent consumer group that, among other things, compiles information about long distance rates – there is a Verizon calling plan in New York with rates lower than any AT&T, WorldCom, or Sprint New York calling plan for all levels of customer usage except high volume callers (which account for only 10 percent of the total number of customers in New York).[94] A more recent TRAC study, released on September 6, 2000, found that savings for consumers who switched to Verizon's long distance service was between more than $46 million and $120 million.[95] There is every reason to believe that

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[94] Declaration of Maura C. Breen, *In the Matter of Application by Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions) and Verizon Global Networks, Inc., for Authorization to Provide In-Region, InterLATA Services in Massachusetts*, CC Docket No. 00-176 at ¶12-¶14 (hereinafter "Verizon-Massachusetts Application"). Source: http://newscenter.verizon.com/policy/mass/declarations/.
[95] *Id.*

consumers in Arizona will experience similar benefits and savings if Qwest is allowed to offer interLATA long distance services.

If Qwest is not afforded an opportunity to be a viable full service competitor, there is a risk that customers will have a narrower range of service options, particularly in those less competitive areas. Local exchange carriers that want to be healthy, viable companies, need to offer what customers want: attractive packaging of local service, intraLATA long distance and interLATA long distance, calling features, data services, Internet connectivity, and other choices.[96] Qwest's competitors can do that today and have chosen to do so only in certain markets. All Qwest seeks is an opportunity to compete in the same way. The public interest is not served if Qwest continues to be prevented from: 1) entering the interLATA long distance markets, 2) packaging services to meet customer needs, and 3) competing on par for its own high margin customers wherever they are located.

The lack of incentive of competitive providers to serve certain markets in no way means that the local markets are not fully open. It merely means that providers have elected not to use the options created by the Act. Competing providers of local exchange service have demonstrated that they are only going to offer their services to those customers that they find most profitable. Those customers will be determined by their location and by their demand for telecommunications services. The small customer, the customer who is expensive to serve, or the high-risk customer will not be offered a competing local exchange service, other than perhaps the resale of Qwest's services.

The entry by Cox, AT&T, WorldCom and others into Qwest's local exchanges provides a clear view of the future. Qwest's competitors are targeting customers who are most profitable to serve, and will gladly let Qwest continue to provide exchange services to the low or negative margin customer who is expensive to serve. If Qwest is prevented from competing in the interLATA markets, its customer base will quickly become limited to the high cost, low revenue exchange service customers no one else wants to serve.

LATA restrictions apply only to Qwest and they are a constant and significant barrier to efficiently meeting customer needs. Unfortunately, this often adversely affects the most desirable sectors of the market, as well as any other customer who needs to connect multiple locations that cross LATA or state boundaries. Qwest faces these barriers every day. Many customers do not understand why these LATA problems exist, and they often result in higher costs for the customer.

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96 S. Schmelling, "Bundling Takes on New Meaning," *Telephony*, July 13, 1998, p. 20.

2. Other Consumer Benefits

Qwest's entry into the interLATA market will benefit consumers in other ways. As I discussed earlier in my affidavit, Qwest plans to make one-stop shopping available to all residential and business customers. As the incumbent local service provider in Arizona, Qwest already offers consumers a wide array of local services. Being able to offer interLATA long distance service will allow Qwest to combine those services with existing local services to create integrated bundles or packages of service that customers have been asking for. Qwest will be able to provide these packages not only to customers in geographic areas currently targeted by competitive providers, but to residential and rural customers who are often ignored by these same providers.

Being able to offer consumers packages of service will allow Qwest to compete on a level playing field with competitive providers who already offer customers bundles of local and long distance services. Without the ability to offer bundled services, including an interLATA long distance component, Qwest will be significantly disadvantaged in its ability to compete in virtually all markets since customers are increasingly demanding robust packages, not just stand-alone offerings. Consumers in Arizona will ultimately benefit by having not only a choice of service providers but also more variety in packages from which to chose. Further, as firms compete for customers, consumers should see additional benefits due to lower prices and more package choices.

Qwest's entry into the interLATA market will also serve the public interest by encouraging competition not only in the interLATA market, but the intraLATA market and the local exchange markets as well. The market dynamics are similar for everyone. If Qwest is allowed to aggressively compete in all market segments, it will be much harder for national carriers like AT&T, MCI, Sprint as well as other more regional interexchange carriers to ignore the residential local exchange market.

Recent experience in New York has shown that competitive providers have little interest in providing local services to a broad range of consumers unless they are at risk of losing existing long distance customers.[97] Qwest's entry into Arizona's interLATA long distance markets will provide competitive providers with the incentive to quickly expand their local service offerings in order to protect their long distance business and the associated revenues.

In September, 1999, following approval by the New York Public Service Commission, Verizon filed with the FCC for authority to provide interLATA services within the state of New York. Because the Section 271 process takes months to complete, there was widespread knowledge within the industry about Verizon's plans months in advance. There was also a widespread belief that Verizon was going to receive FCC approval to enter the interLATA long distance market some time during 1999. During this same timeframe there was a surge of competitive activity by WorldCom and AT&T in New York. At the end of 1998, WorldCom reports that it served 35,600 access lines in New York; by September, 1999 it had signed up 160,000 residential customers.[98] AT&T was also actively pursuing customers in 1999; it began offering its local service to residential customers in August, 1999, and as of December 31, 1999, reportedly served almost 98,000 access lines.[99]

This activity in the residential market shows that competitive providers were positioning themselves to compete with Verizon once it received Section 271 approval. With Section 271 approval, Arizona could expect a similar competitive response by the large carriers such as AT&T and WorldCom.

In conclusion, it is essential that both the deliberations of the ACC and the FCC reflect the realities of Arizona, not a competitive model developed with the densely populated eastern seaboard in mind. Many parts of Arizona have low population density and rural geography, making these areas difficult and expensive to serve for any local telephone provider.[100] However, alternatives do exist and the CLECs can serve these rural customers via resale. Qwest

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[97] Declaration of Maura Breen, Verizon-Massachusetts Application at ¶22-¶27.

[98] "Carriers Ranked By Local Exchange Lines Served," from Competitive Analysis of Telecommunications in New York State, *New York Public Service website*, downloaded November 22, 1999. See also, Goodman, Peter "Long Distance Market Calls to Bell Atlantic; Bid in New York May Guide Local Phone Firms," *The Washington Post*, September 27, 1999.

[99] Goodman, Peter "Long Distance Market Calls to Bell Atlantic; Bid in New York May Guide Local Phone Firms," *The Washington Post*, September 27, 1999.

[100] In Oklahoma, another state with rural geography, the FCC granted SBC's 271 application even though the evidence showed that CLECs served as low as 5.5 percent of the total access lines in SBC's service

should not be denied access to the interLATA markets simply because the CLECs have chosen not to provide service.[101] Aggressive competition is already occurring in many communities in Arizona and the customers in these areas represent a significant portion of access line base. Qwest's application to enter the interLATA business in Arizona must be considered in light of these realities. The very vitality of the process is at stake, as noted in a statement by the current FCC Chairman Michael Powell:

> "Cookie-cutter solutions that ignore the economic, regulatory and technical context in which each applicant operates may unduly burden BOCs or deprive new entrants of a fighting chance to compete for local exchange customers, and I seriously question whether such national solutions would be consistent with the state-by-state application process contemplated by section 271. I am also concerned that if we do not tailor checklist solutions to particular States or regions, we may overlook small and mid-sized competitors, whose competitive activities and successes all too often are drowned out by the chorus of larger companies that constantly serenade those of us within the Beltway."[102]

Based on all these facts, it is not in the public interest to continue to keep Qwest out of the interLATA markets in Arizona. Qwest's competitors are taking advantage of this restriction at a time when the telecommunications markets in Arizona are expanding. Unless the interLATA restriction is lifted, many customers in Arizona will not have the choices promised them when

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territory. SBC-Kansas/Oklahoma Order at ¶5.

101 BANY Order at ¶427; SBC-Texas Order at ¶419.

102 (FCC Press office called an "Essay" released by Powell on January 15, 1998, titled: WAKE UP CALL: FCC COMMISSIONER MICHAEL POWELL CALLS FOR NEW "COLLABORATIVE APPROACH" TO SECTION 271 APPLICATIONS).

BEFORE THE ARIZONA CORPORATION COMMISSION

WILLIAM A. MUNDELL
Chairman
JIM IRVIN
Commissioner
MARC SPITZER
Commissioner

IN THE MATTER OF U S WEST COMMUNICATIONS, INC.'s COMPLIANCE WITH SECTION 271 OF THE TELECOMMUNICATIONS ACT OF 1996	DOCKET NO. T-000000B-97-0238 **Affidavit of David L. Teitzel**

STATE OF WASHINGTON)
)
COUNTY OF KING)

David L. Teitzel, of lawful age being first duly sworn, deposes and states:

1. My name is David L. Teitzel. I am Director for Qwest Corporation, located in Seattle, Washington.

2. Attached hereto and made a part hereof for all purposes is my Affidavit.

3. I hereby swear and affirm that my answers contained in the attached Affidavit to the questions therein propounded are true and correct to the best of my knowledge and belief.

David L. Teitzel

David L. Teitzel

SUBSCRIBED AND SWORN to before me this 3rd day of April, 2001.

LORI L. WHITE NOTARY PUBLIC STATE OF WASHINGTON COMMISSION EXPIRES 7-10-03

Lori L. White
NOTARY PUBLIC

My Commission Expires:

7/10/03

INDEX OF EXHIBITS

PHX/DPOOLE/1175378.1/67817.150

Exhibit DLT-1C

Proprietary and Confidential

(Redacted Version)

Exhibit DLT-2C

Proprietary and Confidential

(Redacted Version)

Arizona Corporation Commission
Docket No. T-00000B-97-0238
Exhibit of David L. Teitzel
Exhibit DLT-3

April 17, 2001

ARIZONA WHOLESALE VIEW
As of February 28, 2001

Products Provided	Arizona
Total Number of UNE-P in Service (Cumulative)	653
Number of CLECs	4
Total Number of Unbundled Dedicated Interoffice Transport (UDIT) in Service	275
Number of CLECs	9
Total Unbundled Switch Ports in Service	302
Number of CLECs	1
Number of Approved Wireline Interconnection Agreements (Includes Opt Ins)	56
Number of Approved Wireless, Paging, and EAS Interconnection Agreements	18
Number of Approved Resale Interconnection Agreements (Includes Opt Ins)	41
Total Approved Interconnection Agreements	115
Number of Interconnection Agreements Pending (Includes Wireline, Resale, Wireless, Paging, EAS, Opt Ins)	38
Number of Active Resellers	37
Total Interconnection Trunks in Service (Cumulative)	132,105
CLECs with LIS Trunks in Service	23
Total Minutes Exchanged (Local, Toll, and Transit)	1,123,624,413
Unbundled Loops in Service (Cumulative)	17,186
Number of CLECs Utlizing Unbundled Loops	16
Total Resold Lines	407,272
Number of Completed Collocations	455
Number of Central Offices with Completed Collocations	80
Total Number of Central Offices in State	137
total Number of CLEC End User White Pages Listings (Cumulative)	105,373
Local Number Portability (LNP) Telephone Numbers Ported (Cumulative)	330,541
Percent Access Lines with Local Number Portability (LNP) Available	100.0%