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BEFORE THE ARIZONA CORPORATION COMMISSION RECEIVED

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

DOCKET NO. T-00000A-97-0238

**QWEST CORPORATION'S COMMENTS TO STAFF'S FINAL EMERGING  
SERVICES REPORT**

Qwest Corporation hereby provides its comments to the Arizona Corporation Commission Staff's (Staff's) Final Report issued on August 1, 2001, concerning Emerging Services (Report). Emerging services are comprised of subloop unbundling, line sharing, packet switching and dark fiber. The FCC did not originally require ILECs such as Qwest to unbundle emerging services; however, the FCC imposed these unbundling requirements in its *UNE Remand* and *Line Sharing Orders* issued in late 1999. As a result, Qwest suggested and participated in approximately two weeks of emerging services workshops in Arizona.

Qwest commends the Staff for its hard work in generating and issuing the Report. Qwest accepts virtually every conclusion in the Report. Qwest seeks minor clarification of three issues, one line sharing issue, one subloop issue, and one dark fiber issue. Qwest requests that the remainder of the Staff's Final Report be adopted by the Hearing Division.

## **I. BACKGROUND**

Qwest and a number of CLECs participated in approximately two weeks of emerging services workshops in Arizona. Substantial progress was made resolving a number of key issues. Nonetheless, several impasse issues remained principally around subloop unbundling. The Staff Report decided these issues in an even-handed manner; therefore, Qwest only seeks slight clarification of three few issues in the Report. Each of these issues will be discussed below.

## **II. LINE SHARING**

On December 9, 1999, the FCC released an Order (the *Line Sharing Order*<sup>1</sup>) amending its unbundling rules to require ILECs to provide unbundled access to the high frequency portion of copper loops in certain situations. The unbundling of the high frequency portion of the loop enables a CLEC to offer DSL over that portion of the loop at the same time Qwest is using the low frequency portion of the loop to provide voice service. This joint use of copper loops by both CLECs and ILECs is commonly referred to as line sharing. Qwest is an industry leader in providing line sharing.

### **Disputed Issue No. 5:**

This issue concerns how quickly Qwest must provision line sharing. During the workshop, Qwest argued for a five (5) day provisioning interval. Since then, Qwest has voluntarily reduced its interval to three (3) days. Qwest's interval for providing Qwest

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<sup>1</sup> Third Report and Order in CC Docket No. 98-147, Fourth Report and Order in CC Docket No. 96-98, *In the Matters of Deployment of Wireline Services Offering Advanced Telecommunications Capability*

DSL – the retail comparative to line sharing – is in excess of 10 days. The FCC’s *Line Sharing Order* states that ILECs must “fulfill requests for line sharing within the *same interval the incumbent provision xDSL to its own retail or wholesale customers.*”<sup>2</sup>

The Staff concluded “Qwest’s five-day interval does not appear to be outside the range of intervals to establish parity with Qwest’s retail operations.” Report at ¶190. Nonetheless, the Staff also recommended that “Qwest target a two-day interval in the future.” *Id.* The Staff concluded by stating that “the acceptance of Qwest’s three-day interval should be with the understanding that it should be revisited with Qwest in the very near future, particularly if retail performance shows improvement.” *Id.* As a result of this Staff finding, AT&T asked that Qwest affirmatively state whether it will transition to a two (2) day interval. The Staff therefore, recommended that Qwest add a provision to its SGAT that states:

On or before January 1, 2002, Qwest shall file with the Commission either an amendment to this SGAT abbreviating this interval to no greater than two days or a statement setting forth its reasons for not filing such an amendment.

Qwest does not object to this request, *per se*. It does, however, object to adding it to the SGAT. The SGAT is a form interconnection agreement and the proposed language is simply not a contractual provision. The recommendation could, however, be viewed as a finding of the Commission that requires Qwest to affirmatively report to the Commission before the end of the year. Qwest will docket the matter and report accordingly.

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*and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, 14 FCC Rcd 20912 (1999) (“*Line Sharing Order*”).

<sup>2</sup> *Line Sharing Order*” ¶ 173 (emphasis added).

Qwest does not want these comments to suggest that it believes a two (2) day interval is appropriate or achievable. The Staff correctly found that retail parity is the appropriate standard and that the current retail interval is approximately ten (10) days. Qwest has no current plan to significantly reduce this retail Qwest DSL interval; therefore, CLECs are already obtaining a significant competitive advantage over Qwest retail.

### III. SUBLOOP UNBUNDLING

In the *UNE Remand Order*, the FCC determined that ILECs must provide unbundled access to the constituent facilities making up the loop, known as “subloops.”<sup>3</sup> Specifically, the Order stated,

We define subloops as portions of the loop that can be accessed at terminals in the incumbent’s outside plant. An accessible terminal is a point on the loop where technicians can access the wire or fiber within the cable without removing a splice case to reach the wire or fiber within. These would include a technically feasible point near the customer premises, such as the pole or pedestal, the NID . . . or the minimum point of entry to the customer premises (MPOE). Another point of access would be the feeder distribution interface (FDI), which is where the trunk line, or “feeder,” leading back to the central office, and the “distribution” plant, branching out to the subscribers, meet, and “interface.” The FDI might be located in the utility room in a multi-dwelling unit, in a remote terminal, or in a controlled environment vault (CEV).<sup>4</sup>

Qwest has agreed to make subloops available pursuant to the *UNE Remand Order*.

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<sup>3</sup> See Third Report and Order and Fourth Further Notice of Proposed Rulemaking, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, 15 FCC Rcd 3696, 3791 ¶ 209 (1999) (“*UNE Remand Order*”).

<sup>4</sup> *Id.* at 3789 ¶ 206.

Subloop unbundling constituted the most contentious of the emerging services. All of the disagreement centered on how CLECs can access subloops in Multi-Tenant Environments (MTEs) – apartment complexes and business campuses. In Arizona, the parties reached impasse, rather than consensus, on a number of issues. Since then, the parties have narrowed the impasse issues substantially. In these comments Qwest brings forward consensus reached in the last two weeks on issues formerly in dispute. This eliminates the need for one finding from the Staff's Report and, in Qwest's opinion, eliminates the need for one parallel finding as well. Qwest will also identify where additional consensus was reached.

**Disputed Issue No. 1:**

This issue concerns how CLECs can obtain access to terminals in MTEs. In this regard, Qwest and AT&T, among others, negotiated a detailed MTE Access Protocol, which spells out in detail how CLECs can access different types of MTE Terminals. While there are a few concerns with the language in this document, the document is in large part negotiated. Both of the findings that Qwest seeks to clarify concern this one disputed issue and can be found in paragraph 204 of the Report.

The first clarification concerns the time frame that Qwest has to construct new MTE Terminals. In recent Washington workshops, Qwest agreed to extend the time that temporary wiring can be in place in MTE Terminals and, in response, CLECs dropped any concerns about timeframes for Qwest to build a new terminals. The Staff found that "the 45 day timeline contained in Section 9.3.3.7.1 of the SGAT be shortened to 30 days which Staff believes should permit Qwest sufficient time to rearrange its MTE Terminal

to make space for the CLEC.” Report at ¶204. This provision is no longer in dispute and the Hearing Division should accept the consensus reached. *See Exhibit 1.*

The second concern is related and concerned how long it will take Qwest to decide how CLECs can access unique MTE Terminals. In this regard, the Staff expressed concern that adopting recommended language from the 7-State Report could engender delay in CLEC access to terminals different than those identified in the SGAT. Therefore, the Staff proposed adding the following SGAT language:

(c) Prior to the development of such standard terms and conditions, Qwest shall impose in the six areas identified in item (1) above only those requirements as are reasonably necessary and shall make its determinations within 10 business days and shall apprise the CLEC of the conditions for access. If there is a dispute regarding the conditions for access, Qwest shall attempt to accommodate access pending resolution of the specific issues in dispute.

Qwest does not believe that this provision is necessary in light of agreement reached in Washington. In that jurisdiction, as stated above Qwest allowed CLECs access to MTEs using temporary wiring for a period of 90 days. The timing concerns expressed by CLECs are, therefore, no longer valid. Qwest recommends that this recommended provision be eliminated.

**Disputed Issue No. 4:**

During the Washington workshop, the parties agreed to the timeframes proposed by Qwest and accepted by the Staff.

**Disputed Issue Nos. 5, 6, 7 & 9:**

These issues are no longer disputed. The Attached SGAT language (*Exhibit 1*) either resolves them or the parties have deferred the issue to the Arizona cost docket.

#### IV. DARK FIBER

The FCC's *UNE Remand Order* identified dark fiber — meaning fiber that has been deployed but is not in use and that lacks the necessary messaging electronics — as a new UNE. The FCC required the unbundling of dark fiber both in the loop plant and interoffice facilities. The Order states,

174. Dark Fiber. We also modify the loop definition to specify that the loop facility includes dark fiber. ... [We] conclude that both copper and fiber alike represent unused loop capacity. We find, therefore, that dark fiber and extra copper both fall within the loop network element's "facilities, functions, and capabilities."

\* \* \*

325. Dark Fiber. In addition, we modify the definition of dedicated transport to include dark fiber. Dark Fiber is deployed, unlit fiber optic cable that connects two points within the incumbent LEC's network. As discussed above, dark or "unlit" fiber, unlike "lit" fiber, does not have electronics on either end of the dark fiber segment to energize it to transmit a telecommunications service.<sup>5</sup>

Qwest is providing CLECs with access to dark fiber pursuant to the *UNE Remand Order*.

#### Disputed Issue No. 1:

This issue concerns whether or not Qwest's obligation to unbundle extends beyond Qwest Corp., its ILEC affiliate, to other affiliated companies, specifically Qwest Communications Corp., Qwest's long distance affiliate. The specific concern raised by CLECs in the workshop was that QC would use QCC's network to avoid its unbundling obligations. As a practical matter, the Staff found that QCC had no such unbundling obligations. The reasons are simple: Section 251(c) places unbundling obligations only on ILECs, and QCC has never been an ILEC.

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<sup>5</sup> *UNE Remand Order*, 15 FCC Rcd at 3776, 3843 ¶¶ 174, 325.

Qwest supports the findings in the Draft Report related to this issue, including: 1) that QCC and its predecessors have never provided local exchange service or exchange access in Colorado, 2) that QCC does not constitute a LEC or an ILEC, 3) that even if QCC were deemed to be an ILEC, it would not have an obligation to provide unbundled access to its long distance network or operations, 4) that QCI (the parent company) and its affiliates are not obligated to unbundle their in-region facilities, including dark fiber, and 5) that there is no evidence that any affiliate of QC has been used as a CLEC in an attempt to circumvent the ILEC obligations of section 251(c) and therefore no QC affiliate is deemed a successor and assign of U S WEST/QC for section 251(c) purposes.

As the Staff recognized, there is no legal authority to support the position that QCC must unbundle its network pursuant to § 251(c). *Association of Communications Enterprises v. FCC*, 235 F.3d 662, 668 (D.C. Cir. 2001), stands only for the proposition that once an ILEC is engaged in a line of business subject to regulation under 251(c), the ILEC may not shield that business from regulation by moving it into a corporate affiliate. That is not the case here, and AT&T has not alleged otherwise. Additionally, the FCC has already ruled that long distance networks are not subject to the unbundling obligations of 251(c).<sup>6</sup>

Moreover, the concerns raised by AT&T are now moot anyway. Six months after the Qwest-U S WEST merger, the company elected to make QCC its 272 long distance affiliate. Section 272 prohibits QC and its 272 affiliate (now QCC) from jointly owning switching and transmission facilities.<sup>7</sup> Thus, under Section 272(b)(1), the 272 affiliate

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<sup>6</sup> Order on Remand, *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, 15 FCC Rcd 385, 390-391 ¶¶13-14 (1999), *appeal pending sub nom. WorldCom v. FCC*, No. 00-1002 (D.C. Cir.).

<sup>7</sup> 47 U.S.C. § 272(b)(1); BANY Order, at ¶ 406.

(QCC) must be separate from the ILEC/BOC (QC) . Not only must the two companies be separate, all transactions between QC and QCC must be at arm's length and posted on a public website within ten (10) days. *See* § 272(b)(5). Any interested party will always, therefore, be able to see and understand all dealings between the two sister corporations.

In its Report, the Staff shifted course away from its original draft report in one slight respect. The Staff recommended that Qwest be required to publicly disclose all transactions between QC and QCC. Report at ¶ 262. Such a finding is unnecessary. Now that QCC is the 272 affiliate, all transactions between the two companies must be publicly posted on a website. The Hearing Division should therefore eliminate paragraph 262 from the final recommendation or clarify that the need for the provision is no longer applicable.

## **V. PACKET SWITCHING**

Packet switching is the “function of routing individual data units . . . based on address or other routing information contained in the packets.”<sup>8</sup> This facilitates DSL transmission. The FCC does not require ILECs to unbundle packet switching except in extremely limited circumstances.<sup>9</sup> An ILEC’s obligation to unbundle packet switching is limited to those cases in which it has deployed a DSLAM in a remote terminal<sup>10</sup> and the following four conditions are met:

- (i) The incumbent LEC has deployed digital loop carrier systems, including but not limited to, integrated digital loop carrier or universal digital loop carrier systems; or has deployed any other system in which

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<sup>8</sup> *UNE Remand Order*, 15 FCC Rcd at 3834 ¶ 304.

<sup>9</sup> *Id.* at 3835 ¶ 306.

<sup>10</sup> *Id.* at 3838 ¶ 313 (“[The] incumbent LECs must provide requesting carriers with access to unbundled packet switching in situations in which the incumbent has placed its DSLAM in a remote terminal.”).

fiber optic facilities replace copper facilities in the distribution section (e.g., end office to remote terminal, pedestal or environmentally controlled vault);

(ii) There are no spare copper loops capable of supporting the xDSL services the requesting carrier seeks to offer;

(iii) The incumbent LEC has not permitted a requesting carrier to deploy a Digital Subscriber Line Access Multiplexer at the remote terminal, pedestal or environmentally controlled vault or other interconnection point, nor has the requesting carrier obtained a virtual collocation arrangement at these subloop interconnection points as defined by § 51.319(b); and

(iv) The incumbent LEC has deployed packet switching capability for its own use.<sup>11</sup>

Qwest has agreed to unbundle its packet switching pursuant to the four conditions set forth in the UNE Remand Order. Qwest has no specific comments on the packet switching portion of the Report.

## VI. CONCLUSION

Qwest hereby requests that the Hearing Division adopt the Staff Report except as specifically stated herein.

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<sup>11</sup> See 47 C.F.R. § 51.319(c)(5)(i)-(iv).

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