



BEFORE THE ARIZONA CORPORATION COMMISSION

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

Docket No. T-00000A-97-0238

QWEST'S COMMENTS
ADDRESSING THE MOTION
TO MODIFY AND/OR
SUPPLEMENT THE JUNE 12,
2000 PROCEDURAL ORDER

Qwest Corporation (Qwest) provides these comments regarding the July 27, 2001 Motion to Modify and/or Supplement the June 12, 2000 Procedural Order (the Motion). Qwest also responds to AT&T's August 3, 2001 response to the Motion.

I. COMMENTS REGARDING THE MOTION

The Motion was presented as the joint motion of the Staff of the Arizona Corporation Commission (Staff) and Qwest to modify and/or supplement the Commission's June 12, 2000 Procedural Order in this docket. As AT&T points out in its response to the Motion, Staff was required to weigh and resolve concerns raised both by Qwest and AT&T in filing the Motion and in making recommendations for revisions to the existing procedural schedule. Qwest and Staff were able to work through enough of the concerns raised by Qwest to allow Staff and Qwest to present the Motion jointly. As Staff understands, however, there are still a few issues on which Staff and Qwest do not fully agree, and Qwest wishes to address those issues in these comments.

1 **A. Timing for Final Report Workshop**

2 The Motion suggests that the Commission hold a Workshop on the Final Report
3 within 14 days after the Final Report issues. Qwest believes that 10 days would be
4 more appropriate, and ample time for the parties to prepare for such a workshop. As
5 noted in the Motion, “[t]he consolidated reports that comprise the Final Report are likely
6 to contain a limited number of additional new findings and/or conclusions”
7 (Motion, p.4). The Final Report is contemplated to be the consolidation of the four
8 individual draft test reports (Retail Parity Evaluation, Functionality Test, Relationship
9 Management Test and Capacity Test). Each of these draft reports will be the subject of
10 discrete workshops, where all parties will be afforded ample time to review, question and
11 comment upon the draft reports (see Motion, p.3). The Motion contemplates that the
12 Final Report Workshop therefore “will be limited in scope to new or modified findings,
13 conclusions or recommendations not contained in the individual draft reports.” (Motion,
14 p.4). Accordingly, given that the 4 individual reports that will comprise the Final Report
15 will already have been subjected to intense scrutiny in individual workshops, and given
16 that the Final Report is expected to raise few new issues, Qwest believes that holding the
17 Final Report Workshop ten days from the issuance of the Final Report will allow all
18 parties more than sufficient time to prepare for that workshop.

19 **B. The Remaining Issues Open Meeting Should be Consolidated with the Final**
20 **Report Workshop**

21 Again, as the Motion demonstrates, the Final Report is a consolidation of the four
22 test draft reports, and is likely to raise few new issues not previously addressed in the
23 previous workshops on the four discrete tests. It would be appropriate, therefore, to
24 consolidate the Remaining Issues Open Meeting (listed as TBD in the proposed schedule

1 attached to the Motion) with the Final Report Workshop. This would also afford the
2 Commission the opportunity to better familiarize itself with the Final Report by
3 participating in the Final Report Workshop.

4 **C. Open Meetings on Disputed Testing Workshop Issues**

5 Qwest first proposes that, in addition to the special 271 open meetings set forth in
6 the proposed schedule in the Motion, the Commission hold open the possibility of
7 resolving issues, if necessary, in its next regularly scheduled open meeting. For example,
8 issues that are not considered in the August 29 special open meeting can be considered in
9 the regularly scheduled September 11-12 open meeting, issues not considered in the
10 September 26 special open meeting can be considered in the regularly scheduled October
11 2-3 open meeting, and issues not considered in the October 15 special open meeting can
12 be considered in the regularly scheduled October 23-24 open meeting. This contingency
13 plan can help to efficiently resolve issues in the event that they cannot be considered as
14 scheduled in the special open meetings.

15 Further, Qwest believes that disputed checklist items 5 and 6 were inadvertently
16 omitted from the disputed checklist items to be considered in the September 26, 2001
17 special open meeting, because checklist items 5 and 6 were part of the workshop on
18 checklist item 2. Qwest asks that the proposed schedule attached to the Motion be
19 amended to reflect that checklist items 5 and 6 will be considered in that special open
20 meeting.

21 Finally, Qwest would also like to point out that the September 29 workshop is
22 scheduled for a Saturday. Qwest suggests that the date be changed to September 26.

1 given that they are spaced out over more than two months (see Proposed Schedule
2 attached to Motion). AT&T claims that it needs at least 30 days after a draft test report is
3 issued to prepare for a workshop on that report. This is clearly excessive. Again, the
4 Commission should bear in mind that Staff believes that the timeframes for the
5 workshops were reasonable.

6 AT&T also suggests that discrete workshops on each of the draft final test reports
7 would be burdensome, because some CLECs would be required to travel to Phoenix to
8 review the underlying data. Of course, AT&T is not one of those CLECs, as AT&T has
9 ample business and legal resources in Phoenix. No other CLEC has raised this concern—
10 and it is their concern to raise, not AT&T's. AT&T's comments are more likely due to
11 its concern that discrete workshops on the draft final reports could lead this docket to be
12 concluded in a timely and efficient matter, as opposed to its concern that other CLECs
13 may find this approach burdensome.

14 In similar fashion, AT&T objects to the proposal that parties submit in advance
15 any questions that they intend to ask at the workshops. This requirement is imminently
16 reasonable, as the Motion explains: "The requirement for parties to submit their
17 questions in advance of the Workshops will ensure that CGE&Y is able to conduct any
18 research or examine any underlying data that will be necessary before convening the
19 Workshop. Staff and its consultants believe that this process will improve the efficiency
20 and effectiveness of the Workshop process." (Motion, p. 3). The Motion adds that this
21 process will not preclude parties from asking related questions at the workshop.

22 The Staff has established a reasonable procedure for the conduct of the
23 workshops. Other states have followed similar procedures for review of OSS testing.

1 For example, in New York, the parties were required to submit their questions in advance
2 for the technical conferences to review the results of OSS testing. AT&T suggests that
3 this proposal somehow violates the parties' due process rights, but this ignores the fact
4 that state commissions do not make legally binding decisions in 271 proceedings, but
5 rather, make recommendations to the FCC regarding 271 applications. 47 U.S.C. §
6 271(d)(2)(B) provides that the FCC shall consult with state commissions before making a
7 determination.

8 Because a state commission's recommendation has no binding or preclusive
9 effect, a state commission is free to establish the proceedings it considers appropriate to
10 review OSS test results. This is not a contested case; it is more akin to an investigatory
11 proceeding. AT&T has, in fact, acknowledged this in a proceeding arising out of
12 Qwest's 271 docket in Montana:

13 The Commission proceeding at issue cannot result in a binding order
14 affecting [Qwest's] rights . . .

15 Under the Act, only the FCC will decide whether [Qwest] complies with
16 the Act. The Act does, however, provide the Montana Commission with
17 an opportunity to provide consultation to the FCC regarding [Qwest's]
18 compliance with certain Section 271 requirements

19 Nothing within Section 271 permits the Commission to make any binding
20 determination regarding [Qwest's] right to offer long distance services.
21 That function has been accorded to the FCC. Moreover, nothing within
22 Section 271 or any other statute requires the Commission to provide
23 [Qwest] with a hearing of any sort in coming to the Commission's
24 recommendation . . .

25 There will be no determination of any legal right, duty or privilege of
26 [Qwest] as a result of this proceeding.

27 Memorandum of AT&T Communications of the Mountain States, Inc. in Support
28 of Motion to Dismiss Petition for Judicial Review, U S WEST Communications,
29 Inc. v. Montana Department of Public Service Regulation, et al., Montana First
30 Judicial District, Lewis & Clark County, No. BDV 9900012 (Feb. 1, 1999).

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1 As AT&T itself argued, 271 cases are unique proceedings, and are not contested
2 cases. Therefore, the Commission has flexibility in determining what proceedings are
3 appropriate. The Motion's proposal that questions be submitted in advance of the
4 workshops is both legally permissible and reasonable, particularly given that parties will
5 be allowed to ask follow-up questions in the workshop.

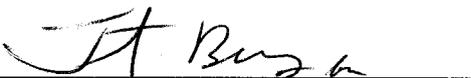
6 AT&T further suggests that the time provided to respond to the four test reports
7 may not be reasonable, and that CLECs may find themselves in the position of reviewing
8 multiple reports at the same time. Again, Staff, at least, which has no agenda to either
9 accelerate or delay this process, believes that the proposed time frames are reasonable.
10 Further, Cap Gemini has already issued the Retail Parity and Relationship Management
11 test reports, so parties' review of and work on those reports should already be underway.
12 Two test reports remain to be issued. While AT&T claims that parties may be required to
13 review "multiple" reports at the same time, it is clear that "multiple" really means two.
14 Again, AT&T intentionally exaggerates the potential burden in the hope of persuading
15 the Commission to adopt a more protracted timetable.

16 Finally, AT&T suggests that the timetable proposed concerning the Final Report
17 Workshop is inappropriate, because the Final Report may deviate from the individual test
18 final reports. This simply ignores the fact, noted in the Motion, that the Final Report is a
19 consolidation of the four individual reports, and as such it is likely to contain a limited
20 number of new findings or conclusions. (Motion, p.4). As AT&T points out, the Final
21 Report Workshop is "the end of the road." (AT&T Response, p. 5). And what a road it
22 will have been. The Arizona proceeding has been more open and exhaustive than any
23 other proceeding in the country, as AT&T recently admitted during the workshop on the

1 Retail Parity Evaluation. The CLECs have had input into every aspect of the testing, and
2 every significant issue has been exhaustively discussed. The proceedings to establish the
3 test plan alone took approximately one year, with every detail of the testing having been
4 discussed in detail. In addition, all test incidents have been disclosed by Cap-Gemini as
5 incident work orders (IWOs). The facts of each IWO and its resolution will have been
6 exhaustively discussed by the time the Final Report is issued. The Final Report will
7 contain little, if any, new information.

8 At the end of this road, Staff and this Commission will be able to represent to the
9 FCC that this process has been thorough and exhaustive.

10 Respectfully submitted on this 8th day of August 2001.

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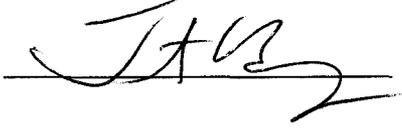
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