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BEFORE THE ARIZONA CORPORATION COMMISSION RECEIVED

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AZ CORP COMMISSION  
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Chairman

JIM IRVIN

Commissioner

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Commissioner

IN THE MATTER OF QWEST  
CORPORATION'S COMPLIANCE  
WITH § 271 OF THE  
TELECOMMUNICATIONS ACT OF  
1996.

DOCKET NO. T-00000B-97-0238

**QWEST'S COMMENTS ON FINAL STAFF**

**REPORT ON CHECKLIST ITEM 14: RESALE**

Arizona Corporation Commission

**DOCKETED**

AUG 06 2001

DOCKETED BY	<i>nae</i>
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**August 6, 2001**

1    **A.    INTRODUCTION**

2           As the Staff Final Report demonstrates, Qwest has made significant efforts  
3 to resolve disputes with its competitors on Checklist Item 14: Resale. Qwest has  
4 modified its SGAT to accommodate the requests of competitors in numerous  
5 situations, often going far beyond any legal requirements. Qwest's  
6 accommodations have resulted in an impressive number of resolved issues, and  
7 just two issues concerning Resale remain. Of these, Qwest only asks the Arizona  
8 Commission to depart from the Staff Final Report on one issue, which concerns  
9 the double recovery by CLECs for service quality incidents: once under the  
10 SGAT, and another time under the Performance Assurance Plan. Qwest is  
11 prepared to adopt the resolution of the remaining issues resolved in the Staff Final  
12 Report.

13    **B.    DUPLICATE RECOVERY PROVIDES NO FURTHER INCENTIVE**  
14           **TO QWEST, AND A WINDFALL TO CLECS**

15           Staff's recommendation to delete the provision that avoids a double penalty  
16 against Qwest for the same incident appears to be based on an incorrect  
17 assumption or understanding concerning the operation of the Performance  
18 Assurance Plan. The Commission is currently involved in the process of drafting  
19 a post-271 Performance Assurance Plan that will subject Qwest to *significant* fines  
20 and penalties for quality of service violations. The purpose of SGAT Section  
21 6.2.3.1 is to strike a balance between providing an incentive to Qwest to meet  
22 service quality requirements, but at the same time, avoid penalizing Qwest

1 unnecessarily in the event that the same service quality incident would otherwise  
2 be subject to fines or penalties under the Performance Assurance Plan, as well as a  
3 corresponding windfall to CLECs.

4 Qwest respectfully submits that the Performance Assurance Plan can, and  
5 will, have more than enough "teeth" to act as an effective incentive and deterrent  
6 without the need for providing for duplicate penalties under the SGAT. It is not  
7 reasonable to assume that Qwest will be any less motivated to avoid service  
8 quality problems because in certain limited situations it will not be penalized twice  
9 for the same incident, or that Qwest would have somehow calculated the potential  
10 diminution in the penalty and engaged in conduct it otherwise would have avoided  
11 based on that fact.

12 Conversely, the elimination of double penalty would in fact avoid an  
13 unnecessary windfall to CLECs. Contrary to the assumption in the Staff Final  
14 Report, Qwest continues to believe that it would be unreasonable and unduly  
15 punitive to subject Qwest to two penalties for the same service problem. In this  
16 sense, Qwest respectfully disagrees with the Staff's conclusion that Qwest would  
17 not be penalized twice for the same incident. To the contrary, a double penalty is  
18 precisely what will occur in the absence of this section of the SGAT. Without the  
19 limitation contained in Section 6.2.3.1(e), Qwest would be penalized twice: once  
20 in the form of a service quality credit paid to CLEC, and another time under the  
21 Performance Assurance Plan. Even assuming that the CLEC resellers pass  
22 through the credit to their customers, those CLECs would nevertheless obtain a

1 windfall by also recovering themselves for the *exact same incident* under the  
2 Performance Assurance Plan. Section 6.2.3.1(e) avoids this improper windfall to  
3 CLECs, and accordingly provides an offset for payments already received.

4 The Facilitator in the Multi-state proceeding noted the plain inequity of this  
5 result:

6 Finally, it is proper for Qwest to provide protection in  
7 the event that PEPP payments clearly include payment  
8 to CLECs or their customers for state quality "misses."  
9 There is no sound policy for making Qwest pay twice  
10 for the same thing; nor is it at all clear that PEPP  
11 payments will necessarily not include such items. To  
12 the extent that they eventually may do so, Qwest  
13 should have explicit SGAT recognition that Section  
14 6.2.3.1 is not intended to duplicate them. To the extent  
15 that they eventually do not, inclusion of 6.2.3.1(d) will  
16 cause no harm to anyone.<sup>1</sup>

17 Accordingly, Qwest respectfully submits that subsection (e) of Sections 6.2.3.1 not  
18 be deleted.  
19

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<sup>1</sup> Multi-state Report 1, p. 132.

1 C. CONCLUSION

2 Qwest is prepared to accept the proposed recommendations of the Staff  
3 with only one minor exception. Qwest respectfully requests that the provision of  
4 the SGAT that avoids double penalties to Qwest for the same service quality  
5 incident, and in the process a windfall to CLECs, not be deleted.

6 DATED this 6th day of August, 2001.

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Respectfully submitted,



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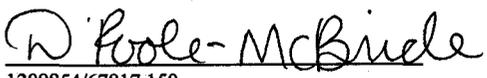
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