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0000020799



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ARIZONA CORPORATION
COMMISSION



T > 720.208.1000
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Director of Utilities
AZ CORP COMMISSION
DOCUMENT CONTROL

August 1, 2001

VIA FEDERAL EXPRESS

Arizona Corporation Commission
Utilities Division
1200 West Washington
Phoenix, Arizona 85007

RE: *In the Matter of the Investigation Into US West Communication, Inc.'s
Compliance With the § 271 of the Telecommunications Act of 1996, Arizona
docket no. T-00000A-97-0238*

Dear Sir or Madam:

Enclosed for filing in the above referenced docket is *Covad Communications Company's
Motion for Leave to Supplement the Record for Checklist Item 4*. The original and ten
(10) copies of the aforementioned document will be and delivered to your office.

Please contact me at 720-208-3354 with any questions. Thank you.

Sincerely,

Adrienne M. Anderson
Paralegal

Enclosures

Arizona Corporation Commission

DOCKETED

AUG 02 2001

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BEFORE THE ARIZONA CORPORATION COMMISSION

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CARL J. KUNASEK
Chairman
JIM IRVIN
Commissioner
WILLIAM A. MUNDELL
Commissioner

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Arizona Corporation Commission
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AUG 02 2001

DOCKETED BY 

IN THE MATTER OF THE)
INVESTIGATION INTO)
US WEST COMMUNICATION,)
INC.'S COMPLIANCE WITH)
THE § 271 OF THE)
TELECOMMUNICATIONS ACT)
OF 1996)

DOCKET NO. T-00000A-97-0238

**COVAD COMMUNICATIONS COMPANY'S MOTION FOR LEAVE TO
SUPPLEMENT THE RECORD FOR CHECKLIST ITEM 4**

Covad Communications Company ("Covad") respectfully submits this Motion for Leave to Supplement the Record for Checklist Item 4. As grounds for this Motion, Covad states as follows:

1. A necessary prerequisite to the approval of Qwest's application to provide interLATA long distance service is proof that Qwest has "fully implemented" the § 271 competitive checklist, thereby presumptively opening its local telecommunications markets to competition. Qwest must thus provide "actual evidence demonstrating its present compliance with the statutory conditions for entry," which require, among other things, that Qwest provide nondiscriminatory access to unbundled network elements, such as unbundled loops.

2. During the course of the workshops on Checklist Item 4, held in connection with *In the Matter of Investigation Into US West Communication, Inc.'s Compliance With Section 271(c) of the Telecommunications Act of 1996*, Arizona Corporation Commission docket no. T-00000A-97-0238, the parties discussed performance-based issues arising out of Qwest's provision of unbundled loops. Specifically, Covad raised the issue of the anti-competitive conduct of Qwest's technicians, including the disparagement of Covad, the theft of Covad loops by Qwest technicians, and the improper solicitation of Covad's customers.

3. Because such anti-competitive conduct damages Covad's relationship with its customers, Covad argued that, pursuant to Section 271, Qwest is required to take all necessary steps to deter and eliminate this type of conduct, including (1) a verified assurance, from the appropriate personnel, that corrective action has been taken for every incident reported by Covad to Qwest; (2) an assurance from Qwest, in the form of properly authenticated documentation, that it has in place policies specifically prohibiting this type of anti-competitive conduct, providing an identified and formal investigatory procedure, and implementing a mandatory disciplinary structure to deter anti-competitive conduct in the future.

4. Qwest responded by stating that its Code of Conduct – as well as training regarding, and “forceful” reminders of, that Code of Conduct – are sufficient to assuage Covad's concerns and to satisfy its obligations under Section 271. Covad disagreed, for a number of reasons, and this issue went to impasse.

5. The workshops on Checklist Item 4 have been closed, and the parties have completed the briefing on this impasse issue.

6. Subsequent to the conclusion of these workshops, Qwest employee(s) engaged in additional anti-competitive conduct, stealing from Covad's collocation space three routers and a pair of cables from four separate Qwest Colorado central offices in the space of two weeks between June 14 and June 26, 2001. Attached hereto as Exhibit 1, is an internal Covad email setting forth an identification of the equipment stolen and the dates on which such thefts occurred. Attached hereto as Exhibit 2, is an electronic letter from Ken Beck (Qwest) to Minda Cutcher (Covad), dated July 17, 2001, which states that a Qwest employee is responsible for the theft.¹

7. While Covad appreciates that Qwest finally responded promptly to these recent incidents (but is concerned by Qwest's inexplicable delay in determining the appropriate discipline), the fact that such thefts occurred *after* the implementation of Qwest's Code of Conduct, *after* Qwest allegedly implemented additional training regarding the obligations of its employees under the Code of Conduct, *after* Qwest informed its employees that their quarterly bonus was contingent on the review and acknowledgment of the Code of Conduct; and *after* "clear and forceful" reminders of the obligations imposed on Qwest employees by the Code of Conduct, plainly demonstrates -- as Covad argued repeatedly -- that these steps are woefully insufficient to deter and eliminate anti-competitive conduct on the part of Qwest's employees. Indeed, these unabashed thefts of Covad's equipment by Qwest employees plainly show that the Code of Conduct (and associated training and reminders) not only have no teeth but also are cavalierly disregarded by Qwest employees.

¹ while Qwest transparently refused to state that it is a Qwest employee, it clearly must be since Qwest has the power to suspend that individual.

8. Because the workshops on Checklist Item 4 have been closed, Covad was not able to discuss these thefts with Qwest and to resolve the additional issues raised by these thefts during the course of that workshop. Nonetheless, because these thefts provide current, on-going and highly probative evidence regarding whether Qwest presently is complying with "the statutory conditions for entry"² and, more specifically, whether this issue should be closed in favor of Qwest, Covad requests that this Commission grant Covad leave to supplement the record for Checklist Item 4 to include this evidence regarding Qwest's current and on-going anti-competitive conduct by Qwest.

Dated this 1st day of August, 2001.

Respectfully submitted,

COVAD COMMUNICATIONS COMPANY

By:

K. Megan Doberneck

K. Megan Doberneck

Senior Counsel

7901 Lowry Boulevard

Denver, Colorado 80230

720-208-3636

720-208-3256 (facsimile)

e-mail: mdoberne@covad.com

(with permission)

² 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 Op. And Order, FCC 99-404 (Rel. Dec. 22, 1999), ¶ 37 ("Bell Atlantic 271 Order").

CERTIFICATE OF SERVICE

I, Adrienne Anderson, hereby certify that an original and ten (10) copies of the Covad Communications Company's NON CONFIDENTIAL Motion for Leave to Supplement the Record For Checklist Item 4) docket no. T-00000A-97-0238, were sent for filing via overnight delivery on this 1st day of August, 2001, to the following:

Arizona Corporation Commission
Docket Control-Utilities Division
1200 West Washington Street
Phoenix, AZ 85007-2996

and a true and correct copy of Covad Communications Company's NON CONFIDENTIAL Motion for Leave to Supplement the Record For Checklist Item 4 was served electronically this 1st day of August, 2001, on the following:

Jerry Rudibaugh
Hearing Officer
Arizona Corporation Commission
1200 West Washington Street
Phoenix, AZ 85007

Maureen Scott
Legal Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, AZ 85007

Matt Rowell
Utilities Division
1200 West Washington Street
Phoenix, AZ 85007

Phil Doherty
545 South Prospect Street, Suite 22
Burlington, VT 05401

W. Hagood Bellinger
5312 Trowbridge Drive
Dunwoody, GA 30338

Charles Stees
Andrew Crain
Qwest Corporation
1801 California Street, Suite 5100
Denver, CO 80202

and a true and correct copy of Covad Communications Company's NON CONFIDENTIAL Motion for Leave to Supplement the Record For Checklist Item 4 was sent via electronic mail; on this 1st day of August, 2001, to the following:

<p>Todd C. Wiley Esq. GALLAGHER AND KENNEDY 2575 East Camelback Road Phoenix, Arizona 85016-9225</p>	<p>Michael M. Grant Gallagher & Kennedy 2575 E. Camelback Road Phoenix, Arizona 85016-9225</p>	<p>Timothy Berg FENNEMORE CRAIG 3003 N. Central Ave., Suite 2600 Phoenix, Arizona 85016</p>
<p>Mark Dioguardi TIFFANY AND BOSCO PA 500 Dial Tower 1850 N. Central Avenue Phoenix, Arizona 85004</p>	<p>Nigel Bates ELECTRIC LIGHTWAVE, INC. 4400 NE 77th Avenue Vancouver, Washington 98662</p>	<p>Thomas L. Mumaw Jeffrey W. Crockett SNELL & WILMER One Arizona Center Phoenix, Arizona 85004-0001</p>
<p>Darren S. Weingard and Stephen H. Kukta SPRINT COMMUNICATIONS CO L.P. 1850 Gateway Dr., 7th Floor</p>	<p>Thomas H. Campbell LEWIS & ROCA 40 N. Central Avenue Phoenix, Arizona 85007</p>	<p>Andrew O. Isar TRI 4312 92nd Avenue, N.W. Gig Harbor, Washington 98335</p>

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Michael W. Patten Roshka Heyman & Dewulf 400 N. 5th St., Ste. 1000 Phoenix, AZ 85004	Richard M. Rindler Morton J. Posner SWIDER & BERLIN 3000 K Street, N.W. Suite 300 Washington, DC 20007	Charles Kallenbach AMERICAN COMMUNICATIONS SERVICES I 131 National Business Parkway Annapolis Junction, MD 20701
Thomas F. Dixon MCI TELECOMMUNICATIONS CORP 707 17th Street, #3900 Denver, Colorado 80202	Jon Loehman, Managing Director SBC Telecom, Inc. 5800 Northwest Parkway Suite 135, Room 1.S.40 San Antonio, TX 78249	Richard S. Wolters AT&T & TCG 1875 Lawrence Street, Room 1575 Denver, Colorado 80202
Joyce Hundley UNITED STATES DEPARTMENT OF JUSTICE Antitrust Division 1401 H Street NW, Suite 8000 Washington, DC 20530	Joan Burke OSBORN MALEDON 2929 N. Central Avenue, 21st Floor P.O. Box 36379 Phoenix, Arizona 85067-6379	Scott S. Wakefield, Chief Counsel RUCO 2828 N. Central Avenue, Suite 1200 Phoenix, Arizona 85004
Mark J. Trierweiler Vice President Government Affairs AT&T 111 West Monroe St., Suite 1201 Phoenix, Arizona 85004	Daniel Waggoner DAVIS WRIGHT TREMAINE 2600 Century Square 1501 Fourth Avenue Seattle, WA 98101-1688	Alaine Miller NEXTLINK Communications, Inc. 500 108 th Avenue NE, Suite 2200 Bellevue, WA 98004

Douglas Hsiao RHYTHM LINKS, INC. 6933 S. Revere Parkway Englewood, CO 80112	Raymond S. Heyman Randall H. Warner ROSHKA HEYMAN & DeWULF Two Arizona Center 400 N. Fifth Street, Suite 1000 Phoenix, Arizona 85004	Diane Bacon, Legislative Director COMMUNICATIONS WORKERS OF AMERICA 5818 North 7 th Street, Suite 206 Phoenix, Arizona 85014-5811
Gena Doyscher GLOBAL CROSSING LOCAL SERVICES, INC. 1221 Nicollet Mall Minneapolis, MN 55403-2420	Karen L. Clauson ESCHELON TELECOM, INC. 730 Second Avenue South, Suite 1200 Minneapolis, MN 55402	Mark P. Trnichero Davis, Wright Tremaine 1300 SW Fifth Avenue, Suite 2300 Portland, OR 97201
Robert S. Tanner Davis, Wright Tremaine 17203 N. 42 nd Street Phoenix, AZ 85032	Bradley Carroll, Esq. COX ARIZONA TELCOM, L.L.C. 1550 W. Deer Valley Rd. Phoenix, AZ 85027	Mark N. Rogers EXCELL AGENT SERVICES, L.L.C. 2175 W. 14 th Street Tempe, AZ 85281
Janet Livengood Regional Vice President Z-Tel Communications, Inc. 601 S. Harbour Island Blvd. Tampa, FL 33602	Jonathan E. Canis Michael B. Hazzard Kelly Drye & Warren L.L.P. 1200 19 th Street, NW, 5 TH Floor Washington, D.C. 20036	Andrea P. Harris Senior Manager, Regulatory Allegiance Telecom, Inc of Colorado 2101 Webster, Suite 1580 Oakland, CA 94612
Dennis D. Ahlers, Sr. Attorney Eschelon Telecom, Inc. 730 Second Ave. South, Ste. 1200 Minneapolis, MN 55402	M. Andrew Andrade, Esq. TESS Communications, Inc. 5261 S. Quebec St. Ste 150 Greenwood Village, CO 80111	Maureen Arnold Qwest Communications, Inc. 3033 N. Third Street, Room 1010 Phoenix, Arizona 85012

Adrienne M. Anderson

Adrienne M. Anderson

EXHIBIT 1

Anderson, Adrienne

From: Doberneck, Megan
Sent: Tuesday, July 24, 2001 7:14 PM
To: Anderson, Adrienne
Subject: FW: Time and Event of Equipment Loss

-----Original Message-----

From: Tran, Anh
Sent: Thursday, June 28, 2001 8:18 PM
To: 'sdemmin@covad.com'
Cc: Perry, Deborah; DL NOC Managers; Cutcher, Minda; Powers, Tom; Howell, Bernard
Subject: Time and Event of Equipment Loss

Susan,

Below you will find the data requested. The entry in bold is from our ticket log in our ticket system. It is a direct entry into the ticket system from our fault management system with the timestamp for when the ticket. The process to open a ticket usually takes only a few minutes after receiving the alarm condition(s). Below the bold type verbage, you will find the log entry within the router that connects to the site router via a DS1. Again, this timestamp is also system generated. Each alarm condition is indicating when we lost connectivity to the devices. This could be the device being powered down or the WAN connectivity being disconnected.

We lost three Cisco 2610 router at three different central offices

- DNVRCOCP 6/14/01
- EVRGCOMA 6/21/01
- GLDNCOMA 6/25/01

and one set of cable from DNVRCOMA on 6/14/01.

Thanks,
Anh Tran
Network Operations Director
(408) 434-2114 (w)
(408) 375-0037 (c)

=====
> **TT# 356576 FaultMgr @ 06/21/2001 02:07:18; Mountain time**
> **DNVRCOMA-MHR.1.1.4-EVRGCOMA-MR.1.1.1**

Jun 21 08:06:54: %LINK-3-UPDOWN: Interface Serial1/0/4:0, changed state to down
in UTC

> **TT#352321 FaultMgr @ 06/14/2001 03:02:34; Mountain time**
> **NE::DNVRCOMA-HR.2.1.3-DNVRCOCP-MR.1.1.1**

WE do not have the actually log data since the file only went back to 03:37 MST.

> **TT# 359412 FaultMgr @ 06/25/2001 23:54:28; Mountain time**
> **NE::DNVRCOMA-HR.1.1.20-GLDNCOMA-MR.1.1.1**

Jun 26 06:37:09: %LINK-3-UPDOWN: Interface Serial1/0/20:0, changed state to down
in UTC

> TT# 352864 FaultMgr @ 06/14/2001 15:27:49; in UTC
> MPLSMNDT-BPX1.0.1.6-DNVRCOMA-BPX1.0.1.6

06/14 22:15:43.127: >>>Event :
06/14 22:15:43.128: Id =
IDL:com/covad/nms/fault/bl/fmsData/AlarmInfo:1.0:Time = 992556943125:State = 0:Type =
Trunk Alarm:Severity = 4:Problem = :Desc =<communication-failure>:Cause =
06/14 22:15:43.128: <<<Event
06/14 22:15:43.128: >>>Equipment:
06/14 22:15:43.129: Id = IDL:com/covad/nms/fault/bl/fmsData/EquipmentInfo:1.0:Na
me = MPLSMNDT-BPX1:Shelf = 0:Card = 1:Port = 6:Subport =
06/14 22:15:43.129: <<<Equipment =====

in UTC

EXHIBIT 2



Qwest
1005 17th St, Rm 950
Denver, Colorado 80202

July 17, 2001

Minda Cutcher
Vice President-ILEC Relations
Covad Communications

Dear Minda:

Qwest Corporation ("Qwest") is nearing completion of its investigation into the incidents of reported vandalism and theft of Covad Corporation ("Covad") equipment in Qwest central offices. While our investigation is continuing, we have been able to identify a suspect, who is currently placed on suspension pending the results of the investigation.

In being responsive to Covad's concerns that Qwest take precautions to minimize the likelihood that this would occur again, Qwest undertook this investigation with that in mind. Qwest has identified that in one incident investigated that the Covad collocation cage was locked without a chain, which allowed access to that cage. Qwest is going to notify CLECs that they should secure their equipment whenever possible. In addition, Qwest is further investigating ways to determine what actions Qwest can take to maximize the probability that security systems placed in Qwest central offices are working as intended. Qwest is willing to work with Covad to determine if Covad has ideas on how security can be enhanced in Qwest's central offices. Since Covad is a purchaser of collocation space (both caged and cageless) in Qwest premises, Covad may have ideas which Qwest unaware of. Qwest would like to hear from Covad on this issue. Qwest takes its obligations very seriously, and is looking at whether there are other ways that collocation security can be enhanced.

If you have any further questions, please feel free to call me on (303) 896-8805.

Sincerely,

Kenneth Beck
Executive Director
Wholesale Customer Service Operations
Qwest Communications

cc: Christie Doherty
Julie Kaufman-Prentice
Jim Gallegos
Amador Lucero
Susan Demmin