



0000020817

ORIGINAL
RECEIVED

BEFORE THE ARIZONA CORPORATION COMMISSION

WILLIAM A. MUNDELL
CHAIRMAN
JIM IRVIN
COMMISSIONER
MARC SPITZER
COMMISSIONER

AZ CORP COMMISSION
DOCUMENT CONTROL

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

DOCKET NO. T-00000A-97-0238

**COVAD COMMUNICATIONS
COMPANY'S DISCUSSIONS POINTS
FOR OPEN MEETING ON
AUGUST 23, 2001**

Covad Communications Company ("Covad") files the attached presentation of discussion points to be presented by Michael Zulevic, Director of Planning & Capacity Management, at the special open meeting to be held on August 23, 2001.

DATED this 21st day of August, 2001.

COVAD COMMUNICATIONS COMPANY

By:

K. Megan Doberneck
Senior Counsel
Covad Communications Company
7901 Lowry Boulevard
Denver, Colorado 80230
Telephone: (720) 208-3636
Facsimile: (720) 208-3350
Email: mdoberne@covad.com

Arizona Corporation Commission

DOCKETED

AUG 21 2001

DOCKETED BY

Original and ten copies filed this 21st day of August, 2001, with:

GALLAGHER & KENNEDY, P.A.
2575 E. CAMELBACK ROAD
PHOENIX, ARIZONA 85016-9225
(602) 530-8000

1 Docket Control
Arizona Corporation Commission
2 1200 West Washington
Phoenix, Arizona 85007
3

4 **Copies** of the foregoing hand-delivered
this 21st day of August, 2001 to:
5

6 Chairman William A. Mundell
Arizona Corporation Commission
1200 West Washington
7 Phoenix, Arizona 85007

8 Commissioner Jim Irvin
Arizona Corporation Commission
9 1200 West Washington
Phoenix, Arizona 85007
10

11 Commissioner Marc Spitzer
Arizona Corporation Commission
1200 West Washington
12 Phoenix, Arizona 85007

13 Hercules Dellas
Aide to Chairman William A. Mundell
14 Arizona Corporation Commission
1200 West Washington
15 Phoenix, Arizona 85007

16 Patrick Black
Aide to Commissioner Jim Irvin
17 Arizona Corporation Commission
1200 West Washington
18 Phoenix, Arizona 85007

19 Paul Walker
Aide to Commissioner Marc Spitzer
20 Arizona Corporation Commission
1200 West Washington
21 Phoenix, Arizona 85007

22 Hearing Division
Arizona Corporation Commission
23 1200 West Washington
Phoenix, Arizona 85007
24

1 Utilities Division
Arizona Corporation Commission
2 1200 West Washington
Phoenix, Arizona 85007

3 Legal Division
4 Arizona Corporation Commission
1200 West Washington
5 Phoenix, Arizona 85007

6
7 **Copy of the foregoing mailed**
this 21st day of August, 2001 to:

8			
9	Timothy Berg FENNEMORE CRAIG 3003 N. Central Ave., Suite 10 2600 Phoenix, Arizona 85016	K. Megan Doberneck, Esq. Covad Communications Company 7901 Lowry Boulevard Denver, Colorado 80230	
11			
12	Mark Dioguardi TIFFANY AND BOSCO PA 500 Dial Tower 13 1850 N. Central Avenue Phoenix, Arizona 85004	Nigel Bates ELECTRIC LIGHTWAVE, INC. 4400 NE 77 th Avenue Vancouver, Washington 14 98662	Thomas L. Mumaw Jeffrey W. Crockett SNELL & WILMER One Arizona Center Phoenix, Arizona 85004-0001
15	Darren S. Weingard and Stephen H. Kukta SPRINT 16 COMMUNICATIONS CO L.P. 17 1850 Gateway Dr., 7 th Floor San Mateo, CA 94404-2467	Thomas H. Campbell LEWIS & ROCA 40 N. Central Avenue Phoenix, Arizona 85007	Andrew O. Isar TRI 4312 92 nd Avenue, N.W. Gig Harbor, Washington 98335
18	Michael W. Patten Roshka Heyman & Dewulf 19 400 N. 5th St., Ste. 1000 Phoenix, AZ 85004	Richard M. Rindler Morton J. Posner SWIDER & BERLIN 3000 K Street, N.W. Suite 300 20 Washington, DC 20007	Charles Kallenbach AMERICAN COMMUNICATIONS SERVICES I 131 National Business Parkway Annapolis Junction, MD 21 20701
22			
23			
24			

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

<p>Thomas F. Dixon MCI TELECOMMUNICATIONS CORP 707 17th Street, #3900 Denver, Colorado 80202</p>	<p>Jon Loehman, Managing Director SBC Telecom, Inc. 5800 Northwest Parkway Suite 135, Room 1.S.40 San Antonio, TX 78249</p>	<p>Richard S. Wolters AT&T & TCG 1875 Lawrence Street, Room 1575 Denver, Colorado 80202</p>
<p>Joyce Hundley UNITED STATES DEPARTMENT OF JUSTICE Antitrust Division 1401 H Street NW, Suite 8000 Washington, DC 20530</p>	<p>Joan Burke OSBORN MALEDON 2929 N. Central Avenue, 21st Floor P.O. Box 36379 Phoenix, Arizona 85067-6379</p>	<p>Scott S. Wakefield, Chief Counsel RUCO 2828 N. Central Avenue, Suite 1200 Phoenix, Arizona 85004</p>
<p>Mark J. Trierweiler Vice President Government Affairs AT&T 111 West Monroe St., Suite 1201 Phoenix, Arizona 85004</p>	<p>Daniel Waggoner DAVIS WRIGHT TREMAINE 2600 Century Square 1501 Fourth Avenue Seattle, WA 98101-1688</p>	<p>Alaine Miller NEXTLINK Communications, Inc. 500 108th Avenue NE, Suite 2200 Bellevue, WA 98004</p>
<p>Douglas Hsiao RHYTHM LINKS, INC. 6933 S. Revere Parkway Englewood, CO 80112</p>	<p>Raymond S. Heyman Randall H. Warner ROSHKA HEYMAN & DeWULF Two Arizona Center 400 N. Fifth Street, Suite 1000 Phoenix, Arizona 85004</p>	<p>Diane Bacon, Legislative Director COMMUNICATIONS WORKERS OF AMERICA 5818 North 7th Street, Suite 206 Phoenix, Arizona 85014-5811</p>
<p>Gena Doyscher GLOBAL CROSSING LOCAL SERVICES, INC. 1221 Nicollet Mall Minneapolis, MN 55403-2420</p>	<p>Karen L. Clauson ESCHELON TELECOM, INC. 730 Second Avenue South, Suite 1200 Minneapolis, MN 55402</p>	<p>Mark P. Trmichero Davis, Wright Tremaine 1300 SW Fifth Avenue, Suite 2300 Portland, OR 97201</p>
<p>Robert S. Tanner Davis, Wright Tremaine 17203 N. 42nd Street Phoenix, AZ 85032</p>	<p>Bradley Carroll, Esq. COX ARIZONA TELCOM, L.L.C. 1550 W. Deer Valley Rd. Phoenix, AZ 85027</p>	<p>Mark N. Rogers EXCELL AGENT SERVICES, L.L.C. 2175 W. 14th Street Tempe, AZ 85281</p>

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

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
Phil Doherty Suite 22 545 S. Prospect St. Burlington, VT 05401	W. Hagood Bellinger 5312 Trowbridge Dr. Dunwoody, GA 30338	Charles Steese Qwest Corporation Suite 5100 1801 California St. Denver, CO 80202
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

By: Linda Maguire
12263-0005/950077

QWEST CORPORATION – ARIZONA 271 APPLICATION

**Michael Zulevic – Director, Network Deployment
August 23, 2001 Open Meeting**

FUNCTION OF ARIZONA CORPORATION COMMISSION

-The Arizona Corporation Commission ("ACC") is charged with the critical function of determining that Arizona's local markets are open to competition.

-Because the FCC relies heavily upon the states in deciding whether to grant Section 271 relief to an ILEC, the ACC must undertake a rigorous factual investigation of whether Qwest has satisfied each competitive checklist item. In other words, this Commission must determine whether Qwest has proved by a preponderance of the evidence that it has satisfied the statutory conditions for entry into the interLATA market.

-Based on a review of those states where 271 relief has been granted, the FCC fully expects and anticipates that the ACC will take the steps necessary to ensure the existence and sustenance of competition in the local markets:

- °Well-defined, meaningful and enforceable performance standards.

- °Identification and affirmative resolution of checklist item issues without waiting for the FCC to take action.

- °Imposition of any additional, appropriate and necessary unbundling obligations.

-Assuming Arizona is the first state for which Qwest submits its application for Section 271 relief, Arizona will provide the template for all other Qwest states. Therefore, it is imperative that that template permit meaningful competition. If it does not, there are two potential outcomes: (1) the Arizona application is rejected by the FCC and all the ACC's work must be repeated; (2) approval of the Arizona application at the expense of competition throughout the Qwest region.

-The time is now for action by the ACC. Covad is the only nationwide provider of DSL left at this point. Unless the ACC takes the steps necessary to permit and maintain competition in Arizona, Covad will exit this market.

COVAD BACKGROUND

Largest Nationwide Provider of DSL

Operational in Arizona since mid-1999

Provides DSL service to small and medium-sized business. Also provides residential DSL in major metropolitan areas in Arizona

LEGAL FRAMEWORK SURROUNDING

ACCESS TO DSL LOOPS

DSL UNE and line shared loops are not a “new thing”:

-August 1996 *Local Competition Order* orders access to DSL loops

-August 1998 and March 1999 *Advanced Services Orders* reaffirm access to DSL loops

-September 1999 *UNE Remand Order* clarifies ILEC obligations even further

-November 1999 *Line Sharing Order* confirms that ILECs are obligated to provide access to the high frequency portion of the loop

-January 2001 *Line Sharing Reconsideration Order* expands the scope of the *Line Sharing Order*, and requires that Qwest permit CLECs to split the local loop

SUMMARY

Three Elements Critical to Successful Competition in Arizona

Collocation:

- Failure to provide collocation space on time or in a timely manner.

- Failure to timely provision collocation elements.

- Failure to install correctly collocation equipment.

- Use of collocation “policies” and “methods of procedure” to terms and conditions of the SGAT or interconnection agreement

- Use of collocation decommissioning, cancellation and transfer “policies” to compel payment of outstanding amounts unrelated to the collocation space at issue.

Loop Provisioning:

-Loop information that is not readily available, incomplete and suspect.

-Failure to provide FOCs. Frequent changes of FOC due date.

-Failure to provide both line shared and UNE loops on time; failure to provide loops at all. Negative impact on end-user customer.

-Failure to provide loops capable of supporting xDSL services.

-Failure to perform agreed upon testing 100% of the time.

-Failure to complete cross-connects in central offices.

Loop Provisioning (cont'd):

-No facilities. Significant percentage of Covad orders are placed in held status due to no/incompatible facilities.

°The “no facilities” problem is extraordinarily bad in Arizona. For example, in one CO, the very first loop order placed was cancelled due to no facilities. In another CO, only one loop was successfully delivered before numerous subsequent orders were cancelled due to no facilities.

°No means to verify no facilities.

-Discriminatory pricing. Qwest already recovers the full cost of the loop through its voice service, yet nonetheless seeks to charge CLECs for the HFPL.

Qwest's Performance Assurance Plan (the "PAP")

-The PAP is a "voluntary" undertaking by Qwest. Therefore, according to Qwest, no changes may be made to the PAP's terms and conditions, PIDs or associated penalty regime even by this Commission without Qwest's agreement.

-Most emerging services PIDs (line shared loops, subloops, etc.) are deemed diagnostic and therefore not included in the PAP. A particularly significant omission is any PID and associated penalty regime for line sharing, even though both Qwest and Covad has been providing line shared DSL throughout the Qwest region for over two years.

-The PAP does not adhere to intervals agreed upon by the parties in connection with the Section 271 proceedings. For example, Qwest "commits" to delivering 1-8 xDSL UNE loops within five business days in the SGAT, yet the PAP only penalizes Qwest if it fails to deliver an xDSL UNE loop within six business days. Similarly, Qwest "committed" to delivering line shared and line split loops in three business days in the Section 271 proceedings, but no penalty is applied regardless of how long it takes Qwest to deliver a line shared or line split loop.

QWEST'S CONDUCT OUTSIDE OF THE 271 PROCEEDINGS REVEALS ITS DESIRE TO ELIMINATE ITS COMPETITORS

-Qwest states in the Section 271 proceedings that it is committed to competition in its incumbent region.

-Qwest tells Covad that it is one of Qwest's "most valued customers."

-Yet, after announcing its voluntary, pre-negotiated Chapter 11 filing, a Qwest employee e-mailed over 190 other Qwest employees, gleefully describing Covad's restructuring efforts as "the third batter down" and the "end of the national DLEC game," and referred to Covad's announcement of continued operations as "delusional" and the result of "drinking too much Kool-Aid." This particular Qwest employee predicts that "its quite likely a judge will say they have no chance to succeed and force them to immediate Ch 7 liquidation."

-Covad faces this kind of open and anti-competitive conduct by Qwest on a regular basis. Qwest employees have told Covad's end user customers that Covad is "notorious" for stealing copper pairs; disconnected Covad DSL service over the objection of the end user; stolen valuable network monitoring equipment out of Covad's collocation space; and, just last week, solicited a Covad end user customer when the Qwest employee, acting on behalf of Covad, went to the end user's premises to correct a trouble on the line.

-The substantive issues, taken in tandem with Qwest's anti-competitive attitude, demonstrate that Section 271 relief in the State of Arizona is *not* in the public interest.

CONCERNS ABOUT THIS PROCEEDING

-Resource and timing constraints on ACC makes it difficult, if not impossible, for a complete and thorough evaluation and resolution of all issues, including emerging services issues.

-Resource and timing constraints on ACC makes it difficult, if not impossible, for the ACC to fulfil the obligations the FCC expects the ACC to satisfy.

-As a result of the resolution of several key emerging services issues, as well as the logistical and scheduling difficulty Covad has faced in attempting to participate in these proceedings, Covad believes it was requested to participate not to ensure that all CLEC concerns will be addressed and the steps necessary to open and keep open Arizona local markets, but simply to "complete the proceeding" with the inclusion of one DLEC.

-As a result, Covad is committed to vigorously opposing Qwest's application at the FCC.

12263-0005/950123