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BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission

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IN THE MATTER OF QWEST
COMMUNICATIONS CORPORATION
D/B/A QWEST LONG DISTANCE FOR
EXTENSION OF ITS EXISTING
CERTIFICATE OF CONVENIENCE AND
NECESSITY TO INCLUDE AUTHORITY
TO PROVIDE RESOLD AND FACILITIES-
BASED LOCAL EXCHANGE AND
RESOLD LONG DISTANCE SERVICES IN
ADDITION TO ITS CURRENT
AUTHORITY TO PROVIDE FACILITIES-
BASED LONG DISTANCE SERVICES,
AND PETITION FOR COMPETITIVE
CLASSIFICATION OF PROPOSED
SERVICES WITHIN THE STATE OF
ARIZONA.

DOCKET NO. T-02811B-04-0313

NOTICE OF FILING RESPONSES
TO DATA REQUESTS

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Pursuant to the motion made by the Arizona Corporation Commission Staff ("Staff") and the ruling of the Administrative Law Judge ("ALJ") made at the hearing conducted in this matter on May 17, 2005 [see Reporter's Transcript of Proceeding (May 17, 2005) at Page 105, Line 23 through Page 108, Line 12] Qwest Communications Corporation ("QCC") hereby files its responses to Staff's Sixth Set of Data Requests, attached and incorporated as Exhibit A-10. Staff's data requests address issues concerning the impact and effect of QCC operations on Qwest Corporation ("Qwest Corp."). In its responses, QCC has stated the following:

(1) It is not necessary or appropriate to revisit the limited waiver from the Affiliated Interest Rules granted to Qwest Corp. by the Arizona Corporation Commission ("ACC") in Decision Nos. 58087 and 64654. Existing Arizona utility regulation statutes,

1 ACC and FCC rules related to affiliate transactions and consumer or competitor
2 complaints adequately address any concerns raised by QCC's limited request to operate as
3 a competitive local exchange carrier ("CLEC") in Arizona. Further, the pending QCC
4 application for CLEC authority has no effect on Qwest Corp.'s existing corporate
5 structure. Arizona consumers would in no way benefit from the waiver being further
6 limited or eliminated. The existing waiver does not preclude the ACC from reviewing any
7 future financial transactions between Qwest Corp. and prospective affiliated
8 telecommunications service providers. The waiver is necessary to ensure that the public
9 utility and the ACC are not burdened with review of transactions that do not occur in
10 Arizona; and that have no impact on the provision of regulated services in Arizona. No
11 party to this proceeding has articulated a reason why the existing waiver should be further
12 limited or revoked.

13 (2) QCC should be permitted to compete with Qwest Corp. and other carriers.
14 As the FCC has recognized, national and state telecommunications policy favors
15 innovation, customers having the ability to choose among carriers and competition:

16 **We also conclude as a matter of policy that regulations**
17 **prohibiting BOC [Bell Operating Company] section 272**
18 **affiliates from offering local exchange service do not serve**
19 **the public interest.** The goal of the 1996 Act is to encourage
20 competition and innovation in the telecommunications
21 market. We agree with the BOCs that the increased flexibility
22 resulting from the ability to provide both interLATA and local
23 services from the same entity serves the public interest,
24 because such flexibility will encourage section 272 affiliates
25 to provide innovative new services. To the extent that there
26 are concerns that the BOCs will unlawfully subsidize their
affiliates or accord them preferential treatment, we reiterate
that improper cost allocations and discrimination are
prohibited by existing Commission rules and sections 251,
252 and 272 of the 1996 Act, and that predatory pricing is
prohibited by the antitrust laws. Our affiliate transaction

1 rules, as modified by our companion Accounting Safeguards
2 Order, address the BOCs' ability to engage in improper cost
3 allocation. The rules in this Order and our rules in our First
4 Interconnection Order and our Second Interconnection Order
5 ensure that BOCs may not favor their affiliates. **In sum, we
6 find no basis in the record for concluding that competition
7 in the local market would be harmed if a section 272
8 affiliate offers local exchange service to the public that is
9 similar to local exchange service offered by the BOC.**¹

8 Section 272 Non-Accounting Safeguards Order, ¶ 315 (1996)(Emphasis added). The
9 market is no longer static and Qwest Corp. is not a monopoly. In any case, QCC's
10 application limits its CC&N request to business customers requiring 4 or more lines—the
11 "enterprise" market, which Staff concedes is already highly competitive. Whether any
12 Qwest company can successfully compete in the enterprise market depends in significant
13 part on whether any Qwest company can bring to customers the "one stop shopping" that
14 enterprise customers demand and that existing competitors currently offer. Because of
15 Section 272 limitations applicable only to Bell Operating Companies (BOC), unless the
16 CC&N requested by QCC in this docket is granted, no Qwest company is legally allowed
17 to provide the "one stop" total solutions enterprise customers increasingly require.

18 (3) QCC's operations will not have any adverse impact on the revenue and
19 financial viability of Qwest Corp. differently than the opening of local exchange markets
20 to competition has had generally on Qwest Corp. As noted above, the enterprise market
21 is highly competitive, and Qwest Corp. has a diminished presence in that market. A
22 combination of very large competitors such as AT&T and MCI, and smaller but

23 _____
24 ¹ *In the Matter of Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of*
25 *the Communications Act of 1934, as amended, First Report and Order and Further Notice of*
26 *Proposed Rulemaking, 11 FCC Rcd. 21095, FCC Release no. 96-489, ¶ 315 (1996) ("Section*
272 Non-Accounting Safeguards Order")(Emphasis added).

1 aggressive competitors such as McLeod, Time Warner, and XO, are competing for
2 enterprise customers. To the extent that those competitors use their own facilities that
3 bypass the Qwest Corp. network to provide local exchange service, Qwest Corp. has lost
4 income and suffered stranded investment. To the extent that those competitors provide
5 local exchange services to their subscribers over the facilities of Qwest Corp. through
6 wholesale service arrangements, Qwest Corp. is compensated for that use at rates
7 established or approved by the ACC.

8 QCC owns and operates a network for its data services and long distance services,
9 and will augment those facilities and connect those facilities to local facilities that QCC
10 might obtain from Qwest Corp. or from another provider. Rather than construct new
11 facilities or purchase facilities from other providers where Qwest Corp. has facilities but
12 QCC does not, QCC will incorporate Qwest Corp. network facilities or services into the
13 QCC network, through purchasing Qwest Corp. retail services at tariff rates, through
14 purchasing Qwest Corp. services for resale, or through purchasing unbundled network
15 elements from Qwest Corp. In each case, Qwest Corp. is compensated for that use at
16 rates established or approved by the ACC that were found to be just and reasonable, and
17 to adequately compensate Qwest Corp. The premise by which Qwest Corp.'s wholesale
18 rates were established was that Qwest Corp. would recover all, but its avoided costs, and
19 would, therefore, be kept financially whole. Therefore, to the extent that Qwest Corp.'s
20 retail revenues decrease as a result of competitive losses to QCC, there will also be an
21 anticipated decrease in Qwest Corp.'s retail costs or in its long run incremental costs of
22 providing network functions. This equation is no different than what has been occurring
23 in Arizona through thousands of transactions between Qwest Corp. and CLECs since
24 passage of the federal 1996 Telecommunications Act.

25 Failure to permit QCC to compete in the enterprise market will not keep Qwest
26 Corp.'s revenues from declining. It will only provide a competitive advantage to

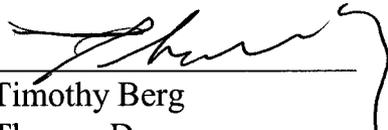
1 providers other than Qwest Corp. or QCC and maximize Qwest Corp. losses to the extent
2 existing Qwest Corp. customers choose to receive service from providers who have
3 invested in their own facilities. To the extent there is a concern about the effect QCC's
4 operations have on Qwest Corp.'s financial condition, the appropriate venue would be
5 before the ACC in a future rate case or AFOR proceeding where issues can be addressed
6 on a fact specific basis. There is no indication in this record or the associated evidence
7 that Qwest Corp. will experience adverse economic consequences from this application
8 being granted.

9 (4) Similarly, Qwest Corp.'s maintenance of its network will not be affected.
10 There are already two significant means by which Qwest Corp. is incented to properly
11 maintain its network in Arizona. First, through Qwest Corp.'s Service Quality Tariff, the
12 ACC has established a process for dealing with the effects of poor maintenance of Qwest
13 Corp.'s network facilities should that occur. Any unacceptable decline in Qwest Corp.'s
14 performance will result in significant financial penalties and/or credits to customers.
15 Second, the presence of aggressive competitors in the Arizona market will require Qwest
16 Corp. to maintain a high quality of service if it is to compete successfully. Moreover,
17 Qwest Corp.'s maintenance expense is, in part, a function of the number of customers it
18 serves. Denial of QCC's CC&N would not guarantee that Qwest Corp. would not lose
19 customers to other providers. It is reasonable to expect that Qwest Corp.'s maintenance
20 expenses will decrease as it loses customers to other providers, regardless of whether that
21 provider is QCC or an unaffiliated CLEC.

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DATED this 23RD day of June, 2005.

By 
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EXHIBIT

A-10



Qwest Corporation
Law Department
1801 California Street
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Denver, CO 80202

Kathy Rowley
Lead Paralegal-Interrogatory Manager

June 22, 2005

VIA OVERNIGHT DELIVERY

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

Re: Qwest Corporation's Application and Petition for a Certificate of Convenience
and Necessity to Provide Intrastate Telecommunications
Docket No. T-02811B-04-0313

Dear Ms. Scott:

Enclosed please find Qwest Corporation's Responses to the following, in the above-referenced matter:

Staff Set 6 (Nos. 001-006)

Should you have any questions, you may contact me at (303) 383-6679.

Sincerely,

A handwritten signature in black ink, appearing to read "Kathy Rowley". The signature is written in a cursive style and is positioned above the printed name "Kathy Rowley".

Kathy Rowley

Enclosures

cc: Norm Curtright
Tim Berg, Esq.
Monica Luckritz
John Bostwick

Arizona
T-02811B-04-0313
STF 06-001

INTERVENOR: Arizona Corporation Commission Staff

REQUEST NO: 001

Please explain Qwest's view regarding the relationship between the waiver of A.A.C. R14-2-803 granted Qwest in Decision No. 58087 and 64654 and QCC's application for CLEC authority.

- a. Does QCC believe that revisiting the waiver is appropriate? Please explain why or why not.
- b. What are the risks and benefits of keeping the waiver in place?

RESPONSE:

a. No. QCC does not believe that revisiting the waiver is appropriate or necessary. Existing Arizona utility regulation statutes, Arizona Commission and FCC rules related to affiliate transactions and consumer or competitor complaints adequately address any concerns raised by QCC's limited request to operate as a competitive local exchange carrier (CLEC) in Arizona. Further, the pending QCC application for CLEC authority has no effect on Qwest's existing corporate structure. Arizona consumers would in no way benefit from the waiver being further limited or eliminated. The existing waiver does not preclude Arizona Commission review of any future financial transactions between Qwest Corporation (the ILEC) and any prospective affiliated telecommunications service provider. In addition it does not exempt any Qwest company from filing the information currently required in the annual affiliated interest reports of intrastate telecommunications service providers, including both QC and QCC. However, the waiver is necessary to ensure that the public utility and the Arizona Commission are not burdened with review of transactions that do not occur in Arizona; and that have no impact on the provision of regulated services in Arizona. No party to this proceeding has articulated a reason why the existing waiver should be further limited or revoked.

b. There are no risks related to keeping the waiver in place. The benefits of the existing waiver are described in Decision No. 58087 and No. 64654, including but not limited to the lawful application of the Affiliated Interest Rules.

Respondent: Legal

Arizona
T-02811B-04-0313
STF 06-002

INTERVENOR: Arizona Corporation Commission Staff

REQUEST NO: 002

What does QCC perceive the purpose of the Affiliate Interest Rules (A.A.C. R14-2-801 thru 806) to be?

RESPONSE:

Objection. The question calls for a legal conclusion and requires Qwest to speculate as to the agency's intended purpose in promulgating and applying the subject rules. The rules speak for themselves. Without waiving the foregoing objection, the Commission issued Decision No. 56844 adopting the rules on March 14, 1990. In so doing, the Commission identified the purpose of the rules as a means to control potential abuses of public service corporations by their affiliates and to "ensure that customers receive adequate service at reasonable rates." Further discussion of the purpose of the rules may be found in *Arizona Corp. Comm'n v. State ex rel. Woods*, 171 Ariz. 286, 830 P.2d 807 (1992) and the Commission's briefs filed in that litigation. A careful reading of *Woods* demonstrates that the rules were not intended to apply, nor did the Arizona Supreme Court sanction their application, to transactions that do not occur in Arizona and which have no impact on the provision of regulated services in Arizona.

Respondent: Legal

Arizona
T-02811B-04-0313
STF 06-003

INTERVENOR: Arizona Corporation Commission Staff

REQUEST NO: 003

Why should QCC be permitted to take customers and revenues away from QC?

RESPONSE:

First, QCC should be allowed to take customers from QC as well as from other carriers because the national and state telecommunications policy favors innovation, customers having the ability to choose among carriers and competition. The FCC addressed this question early on after the Telecom Act of 1996 became law:

We also conclude as a matter of policy that regulations prohibiting BOC [Bell Operating Company] section 272 affiliates from offering local exchange service do not serve the public interest. The goal of the 1996 Act is to encourage competition and innovation in the telecommunications market. We agree with the BOCs that the increased flexibility resulting from the ability to provide both interLATA and local services from the same entity serves the public interest, because such flexibility will encourage section 272 affiliates to provide innovative new services. To the extent that there are concerns that the BOCs will unlawfully subsidize their affiliates or accord them preferential treatment, we reiterate that improper cost allocations and discrimination are prohibited by existing Commission rules and sections 251, 252 and 272 of the 1996 Act, and that predatory pricing is prohibited by the antitrust laws. Our affiliate transaction rules, as modified by our companion Accounting Safeguards Order, address the BOCs' ability to engage in improper cost allocation. The rules in this Order and our rules in our First Interconnection Order and our Second Interconnection Order ensure that BOCs may not favor their affiliates. ***In sum, we find no basis in the record for concluding that competition in the local market would be harmed if a section 272 affiliate offers local exchange service to the public that is similar to local exchange service offered by the BOC. Section 272 Non-Accounting Safeguards Order, ¶ 315 (1996) (Emphasis added).***

Second, implicit in the question are erroneous assumptions that the market is static and that QC is a monopoly. Neither assumption is correct. QCC further points out that the question does not recognize that the Second Supplement to the Application limits the CC&N request to business customers requiring 4 or more lines. This market segment is known as the "enterprise" market. Because the enterprise market is competitive, Staff stated in its supplemental report dated May 13, 2005, "The Enterprise Market is highly competitive." Hearing Exhibit S-2, p. 2. enterprise customers are free to choose from among a number of telecom service providers, and a large number have already chosen providers other than QC. As Staff correctly noted in its supplemental report dated May 13, 2005, the Enterprise market is "a market segment in which it [QC] has diminished presence. *Id.* p. 3. Because enterprise customers have left QC, or may freely do so, the question is not whether QCC should be allowed to take customers from QC, but rather whether any Qwest company will be allowed to try to successfully compete in the enterprise market against large well funded carriers that currently focus on this market segment.

Third, whether any Qwest company can successfully compete in the enterprise market depends in significant part on whether any Qwest company can bring to customers the "one stop shopping" that enterprise customers demand and that existing competitors currently offer. Enterprise customers require that their telecom carrier of choice be able to provide a suite of services, including local and interLATA. Because of Section 272 limitations applicable only to Bell Operating Companies (OC), unless the CC&N requested by OCC in this docket is granted, no Qwest company is legally allowed to provide the "one stop" total solutions enterprise customers increasingly require.

Respondent: Legal

Arizona
T-02811B-04-0313
STF 06-004

INTERVENOR: Arizona Corporation Commission Staff

REQUEST NO: 004

What effect will QCC's CLEC operations have on the revenue and financial viability of QC?

RESPONSE:

QCC interprets this question as relating to the revenue and financial viability of QC in its provision and sale of regulated services. QCC's operations will not have any adverse impact on the revenue and financial viability of QC differently than the opening of local exchange markets to competition has had generally on QC. As noted above in response 6-3, the enterprise market is highly competitive, and QC has a diminished presence in that market. A combination of very large competitors such as AT&T and MCI, and smaller but aggressive competitors such as McLeod, Time Warner, and XO, are competing for enterprise customers. To the extent that those competitors use their own facilities that bypass the QC network to provide local exchange service, QC has lost income and suffered stranded investment. To the extent that those competitors provide local exchange services to their subscribers over the facilities of QC through wholesale service arrangements, QC is compensated for that use at rates established or approved by the Arizona Corporation Commission.

As was stated by Ms. Mary LaFave at the hearing on May 17, 2005, QCC owns and operates a network for its data services and long distance services, and will augment those facilities and connect those facilities to local facilities that QCC might obtain from QC or from another provider. (Examination by ALJ Wolfe of Mary Ferguson Lafave, TR at 94, May 17, 2005). Rather than construct new facilities or purchase facilities from other providers where QC has facilities but QCC does not, QCC will incorporate QC network facilities or services into the QCC network, through purchasing QC retail services at tariff rates, through purchasing QC services for resale, or through purchasing unbundled network elements from QC. In each case, QC is compensated for that use at rates established or approved by the Arizona Corporation Commission. The Commission has found that those rates are just and reasonable, and adequately compensate QC. The premise by which QC's wholesale rates were established was that QC would recover all, but its avoided costs, and would, therefore, be kept financially whole. Therefore, to the extent that QC's retail revenues decrease as a result of competitive losses to QCC, there will also be an anticipated decrease in QC's retail costs or in its long run incremental costs of providing network functions. This equation is no different than what has been occurring in Arizona through thousands of transactions between QC and CLECs since passage of the federal 1996 Telecommunications Act.

Failure to permit QCC to compete in the enterprise market will not keep QC's revenues from declining. It will only provide a competitive advantage to providers other than QC or QCC and maximize QC losses to the extent existing QC customers choose to receive service from providers who have invested in their own facilities. To the extent there is a concern about the effect QCC's operations have on QC's financial condition, the appropriate venue would be before the Commission in a future rate case or AFOR proceeding where issues can be addressed on a fact specific basis. There is no indication in this record or the associated evidence that QC will experience adverse economic consequences from this application being granted.

Respondent: Legal

Arizona
T-02811B-04-0313
STF 06-005

INTERVENOR: Arizona Corporation Commission Staff

REQUEST NO: 005

What are the ratemaking implications of QCC's potential CLEC operations for QC? How should revenue lost by QC to QCC be treated for ratemaking purposes?

RESPONSE:

As described above, given that the Commission has set rates that it has found adequate for retail services, resale, and UNES, and since QCC will be paying those same rates to QC, just as other CLECs do, QC will be properly compensated. To the extent there is a concern about the effect QCC's operations may have on QC's financial condition, the appropriate venue would be before the Commission in a future rate case or AFOR proceeding when those issues can be considered on a factual basis. (Cross Examination of Mr. Fimbres, TR 131-132, May 17, 2005).

Respondent: Legal

Arizona
T-02811B-04-0313
STF 06-006

INTERVENOR: Arizona Corporation Commission Staff

REQUEST NO: 006

Will revenue lost by QC to QCC result in reduced maintenance expenditures by QC? If so why? If not, how can the Commission insure that maintenance expenditures by QC will not decline as a result of QCC's CLEC operations?

RESPONSE:

QC's maintenance of its network will not be affected. See Qwest's responses to STF 06-003, STF 06-004, and STF 06-005 in this docket. There are already 2 significant means by which QC is incented to properly maintain its network in Arizona. First, through QC's Service Quality Tariff, the Commission has established a process for dealing with the effects of poor maintenance of QC's network facilities. This tariff provides strong incentives for QC to provide adequate levels of service in Arizona. Any unacceptable decline in QC's performance will result in significant financial penalties and/or credits to customers. Second, the presence of aggressive competitors in the Arizona market will require QC to maintain a high quality of service if it is to compete successfully. This combination of regulatory oversight and competitive pressure should provide adequate assurance that QC will continue to maintain its network.

QCC would also like to address the premise of this request (STF 06-006) which seems to imply that, absent QCC's presence in the market, QC's maintenance expenses would either be static, or possibly even increase. This premise is not correct and is not supported by any evidence. QC's maintenance expense is, in part, a function of the number of customers it serves and denial of QCC's CC&N would not guarantee that QC would not lose customers to other providers. It is reasonable to expect that QC's maintenance expenses will decrease as it loses customers to other providers, regardless of whether that provider is QCC or an unaffiliated CLEC.

Respondent: Legal