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AZ CORP COMMISSION
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June 24 2001

Arizona Corporation Commission
DOCKETED

VIA FACSIMILE & E-MAIL

JUN 25 2001

Maureen Scott, Esq.
Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007

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Re: AT&T's Response to Qwest's Claims Regarding "Resolved" Issues

Dear Maureen:

Thank you for allowing us the opportunity to review Mr. Steese's matrix of purported "issues that Qwest and intervenors in other states have resolved since workshops closed in Arizona." As you know, Mr. Steese has attached to his June 5th letter an issues matrix and some accompanying Statement of Generally Available Terms ("SGAT") language. We have reviewed both the matrix and the SGAT language. Our review has revealed that Qwest, in some cases, has reported "consensus" where none exists. In other areas, Qwest's claims of consensus appear to be accurate.

Generally, in those areas where Qwest is inaccurately reporting "consensus," Qwest has simply provided its interpretation of certain Workshop Reports' conclusions that it accepts. Thus, claims of issue resolution are inaccurate because as a general matter the various Facilitators' Reports are under consideration by the applicable Commissions along with the Intervenors' and Qwest's Comments related thereto. Qwest should not be allowed to stretch the definition of "consensus" to include those portions of Workshop Reports from other states that it agrees with while leaving out those conclusions it would rather ignore.

To the extent the Competitive Local Exchange Carriers ("CLECs") still take issue with that which Qwest is willing to bring forward from other States' Reports, we respectfully request that the Arizona Corporation Commission resolve for itself the disputed issues rather than simply deferring to Qwest's interpretations of self-selected Report-resolved issues.

For your convenience I have attached a matrix, which contains our responses to both the issues matrix and the SGAT language attached to Mr. Steese's above-referenced

Maureen Scott, Esq.

6/22/2001

Page 2

letter. Should you have any questions or concerns, please do not hesitate to contact me.
And again, thank you for the extra time necessary to review Qwest's material.

Sincerely,

Letty S.D. Friesen by DRF

Letty S.D. Friesen
Senior Attorney

encl.: Matrix

cc: CLEC Intervenors

Other Parties of Record

**AT&T's Response to Qwest's June 5, 2001
Arizona Resolved Issues Matrix
By SGAT Section**

| SGAT § and Status | Issues |
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| Definitions | |
| § 4.11.2 Definition of Tandem Switch <i>No Consensus Reached</i> | <p>In its SGAT § 4.11.2, Qwest had created two issues that were at impasse. <u>First</u>, Qwest tried to define for CLECs when their switches constituted tandem office switches. This was wholly inappropriate and was, in fact, the subject of briefing in the first workshop.</p> <p>The <u>second</u> issue involved the remaining portion of the original definition, which contradicted Qwest's 271 obligations with respect to interconnection at the access tandem. Briefly, the FCC and the Act clearly allow CLECs to choose any particular point of technically feasible interconnection whether at the access tandem or the local tandem, and Qwest within its definition was attempting to avoid full compliance with the law.</p> <p>Qwest purports to resolve—apparently—both issues by “accepting the language from the Arizona Recommended Decision on Reciprocal Compensation.” Qwest Matrix at 1. While Qwest did not propose any language, the Recommended Decision suggested the following language:</p> <p>4.11.2 “Tandem Office Switches” which are used to connect and switch trunk circuits between and among other Central Offices. CLEC switch(es) shall be considered a Tandem Office Switch to the extent such switch serves a geographic area comparable to that served by Qwest's Tandem Office Switch or where the CLEC switch provides an alternative routing function for a second CLEC switch.¹</p> <p>This definition may resolve the second issue that was addressed in the interconnection workshop, but it does not address the first issue in dispute related to the use of a functionality analysis when considering CLEC switches. This analysis has been rejected by the FCC and Qwest's proposed language completely undermines the reciprocal compensation scheme devised by the FCC in the Local Competition Order. AT&T filed its Comments objecting to the Recommended Decision's proposal, and therefore, no “consensus” has been reached.</p> |
| Interconnection | |
| §§ 7.1.2.2, 7.3.1.2.1 & | The issue with respect to these sections was whether Qwest, consistent with the law, should have to pay for interconnection on its |

¹ Arizona Recommended Decision on Reciprocal Compensation, May 15, 2001 at 17.

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| <p>7.3.2.3 EICT Charges</p> | <p>side of the POI. Qwest proposed to charge for the wires it calls the Expanded Interconnection Channel Termination or "EICT." Essentially these are Qwest's physical connection to the CLEC's collocation equipment when collocation is the method used to interconnect to Qwest's network. That is, the CLEC collocation in this instance serves as its point of interconnection or POI, and the law requires that Qwest meet the CLEC at that point. Qwest's SGAT demanded CLECs pay DS-1 or DS-3 circuit rates for this physical link between the CLEC POI and Qwest's switch. Because it is Qwest's legal obligation to take the traffic from the CLEC's POI or collocation space in this instance, it is illegal, unjust and unreasonable for Qwest to shift the financial burden through EICT charges to the CLEC. The EICT is Qwest's side of the interconnection, not the CLECs'; thus, Qwest should bear its own costs.</p> <p>Contrary to Qwest's assertions, AT&T did not propose a bill and keep arrangement <i>per se</i>, not does Qwest's proposed language suggest such an arrangement.</p> |
| <p>§ 7.1.2.2 Consensus Reached.</p> | <p>7.1.2.2 Collocation. Interconnection may be accomplished through the Collocation arrangements offered by Qwest. The terms and conditions under which Collocation will be available are described in Section 8 of this Agreement.</p> <p>Similarly, Qwest proposes other language to address this issue. In SGAT § 7.3.1.2.1, it offers:</p> |
| <p>§ 7.3.1.2.1 No Consensus Reached.</p> | <p>7.3.1.2.1 See Section 8.</p> <p>Merely referencing Section 8 here does not address the underlying problem, which reappears in Qwest's proposal related to SGAT § 7.3.2.3 and may in fact, reappear in Section 8. The preferable approach to this particular section would be to simply delete it.</p> |
| <p>§ 7.3.2.3 No Consensus Reached</p> | <p>In SGAT § 7.3.2.3, Qwest proposes:</p> <p>7.3.2.3 Multiplexing options (DS1/DS3 MUX or DS0/DS1 MUX) are available at rates described in Exhibit A.</p> <p>Here, Qwest appears to be applying its charges found in Exhibit A to the EICT wires. This is entirely unacceptable, and it does not reflect the bill and keep arrangement Qwest purports to adopt.</p> |
| <p>§ 7.1.2.3 Access to UNEs No Consensus Reached</p> | <p>The issue related to SGAT § 7.1.2.3 was that Qwest prohibited the use of mid-span meet arrangements to access unbundled network elements. A mid-span meet arrangement, like other methods of interconnection, consists of facilities used to carry traffic between the ILEC's network and that of the CLEC. These same facilities</p> |

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| | <p>(essentially the fiber optic pipe running between two locations) are identical to facilities purchased as dedicated trunks, and thus, they are capable of carrying traffic of end-users served through unbundled network elements as well as providing interconnection. Contrary to Qwest's Matrix statements, the FCC <i>expressly</i> supports the use of such trunks for access to UNEs.</p> <p>Qwest's proposed language should be altered as follows to be acceptable to AT&T and consistent with the law:</p> <p>7.1.2.3 Mid-Span Meet POI. A Mid-Span Meet POI is a negotiated Point of Interface, limited to the Interconnection of facilities between one Party's switch and the other Party's switch. The actual physical Point of Interface and facilities used will be subject to negotiations between the Parties. Each Party will be responsible for its portion of the build to the Mid-Span Meet POI. A CLEC may use remaining capability in an existing Mid-Span Meet POI to gain access to unbundled network facilities; provided that CLEC shall be obliged to compensate Qwest under the terms and conditions applicable to UNEs for the portion of the facility so used. In determining such portion, the decision shall be based to the extent practicable on the guideline that the portion so determined should correspond to the nature and extent of facilities that would be required to provide access to elements in the absence of a concurrent use for interconnection. Qwest may seek appropriate relief from the Commission if it can demonstrate that this provision has been used to occasion the installation of new facilities that, while claimed necessary for Interconnection, were actually intended for UNE access. These Mid Span Meet POIs will consist of facilities used for the provisioning of one or two way local/IntraLATA and Jointly Provided Switched Access Interconnection trunks, as well as miscellaneous trucks such as Mass Calling Trunks, OS/DA, 911 and including any dedicated DS1, DS3 transport trunk groups used to provision originating CLEC traffic.</p> <p>The stricken language is the creation of the multi-state Facilitator, and as such it is not consensus language. As a practical matter, the stricken language is unclear and difficult to understand if not impossible to implement. Because there exists no legal support for it, the Arizona Commission should reject it.</p> |
| <p>§ 7.2.2.6.3 MF Signaling</p> <p>Consensus Reached</p> | <p>SGAT § 7.2.2.6.3, without more, allowed for discriminatory treatment of CLECs causing CLECs to be completely precluded from competing for certain customers. Where, in particular in rural areas, Qwest refused to allow the use of MF signaling where its central office switches lack SS7 diverse routing. Qwest proposed:</p> <p>7.2.2.6.3 MF Signaling. Interconnection trunks with MF signaling may be ordered by the CLEC if the Qwest Central Office Switch does not have SS7 capability or if the Qwest Central Office Switch does</p> |

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| | not have SS7 diverse routing. |
| Collocation | |
| <p>§ 8.2.1.13 Collocation Full Premises Web Site</p> <p><i>Proposal is Acceptable; Consensus as to AT&T reached.</i></p> | <p>Qwest's SGAT stated, in pertinent part, that Qwest would "maintain a publicly available document, posted for viewing on the Internet ... indicating <i>all Premises that are full</i>, and will update this document within ten (10) calendar days of the date which a premises runs out of physical space." All "premises" by definition includes wire centers and remote premises, among other things. On its face, the SGAT language was consistent with the FCC rule.</p> <p>However, Qwest does not, by its own admissions on the record, comply with either the SGAT or the FCC rule. Instead it now proposed to adopt language proposed by the multi-state Facilitator. The proposed language states:</p> <p>8.2.1.13 Qwest will maintain a publicly available document, posted for viewing on the Internet ... indicating all Premises that are full, and will update this document within ten (10) calendar days of the date at which a Premises runs out of physical space and will update the document within ten (10) calendar days of the date that space becomes available. In addition, the publicly available document shall include, based on information Qwest develops through the Space Availability Report process, the Reservation Process, or the Feasibility Study Process:</p> <ul style="list-style-type: none"> a) Number of CLECs in queue at the Premises, if any; b) Premises that have not been equipped with DS3 capability; c) Estimated date for completion of power equipment additions that will lift the restriction of Collocation at the Premises; d) Address of the Remote Premises that have been inventoried for Remote Collocation, and if the Remote Premises cannot accommodate Collocation. <p><u>Notwithstanding the foregoing, the Qwest web site will list and update within the ten (10) day period, all Wire Centers that are full, whether or not there has been a CLEC requested Space Availability Report.</u></p> <p>The underlined portion of the proposal is the Facilitator's language, and it is acceptable to AT&T.</p> |
| Subloop Unbundling | |
| <p>9.3.1.2, 9.3.1.7 & 9.3.2 Subloop Access</p> <p><i>No Consensus</i></p> | <p>AT&T has agreed not to demand that Qwest develop a separate offering for copper feeder and fiber feeder subloops at this time contingent upon an appropriate resolution of the particularities of the Qwest Special Request process. AT&T believes that because access to both copper feeder and fiber subloops is technically feasible,</p> |

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| Reached | Qwest is required to allow CLEC access pursuant to the FCC UNE Remand Order. Accordingly, if access is substantially encumbered through the Qwest Special Request process, the issue would still be at impasse. |
| 9.3.5.4.1 Determining Ownership No Consensus Reached | The issue is much broader than Qwest represents. The FCC has indicated that if the incumbent fails to determine the demarcation point within ten days, a premises owner (and CLEC) can presume that the demarcation point is at the MPOE. This does not <i>per se</i> mean that Qwest should have a ten-day opportunity in every situation to prohibit the CLEC from accessing internal network wire. AT&T forwarded a proposal §9.3.8.2. that is far more encompassing of the various situations including when a premises owner has knowledge of the demarc point. In this situation, the AT&T proposal allows the CLEC to rely on the premises owner's representation on ownership. AT&T asserts that its proposed language is far more in line with FCC policy and dicta than Qwest's broad-based ten day proposal. |
| Line Sharing | |
| Exhibit C Provisioning Intervals No Consensus Reached | In its matrix purporting to describe resolution of issues "formerly at impasse," Qwest clearly indicates that this issue is still in dispute. Nevertheless, Qwest indicates that it has made a recent offer shortening this interval to 3 days, but as it noted, parties still object. Despite the impasse, Qwest should provide evidence that it has incorporated this new 3-day interval in its SGAT. |
| Dark Fiber | |
| § 9.7.2.4 DWDM Unbundling No Consensus Reached | This issue remains in dispute, and its resolution would benefit from the FCC's impending action. In other jurisdictions, the parties have removed the issue with the express understanding and condition that AT&T will seek clarification and modification of the SGAT once the FCC has spoken. If the FCC acts during the pendency of this proceeding, AT&T will seek appropriate modifications to the SGAT; Qwest's 271 Application must be deemed non-compliant until such modifications are made and reviewed. |
| EELS | |
| § 9.23.3.12 TLA and Converting Special Access Circuits to UNEs No Consensus Reached | Again, Qwest's inclusion of this issue in its matrix erroneously implies resolution. Here, Qwest, "in the spirit of compromise," makes a new proposal. Such new proposal is merely described, Qwest offers no revision to its SGAT. More troubling, Qwest's proposal is presented de novo and Qwest explicitly forecloses any opportunity to investigate or even discuss its offer. AT&T suspects that no CLEC could agree to Qwest's offer without even a brief opportunity to explore the substance of this proposal on the record. Certainly, AT&T cannot accept Qwest's "compromise" on such terms. To make such a material proposal, intending that the proposal will |

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| | <p>satisfy its 271 obligations, and without allowing an investigation of the proposal, is patently wrong and inconsistent with the parties' procedural due process rights. Qwest's proposal makes a sham of the 271 process and casts doubt on the fairness and openness of this proceeding.</p> |
| <p>Access to Poles, Ducts, Conduits & ROW</p> | |
| <p>§ 10.8.1.5 Ownership Consensus</p> | <p>AT&T raised a concern that the SGAT did not provide assurances to CLECs that Qwest would provide access where it "controls" rather than "owns" the ROW facilities involved. AT&T proposed additions to Section 10.8.1.5 language which provided that phrase "ownership or control to do so" also means:</p> <p style="text-align: center;"><i>(ii) the authority to afford access to third parties as may be provided by the landowner to Qwest through express or implied agreements, or (iii) through Applicable Rules</i></p> <p>The facilitator agreed with these proposed revisions, concluding that the FCC test clearly contemplates situations beyond those where occupancy is authorized by commonly used means. It should be clear from the SGAT that cases where Qwest's underlying rights are implied (rather than express) under state law should be accommodated, but made with slight modifications to the proposed SGAT language. The facilitator revised Section 10.8.1.5 to read as follows:</p> <p style="text-align: center;"><i>The phrase "ownership or control to do so" means the legal right, as a matter of state law, to (i) convey an interest in real or personal property or (ii) afford access to third parties as may be provided by the landowner to Qwest through express or implied agreements, or through Applicable Rules</i></p> <p>The Facilitator's revisions are acceptable to AT&T.</p> |
| <p>§§ 10.8.2.2.7, 10.8.4.1.3 & Exhibit D Access to Landowner Agreements No Consensus Reached</p> | <p>This issue concerns Qwest's proposal in its SGAT that it will provide a copy of any ROW agreement in its possession that has not been recorded <u>only</u> after a CLEC has obtained a formally executed, properly notarized "Consent" to the Quitclaim from the subject property owner to the conveyance of the ROW access, not merely consent to disclosure of the ROW agreement.</p> <p>In the 7-State Report, the facilitator acknowledged that there are good reasons why CLECs should be allowed access to landowner agreements and that Qwest has not carried its burden in proving why such agreements should not be disclosed where the underlying agreement has no nondisclosure provision between Qwest and the landowner.</p> |

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| | <p>However, the facilitator directed that if a CLEC wants access to an agreement without obtaining the landowner's consent, it, not Qwest, should bear the risk of landowner claims by agreeing to indemnify Qwest against such claims. If the CLEC chooses not to indemnify, they must obtain the landowner's consent.</p> <p>AT&T objected to the consent requirement and the requirement that, to avoid obtaining landowner consent, CLECs must agree to indemnify Qwest for any litigation brought by the landowner contesting that the CLEC has been given access to the agreement for several reasons. First, the FCC has required RBOCs to provide access to its maps, plats and <i>other relevant data</i> to avoid "the need for costly discovery in pursuing a claim of improper denial of access."² It has not stated that such access is conditioned upon an indemnification agreement by the CLEC. Indeed, such a requirement creates unnecessary barriers to competition by requiring CLECs to negotiate with a separate agreement with Qwest, and significantly raises the cost of entry for CLECs by requiring the CLECs to bear the burden of frivolous litigation that is brought by landowners who have no expectation of privacy. Second, there is no expectation of privacy, as Qwest has argued, in ROW agreements that do not explicitly require consent to disclosure of the terms of the agreement to third parties. Thus, the law does not prohibit such disclosures and there is no risk to Qwest.</p> <p>However, AT&T did make one proposal with respect to the facilitator's indemnification proposal, which, in brief, provided that any reference to a separate indemnification provision that applies exclusively to disclosure of ROW agreements be deleted. Rather, AT&T agreed to include a cross reference to the general indemnification section of the SGAT, if the parties deemed it necessary. Otherwise, AT&T assumed that the existing indemnification provisions of the SGAT would apply.</p> |
| <p>Exhibit D Curing Breaches</p> <p>Consensus Reached</p> | <p>When a CLEC using ROW access it has gained from Qwest breaches the terms of that access, Qwest wants CLECs to secure from the landowners involved the express right to be able to cure that breach, for the expressed purpose of protecting its underlying access rights and those of all carriers using those rights.</p> <p>In the 7-State Report, the facilitator concluded that a balancing of the interests involved favors the elimination of the requirement for CLECs to secure cure provisions from landowners because that requirement will encumber the ability of CLECs to gain access,</p> |

² *Local Competition Order*, ¶ 1223 (emphasis added).

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| | <p>particularly since Qwest will have substantial protection against the consequences that concern it. Qwest was ordered to remove the SGAT's cure provisions.</p> <p>AT&T agrees that this is the appropriate resolution of this issue. If Qwest removes the cure provisions of the SGAT, this issue is resolved.</p> |
| <p>Exhibit D Intervals</p> <p>No Consensus Reached</p> | <p>The issue here is whether Qwest must respond to requests for access to ROW within 45 days without exception. Qwest proposed that it be permitted for large ROW requests to provide an initial response approving or denying a portion of the order no later than 35 days following receipt of the order and continue approval or denial on a rolling basis until it has completed its response to such order.</p> <p>AT&T objected to this provision as contrary to law. In the 7-State Report, the facilitator concluded that while Qwest's SGAT language is not appropriate, he also rejected the arguments raised by AT&T and WCOM, stating:</p> <p style="padding-left: 40px;">the <i>Cavalier</i> decision cannot be logically read as requiring access to all poles in a large order to be determined within 45 days. Otherwise, it stands for the odd proposition that if a CLEC orders 3 poles, it may have to wait 45 days for responses on all of them; however, it can get decisions on a number greater than 3 if it submits a large order.³</p> <p>The Report also states, “[a]bsent carefully constructed alternatives by the participants, it is therefore more practical to treat cases where Qwest has large access-request workloads as possible exceptions to the base interval requirements” and concludes “[a]ccordingly, the SGAT should provide that Qwest is obligated to meet the baseline intervals (<i>i.e.</i>, no specifically defined exceptions to the 45-day rule) unless Qwest can secure relief (under whatever measures the SGAT or state commission regulations may provide).”</p> <p>The conclusion reached in the Report is contrary to the Act, the FCC Rules and FCC rulings. Indeed, the Report ignores the FCC Rule 1.1403(b) which provides “[I]f access is not granted within 45 days of the request for access, the utility must confirm the denial in writing by the 45th day.”⁴ Rule 1.1403(b) contains no exception based on the size of the order.</p> |

³ The Colorado Commission Staff Report adopts the 7-State Report virtually word for word.

⁴ 47 CFR 1.1403(b). See also, *In the Matter of Cavalier Telephone, LLC v. Virginia Electric and Power Company*, 15 FCC Rcd. 9563, June 7, 2000.

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| | <p>State Commissions are bound to apply FCC rules and orders and such rules and orders cannot be challenged in this proceeding.⁵ The Hobbs Act vests exclusive jurisdiction in the courts of appeals to review FCC rules and orders. <i>See</i> 28 U.S.C. § 2342 (granting the court of appeals exclusive jurisdiction to determine the validity of FCC Orders).⁶ To the extent Qwest or a state commission takes issue with rulings of the FCC, they must do so pursuant to the Hobbs Act. Therefore, state commissions may not alter the 45 day response period established by the FCC Rule. Qwest's SGAT must be revised accordingly.</p> |
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⁵ See also *Wilson v. A.H. Belo Corp.*, 87 F.3d 393, 397-400 (9th Cir. 1996), 87 F.3d at 396-98 (holding that all FCC rulings, whether in the form of rules, orders, or otherwise, are insulated from collateral attack under the Hobbs Act). Indeed, on this very point, the Eighth Circuit concluded that the "fact that the FCC assert[ed] . . . its authority in the commentary section of its First Report and Order as opposed to stating its position as a rule is immaterial." *Iowa Utils. Bd. v. FCC*, 120 F.3d 753, 816 (8th Cir. 1997), aff'd in part and rev'd in part, 119 S. Ct. 721 (1999).

⁶ See *U S WEST Communications v. MFS Intelenet, Inc.*, 193 F.3d 1112, 1120 (9th Cir. 1999) (citations omitted) ("The FCC order [*i.e.*, the *Local Competition Order*] is not subject to collateral attack in this proceeding. The Hobbs Act grants exclusive jurisdiction to courts of appeals to determine the validity of all final orders of the FCC. An aggrieved party may invoke this jurisdiction only by filing a petition for review of the FCC's final order in a court of appeals naming the United States as a party.")

CERTIFICATE OF SERVICE

I certify that the original and 10 copies of AT&T's Letter to Maureen Scott regarding AT&T's Response to Qwest's Claims Regarding "Resolved" Issues and AT&T's Matrix of Qwest's "Resolved" Issues by SGAT Section in Docket No. T-00000A-97-0238 were sent by overnight delivery on June 22, 2001 to:

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