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BEFORE THE ARIZONA CORPORATION COMMISSION

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

**Docket No. T-00000A-97-0238**

**AT&T'S COMMENTS ON KPMG  
REPORT**

On November 26, 2001 Qwest Corporation ("Qwest") filed a report prepared by KPMG, LLP ("KPMG") entitled "Qwest Corporation Report of Independent Public Accountants, Attestation Examination with respect to – Report of Management on Compliance with Applicable Requirements of Section 272 of the Telecommunications Act of 1996, November 9, 2001" ("KPMG Report" or "Report"), and accompanying affidavits of Judith L. Brunsting and Marie E. Schwartz. No Commission order authorized that filing, nor has the Commission formally accepted the filing or established a date for responsive comments. If the Commission decides to include the Qwest filing as part of the record in this proceeding, AT&T Communications of the Mountain States, Inc., and AT&T Local Services on behalf of TCG Phoenix ("AT&T") provide the following response to that filing.

The KPMG Report and additional Qwest affidavits fail to demonstrate that Qwest has complied with all requirements of section 272, much less that Qwest currently is in compliance

with those requirements. To the contrary, KPMG's opinion is qualified and its examination was limited in scope, yet KPMG nevertheless found significant instances of noncompliance. Accordingly, the Commission should conclude that Qwest is not in compliance with section 272.

### DISCUSSION

The Liberty Consulting Group Report filed in the multi-state proceeding ("Liberty Report") recommended that Qwest arrange for independent testing of its compliance with the requirements of section 272. The Administrative Law Judge in Washington proposed a similar requirement.<sup>1</sup> The KPMG Report falls far short of satisfying either recommendation. Most obviously, the Report finds multiple instances of *noncompliance*, the total dollar amount of which on an annualized basis is approximately \$6,350,000. Thus, the most that KPMG could provide was a *qualified* opinion that Qwest materially complied with the section 272 requirements that KPMG reviewed "*except for the instances of noncompliance.*" KPMG Report at 4 (emphasis added). In other words, KPMG concluded that Qwest did *not* comply with section 272 during the time period examined.

Qwest attempts to minimize this aspect of the KPMG Report with additional affidavits of Judith L. Brunsting and Marie E. Schwartz, who identify actions that Qwest allegedly has undertaken to correct these areas of *noncompliance*. Such testimony does not change the fact that the independent examiner found that Qwest was not in compliance during the test period. Ms. Brunsting and Ms. Schwartz, moreover, previously testified in this proceeding that Qwest was in full compliance with its section 272 obligations during the time period covered by the KPMG Report. The Commission should place little, if any, reliance on this testimony.

The KPMG Report also was much more limited in scope than the independent testing

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<sup>1</sup> *In re Investigation Into US WEST Communications, Inc.'s Compliance With Section 271*, Washington Utils. & Transp. Comm'n Docket Nos. UT-003022 & UT-003040, Twentieth Supp. Order ¶ 736 (Nov. 15, 2001).

recommended in the Liberty Report. The KPMG Report, for example, did not include an examination of Qwest's compliance with sections 272(a), 272(b)(1), 272(b)(3), 272(b)(4), or 272(g), even though the requirements in those sections are at issue in this proceeding. *See* KPMG Report at 1. In addition, KPMG repeatedly noted that it was examining "management's assertion" that Qwest was in compliance with certain aspects of Section 272. *Id.* The Report fails to explain the extent to which KPMG independently examined individual transactions, rather than simply reviewing the information that Qwest management compiled to support its assertions of compliance. Not surprisingly, therefore, the KPMG Report does not even address whether -- much less opine -- that "there are reasonable assurances that a continuation of the practices and procedures examined will continue to provide the level of accuracy, completeness, timeliness and arm's length conduct found in examining" Qwest's past actions. Liberty Report at 54. The limited "review" in the KPMG Report does not even approach the level of examination and testing that the Liberty Report recommended.

KPMG further reduced the already limited utility of its Report by conditioning its opinion on "materiality," opining that Qwest "complied, in all material respects," with the specified section 272 requirements. KPMG Report at 4. The Biennial Audit Procedures require that the biennial audit is "not based on the concept of materiality" and *all* errors or discrepancies discovered while performing the type of examination KPMG undertook are to be reported.<sup>2</sup> KPMG expressly provided that its "examination does not provide a legal determination on the Company's compliance with specified requirements." *Id.* at 1. KPMG, however, would have had to make such a determination in order to determine whether a specific instance of noncompliance was "material." The Commission should have little confidence in such an

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<sup>2</sup> *See* Schwartz Affidavit, Exhibit MES 8, at 5 – 6; *Biennial Audit Procedures*, Introduction, Background, ¶ 3.

internally contradictory report.

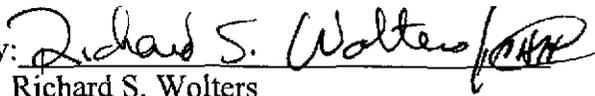
Finally, the KPMG Report covers only the very limited time period of April through August 2001. The Liberty Report recommended the use of that time period when that report was prepared in August, but over three months have passed since that time. Particularly in light of the Report's findings of Qwest's noncompliance during the test period, the Commission should require Qwest to undertake a much more thorough examination and testing for a more recent time period before considering whether Qwest is complying, and will continue to comply, with its Section 272 obligations.

### **CONCLUSION**

For the foregoing reasons, the Commission should find that the KPMG Report does not satisfy the "independent testing" of Qwest's compliance with section 272 recommended in the multi-state and Washington proceedings. The KPMG Report provides support only for the conclusion that an independent examiner found, in a limited review, that Qwest was not in compliance with its section 272 obligations during the period April through August 2001. The Commission, therefore, should require Qwest to undergo thorough independent testing before making any finding that Qwest is complying, and will continue to comply, with its section 272 obligations.

Submitted this 3<sup>rd</sup> day of January 2002.

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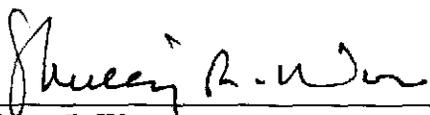
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