

ORIGINAL



0000023234

RECEIVED

BEFORE THE ARIZONA CORPORATION COMMISSION

2002 JAN -4 P 12:07

1 WILLIAM A. MUNDELL
2 Chairman
3 JIM IRVIN
4 Commissioner
5 MARC SPITZER
6 Commissioner

AZ CORP COMMISSION Arizona Corporation Commission
DOCUMENT CONTROL DOCKETED

JAN 04 2002

7 IN THE MATTER OF US WEST)
8 COMMUNICATIONS, INC.'S COMPLIANCE)
9 WITH SECTION 271 OF THE)
TELECOMMUNICATIONS ACT OF 1996)

DOCKETED BY [Signature]

Docket No. T-00000A-97-0238

10 STAFF'S RESPONSE TO QWEST'S OPPOSITION
11 TO POSTPONE FINAL WORKSHOP AND MOTION TO COMPEL

12 I. INTRODUCTION

13 Arizona Corporation Commission ("ACC" or "Commission") Staff files the following
14 reply to Qwest Corporation's ("Qwest") Opposition to Motion of Commission Staff to Postpone
15 Final OSS Workshop by One Week and Qwest's Motion to Compel Commission Staff to release
16 its remaining draft and recommended reports on Qwest's compliance with the Checklist Items.

17 II. DISCUSSION

18 A. Postponement of the Final Workshop for One Week is Necessary and
19 Will Not Prejudice Qwest in Any Way.

20 Qwest argues that Staff's "broad" request for a one-week postponement of the Final
21 Workshop and subsequent dates is not justified and should be denied. As support for its position,
22 Qwest states that all parties agreed to the dates for the Workshop two months ago and that the
23 reasons given by Staff (i.e., conflict with a recently scheduled Colorado hearing and due process
24 concerns) do not require any delay. Staff disagrees.

25 As Staff noted in its Motion, the agreements reached among the parties regarding the
26 schedule were premised upon Staff's -- and its Consultants'-- ability to complete the test and
27 associated reports without sacrificing the integrity of the overall project and upon the parties'
28 ability to have a meaningful opportunity to comment on the reports and participate in the

1 workshops. Staff was subsequently informed by several CLECs that the Colorado Commission
2 had scheduled a hearing for January 16-18, 2002, which presented a direct conflict with the
3 Arizona Final Workshop. The CLECs also informed Staff that they asked the Colorado
4 Commission to move its hearing because of the Arizona Workshop. Qwest, also aware of the
5 conflict, did not join in the request to postpone the Colorado hearing. The Colorado Commission
6 refused to move its hearing stating that it had reserved that week months before and, therefore,
7 intended to go ahead and hold its hearing despite the evident conflict with Arizona. To continue
8 with the original schedule would have presented problems for at least one of the CLECs that has
9 been very involved in both the Arizona and Colorado proceedings and their contributions to this
10 project has been extensive.

11 Staff had also been informed by several of the CLECs that completing their reviews of
12 the CGE&Y Final Report along with verification of the underlying data, the Hewlett-Packard
13 ("HP") SATE evaluation, Qwest's revised Change Management Process ("CMP"), and preparing
14 comments and questions during the holidays would be an undue burden on the parties.
15 Subsequently, in addition to the above reports, Staff issued four checklist reports all requiring
16 CLEC comment as well during this same time period.

17 Finally, at the last TAG meeting, some concerns were raised by parties regarding a
18 performance indicator definition ("PID") calculation chart prepared and distributed by CGE&Y
19 at the last workshop. Because of some apparent misunderstandings regarding the chart, Staff
20 directed its Consultants to do some follow-up work to clarify the methodology used for its PID
21 calculations. Since Staff filed its Motion, it has learned that CGE&Y and HP expect to complete
22 this follow-up work for Staff by January 11, 2002. Staff intends to schedule another TAG
23 meeting the week of January 14, 2002 so CGE&Y can respond to the specific concerns raised at
24 the last TAG meeting regarding the manner in which Qwest's performance was calculated by
25 CGE&Y. Staff believes that CGE&Y's calculations require some additional discussion and
26 clarification in a TAG setting before they are addressed in the Final Workshop, so as not to
27 obscure the record with issues that could have been first resolved through TAG discussion.

28 Staff fails to see how Qwest will be prejudiced by a one-week delay in the Final

1 Workshop and the subsequent dates. In Staff's opinion, the delay will provide parties the time
2 they are allotted by agreement to prepare and participate in the Workshop given the overlap with
3 Region activities and other aspects of the Arizona proceeding. The one-week delay will also
4 provide time for Staff's Consultants to follow up on and clarify the concerns raised by the parties
5 in the last TAG meeting regarding performance data reconciliation. The delay is actually in
6 Qwest's best interests given the importance placed upon both due process and data reconciliation
7 by the FCC.

8 Qwest states that it offered several alternatives to avoid the delay and that if the Final
9 Workshop is postponed by one week, the rest of the schedule should not be changed. The two
10 alternatives offered by Qwest were unworkable and Staff made that fact known to Qwest. The
11 first alternative would have split the Final Workshop between the weeks of January 14 and
12 January 21, 2002, which represented a one-half week schedule change rather than a one-week
13 change which did not justify the additional travel and other logistical requirements. The second
14 alternative Qwest offered was to move the Final Workshop up a week to January 7, 2002, which
15 Staff told Qwest was impossible because of the prescribed comment periods mutually agreed to
16 by all of the parties.

17 Qwest also argues that Staff's Consultants, DCI, stated that even if the Final Workshop
18 was moved, the remainder of the schedule could remain intact. Staff has subsequently learned
19 that this was a miscommunication and that Staff's Consultants actually agree that if the Final
20 Workshop is moved by a week, the rest of the schedule must be moved back a week as well.
21 Parties would not have time to file comments on the Final Report which would result in Staff not
22 having adequate time to complete its recommendations to the Commission on the CGE&Y Final
23 Report if the remaining schedule does not change.

24 **B. Qwest's Motion to Compel Should Be Denied Since the Issues Raised**
25 **Therein Are Moot.**

26 Qwest also criticizes Staff for delaying "several months" in issuing its draft reports on the
27 remaining checklist items and in issuing its recommended reports to the Hearing Division.
28 Qwest states that "[n]ow that the OSS test has concluded, it is imperative that Staff completes its

1 long-overdue tasks on the checklist items to avoid unnecessarily delaying Qwest's application to
2 the FCC." Qwest Opposition and Motion at p. 4. Qwest goes on to state that Staff has "failed to
3 meet its obligations" under the December 8, 1999 Procedural Order and cites to several checklist
4 reports which it claims are late. Qwest further claims that Staff committed "17 times" to have its
5 report out on General Terms and Conditions and that it failed to meet that commitment each time
6 and failed to communicate to Qwest in advance that it would not meet the 17 dates. Staff will
7 first respond to the specific allegations made by Qwest and then will offer a few general
8 observations regarding the process and Qwest's complaints.

9 While Qwest notes that the workshop on General Terms and Conditions concluded on
10 July 25, 2001, it fails to disclose that the record in Arizona was held open pending completion of
11 subsequent workshops in Colorado and Washington the records from which the parties had
12 agreed to import back into Arizona for use in the checklist report.

13 As to the "17 commitments" that Qwest claims that Staff made to publish its report on
14 General Terms and Conditions, Staff has repeatedly informed Qwest of the difficulty in trying to
15 "predict with certainty" when it will be able to complete its analysis of Qwest's compliance with
16 the various checklist items. Given the difficulty of the subject matter, new issues which
17 continually arise and must be addressed, and the volumes of information, transcripts, exhibits,
18 testimony that must be reviewed by Staff in drafting these reports, attempting to give Qwest
19 "dates certain" for publication of the various checklist reports is simply not possible.
20 Nonetheless, Staff has attempted to lend what predictability it can to the process by setting
21 "target" dates for the publication of reports and attempting to adhere to them. When those dates
22 could not be met due to the need for further review and work on any particular report, Staff
23 always attempted to convey this information to Qwest in advance, despite the Company's claims
24 to the contrary. Besides the difficulty of establishing deadlines for each report, the other major
25 problem has been that while Staff has made clear that the dates for each report were merely
26 "targets," Qwest has treated them as firm commitments. Missed "target" dates cannot help but
27 occur in a project as complex as this one.

28

1 Finally, Staff's proposed report on the SGAT's General Terms and Conditions was
2 published in December, rendering the issues raised by Qwest regarding this report moot.

3 Qwest also cites to several other instances where it claims Staff "failed to meet its
4 obligations" to issue recommended reports. While Staff has not been able to determine how
5 Qwest calculated the various due dates appearing in it's Motion, Staff assumes that Qwest is
6 relying upon the time periods contained in the December 8, 1999 Procedural Order. Staff
7 informed Qwest and others about a year ago that it intended to seek modification of the
8 December 8, 1999 Procedural Order, if parties interpreted the time periods therein to apply to
9 "disputed" checklist reports. Qwest at that time urged Staff not to seek modification of the
10 Procedural Order. Qwest stated that it understood that Staff would need more time for
11 "disputed" checklist reports than the time periods set forth in that Order. Qwest is now
12 attempting to hold Staff to the abbreviated time periods contained in the 1999 Procedural Order
13 for "disputed" checklist reports, something which it long ago acknowledged was not appropriate.

14 With respect to the individual reports referenced by Qwest, Staff notes that its reports on
15 Checklist Items 4 and 11 would have been completed a long time ago had Qwest put in the
16 record the necessary information that it had committed to import back to Arizona from other
17 States. This was not done until Staff raised this deficiency in its Report and reopened the record
18 to allow Qwest to put in the additional information. As a result, initial findings of
19 noncompliance were made by the Staff in both instances, and Staff had to review additional
20 comments and prepare supplemental reports for both of these checklist items. With regard to
21 Checklist Item 2, Staff published the report despite the fact that the evaluation of Qwest's SATE,
22 CMP and OSS were not yet completed at the time of publication. Thus, contrary to Qwest's
23 claims, Staff can hardly be considered to have filed this report "late".

24 Qwest now asks the Commission to set "dates certain" for Staff's publication of the
25 remaining checklist reports. Qwest's request should be denied primarily because the solution it
26 proposes is unworkable and the issues it raises to support its request are now moot. Practically
27 speaking, only five checklist reports remain which require additional Staff work; with three of
28 the five reports (Public Interest, Checklist Item 2 and Section 272 compliance) each requiring a

1 review of recently submitted information or awaiting additional information before they can be
2 completed. That only leaves the supplemental report on Checklist 4 and the final Staff report on
3 Line Splitting and NIDs for which Staff has the necessary information to complete the report and
4 is in the process of doing so. Staff intended to complete both of these reports this week, and
5 would have completed them, had it not been required to once again spend significant time
6 defending itself and its actions from the unnecessary and unwarranted attacks made by Qwest in
7 its Motion. In addition, Staff has not delayed unnecessarily in issuing any report, but has taken
8 the time it believed to be necessary to deal with the issues presented. Contrary to what Qwest
9 may believe, there is no short cut to this process without sacrificing the quality of the reports.
10 Thus, Qwest's request would only result in Staff having to formally request an extension of time
11 if it could not complete its work in the time allotted.

12 In summary, Staff offers the following general observations regarding the process and
13 Qwest's complaints. Staff oftentimes receives complaints from Qwest that it is not moving fast
14 enough and the opposite complaints from the CLECs that it is moving too fast. As Staff
15 anticipated, with completion of the process now in sight, the complaints are coming faster and
16 more furiously. It takes Staff considerable time to respond to complaints of this nature; time
17 which could be much better spent by Staff on substantive issues and its reports.

18 Finally, Qwest's complaints must also be put in proper perspective. Staff has worked
19 diligently to ensure that this proceeding, including a very extensive OSS test, was conducted in a
20 fashion designed to ensure the integrity and quality of the findings ultimately presented to the
21 Commission. Qwest has at times compared Staff's progress to the progress of the ROC States in
22 issuing its reports, and has accused Staff of being remiss. In Staff's opinion, these comparisons
23 are misplaced. Staff would note that this Commission is conducting its own OSS test which is a
24 substantial undertaking in and of itself. None of the other ROC states have made the substantial
25 investment of time and effort that this Commission has in reviewing and ensuring that Qwest's
26 OSS will promote competitive entry into the local market. In addition, much of what this
27 Commission has done including in particular the establishment of performance measurement
28 indicators, the development of an extensive OSS Master Test Plan and Test Standards Document

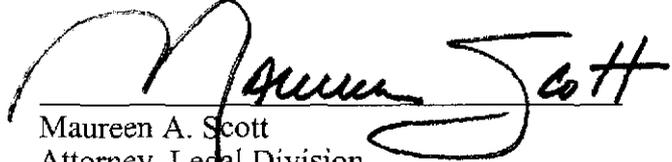
1 and the initial set of Checklist Workshops on nondisputed issues, have been used by the ROC
2 states and allowed them to proceed much more rapidly with their own 271 compliance reviews.
3 There is nothing that Staff could have done, or can now do, to expedite the process without
4 jeopardizing the quality and integrity of the OSS test, checklist reports, and the underlying
5 findings contained therein.

6 **III. CONCLUSION**

7 For the reasons given above, the Commission should grant Staff's Motion to Postpone the
8 Final Workshop and subsequent dates by one week and deny Qwest's Motion to Compel.

9 RESPECTFULLY submitted this 4th day of January, 2002.

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



Maureen A. Scott
Attorney, Legal Division
1200 West Washington Street
Phoenix, Arizona 85007
Telephone: (602) 542-6022
Facsimile: (602) 542-4870
e-mail: maureenscott@cc.state.us

1 Original and ten copies of the foregoing
2 were filed this 4th day of January,
2001, with:

3 Docket Control
4 Arizona Corporation Commission
5 1200 West Washington Street
Phoenix, AZ 85007

6 Copies of the foregoing were mailed and/or
7 hand-delivered this 4th day of January, 02
2001, to:

8 Charles Steese
9 Andrew Crain
10 QWEST Communications, Inc.
1801 California Street, #5100
11 Denver, Colorado 80202

12 Maureen Arnold
13 QWEST Communications, Inc.
14 3033 N. Third Street, Room 1010
15 Phoenix, Arizona 85012

16 Michael M. Grant
17 GALLAGHER AND KENNEDY
18 2575 E. Camelback Road
19 Phoenix, Arizona 85016-9225

20 Timothy Berg
21 FENNEMORE CRAIG
22 3003 N. Central Ave., Suite 2600
23 Phoenix, Arizona 85016

24 Nigel Bates
25 ELECTRIC LIGHTWAVE, INC.
26 4400 NE 77th Avenue
Vancouver, Washington 98662

27 Brian Thomas, VP Reg. - West
28 Time Warner Telecom, Inc.
520 SW 6th Avenue, Suite 300
Portland, Oregon 97204

Richard P. Kolb, VP-Reg. Affairs
OnePoint Communications
Two Conway Park
150 Field Drive, Suite 300
Lake Forest, Illinois 60045

Eric S. Heath
SPRINT COMMUNICATIONS CO.
100 Spear Street, Suite 930
San Francisco, CA 94105

Thomas H. Campbell
LEWIS & ROCA
40 N. Central Avenue
Phoenix, Arizona 85007

Andrew O. Isar
TRI
4312 92nd Avenue, N.W.
Gig Harbor, Washington 98335

Michael W. Patten
Roshka Heyman & DeWulf
One Arizona Center
400 East Van Buren, Suite 800
Phoenix, Arizona 85004

Charles Kallenbach
AMERICAN COMMUNICATIONS
SERVICES INC
131 National Business Parkway
Annapolis Junction, Maryland 20701

Thomas F. Dixon
MCI TELECOMMUNICATIONS CORP
707 17th Street, #3900
Denver, Colorado 80202

Kevin Chapman, SBC
Director-Regulatory Relations
5800 Northwest Parkway
Suite 125, Room 1-S-20
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

1 Lyndon J. Godfrey
2 Vice President – Government Affairs
3 AT&T
4 111 West Monroe St., Suite 1201
5 Phoenix, Arizona 85004

6 Daniel Waggoner
7 DAVIS WRIGHT TREMAINE
8 2600 Century Square
9 1501 Fourth Avenue
10 Seattle, WA 98101-1688

11 Raymond S. Heyman
12 Randall H. Warner
13 ROSHKA HEYMAN & DeWULF
14 One Arizona Center
15 400 East Van Buren, Suite 800
16 Phoenix, Arizona 85004

17 Diane Bacon, Legislative Director
18 COMMUNICATIONS WORKERS OF
19 AMERICA
20 5818 North 7th Street, Suite 206
21 Phoenix, Arizona 85014-5811

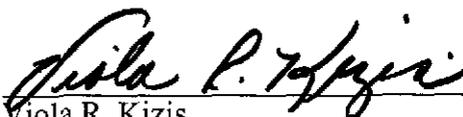
22 Gena Doyscher
23 GLOBAL CROSSING LOCAL
24 SERVICES, INC.
25 1221 Nicollet Mall
26 Minneapolis, MN 55403-2420

27 Karen L. Clauson
28 ESCHELON TELECOM, INC.
730 Second Avenue South, Suite 1200
Minneapolis, MN 55402

Mark P. Trincherro
Davis, Wright Tremaine
1300 SW Fifth Avenue, Suite 2300
Portland, OR 97201

Traci Grundon
Garry Appel, Esq.
TESS Communications, Inc.
1917 Market Street
Denver, CO 80202

Todd C. Wiley Esq. for
COVAD Communications Co.
GALLAGHER AND KENNEDY
2575 East Camelback Road
Phoenix, Arizona 85016-9225

27 
28 Viola R. Kizis
Secretary to Maureen A. Scott

Davis, Wright & Tremaine LLP
1300 S.W. Fifth Avenue
Portland, OR 97201

Bradley Carroll, Esq.
COX ARIZONA TELCOM, L.L.C.
20401 North 29 Avenue
Phoenix, AZ 85027

Mark N. Rogers
EXCELL AGENT SERVICES, L.L.C.
2175 W. 14th Street
Tempe, AZ 85281

Barbara P. Shever
LEC Relations Mgr.-Industry Policy
Z-Tel Communications, Inc.
601 S. Harbour Island Blvd., Suite 220
Tampa, FL 33602

Jonathan E. Canis
Michael B. Hazzard
Kelly Drye & Warren L.L.P.
1200 19th Street, NW, Fifth Floor
Washington, D.C. 20036

Ms. Andrea P. Harris
Sr. Manager, Reg.
ALLEGIANCE TELECOM, INC.
2101 Webster, Suite 1580
Oakland, California 94612

Dennis D. Ahlers, Sr. Attorney
Eschelon Telecom, Inc.
730 Second Ave. South, Ste 1200
Minneapolis, MN 55402

K. Megan Doberneck, Esq. for
COVAD Communications Co.
7901 Lowry Blvd
Denver, CO 80230