EXCEPTION

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 EXCEPTIONS TO THE ADMINISTRATIVE LAW JUDGE'S RECOMMENDED ORDER ON CHECKLIST ITEM NO. 1**

AT&T Communications of the Mountain States, Inc. and TCG Phoenix, (collectively, "AT&T") hereby file their exceptions to the Administrative Law Judge's ("ALJ") Recommended Order on Checklist Item No. 1.

I. INTRODUCTION

In most respects AT&T does not take exception to the ALJ's recommendations. However, there are two issues AT&T wishes to address. However, AT&T wishes to make clear that the failure to respond or object to a particular recommendation should not be construed as agreement with the recommendations in this proceeding or any other proceeding, in this or another jurisdiction. AT&T reserves the right subsequently to raise the legality of any recommendations in any further administrative or court proceedings.

II. ARGUMENTS

A. Single Point of Presence

The Recommended Order discusses Qwest Corporation's ("Qwest") Single Point of Presence ("SPOP") product at paragraphs 52 through 57. The Recommended Order fails to explicitly resolve a very important point -- whether Qwest can demand in its SPOP product that that the point of interconnection ("POI") must be the closest Qwest serving wire center. Without an explicit finding, disputes will arise regarding the interpretation of the SPOP product that will require long, drawn out enforcement actions. Some of this may be avoided by including a simple finding in the Order.

The ALJ has held that Qwest must provide interconnection trunks with lengths up to 50 miles, with longer trunks being available on a case-by-case basis, if the parties agree or the Commission so orders.[1] This is consistent with AT&T's position that Qwest cannot demand in its SPOP product that the POI must be the closest Qwest wire center.

AT&T requests that the order be amended to include a specific finding that the SPOP cannot preclude competitive local exchange carriers ("CLECs") from determining where the POI is, *i.e.*, Qwest cannot demand in its SPOP product that the POI is at the closest serving wire center.

B. Non-Refundable Space Reservation Fee

At paragraphs 151 through 155, the Recommended Order addresses the non-refundable space reservation fee. The Recommended Order concurs with Staff and finds that a non-refundable deposit is not unreasonable.[2]

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[1] Recommended Order, ¶¶ 66-73.
[2] Recommended Order, ¶ 155.

Staff rejected AT&T's proposal that Qwest refund a larger amount if Qwest did not incur costs equal to the deposit. Staff suggests that AT&T's proposal does not recognize Qwest's "carrying costs."[3]

The problem with Qwest's proposal and Staff's rationale is that there is no cost support for either the initial fee or the carrying costs. Although any fee should be cost-based pursuant to the section 252(d), a refundable fee is less problematic from a cost prospective. However, not only does Staff allow Qwest to establish a non-refundable fee that is not cost-based but also allows carrying costs that are not supported by any evidence. It is hard to understand how this can be considered reasonable. AT&T's proposal has some relationship to cost, allowing Qwest to retain that portion of the fee that reflects Qwest's actual expenses.

Qwest recovers interest on the fee while it holds it. This provides some recovery of "carrying costs." Furthermore, the CLECs are out the use of the money, which mitigates any arguments that CLECs will warehouse space unnecessarily. This raises the issue of warehousing and the lack of any evidence of wasteful or inappropriate use of space by the CLECs. Staff's approach penalizes the CLECs in all cases.

The state of competition does not suggest warehousing of space will be a problem in the future. The Staff Report notes that as of December 31, 2000, there were 455 collocations in 80 central offices serving 94.2% of over 2.739 million access lines in Arizona.[4] Since December 31, 2000, there has been a change of fortune in the telecommunications industry. With the current coverage of Qwest wire centers by

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[3] *Id.*, ¶ 154.

[4] Staff Report, ¶ 37, citing Qwest's April 23, 2001, Errata Brief at 2.

existing collocation and the state of the telecommunications industry, it is unlikely that warehousing will be a big problem and a non-refundable fee appears to be a solution without a problem. Yet, for the remaining CLECs, the non-refundable fee is an unnecessary cost of business.

AT&T recommends that the ALJ reconsider a non-cost-based non-refundable reservation fee and, in lieu thereof, adopt AT&T's proposal.

Respectfully submitted this 17th day of December, 2001.

AT&T COMMUNICATIONS
OF THE MOUNTAIN STATES, INC.
AND TCG PHOENIX

By: Richard S. Wolters by DRF

Richard S. Wolters
AT&T
1875 Lawrence Street, Suite 1503
Denver, CO 80202
(303) 298-6741

Gregory H. Hoffman
Senior Attorney
AT&T Corp.
795 Folsom Street, Room 2161
San Francisco, CA 94107
(415) 442-3776
(415) 977-6234 (Fax)

CERTIFICATE OF SERVICE

I certify that the original and 10 copies of AT&T's Exceptions to the Administrative Law Judge's Recommended Order on Checklist Item No. 1 in Docket No. T-00000A-97-0238 were sent by overnight delivery on December 17, 2001 to:

Arizona Corporation Commission
Docket Control – Utilities Division
1200 West Washington Street
Phoenix, AZ 85007

and a true and correct copy was sent by overnight delivery on December 17, 2001 to:

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

Mark A. DiNunzio
Arizona Corporation Commission
1200 West Washington Street
Phoenix, AZ 85007

Ernest Johnson
Director - Utilities Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, AZ 85007

Christopher Kempley
Arizona Corporation Commission
Legal Division
1200 West Washington Street
Phoenix, AZ 85007

Jane Rodda
Administrative Law Judge
Arizona Corporation Commission
400 West Congress
Tucson, AZ 85701-1347

and a true and correct copy was sent by U. S. Mail on December 17, 2001 to:

Thomas F. Dixon
WorldCom, Inc.
707 – 17th Street, #3900
Denver, CO 80202

Terry Tan
WorldCom, Inc.
201 Spear Street, 9th Floor
San Francisco, CA 94015

K. Megan Doberneck
Covad Communications Company
7901 Lowry Blvd.
Denver, CO 80230

Bradley Carroll
Cox Arizona Telcom, L.L.C.
20401 North 29th Avenue
Phoenix, AZ 85027-3148

Michael M. Grant
Gallagher and Kennedy
2575 East Camelback Road
Phoenix, AZ 85016-9225

Gena Doyscher
Global Crossing Local Services, Inc.
1221 Nicollet Mall, Suite 300
Minneapolis MN 55403

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

Michael W. Patten
Roshka Heyman & DeWulf, PLC
400 North Fifth Street, Suite 1000
Phoenix, AZ 85004-3906

Joyce Hundley
United States Dept. of Justice
Antitrust Division
1401 H Street NW, Suite 8000
Washington, DC 20530

Daniel Pozefsky
Residential Utility Consumer Office
2828 North Central Ave., #1200
Phoenix, AZ 85004

Mark N. Rogers
Excell Agent Services, L.L.C.
2175 W. 14th Street
Tempe, AZ 85281

Mark P. Trinchero
Davis Wright Tremaine
1300 SW Fifth Ave., Suite 2300
Portland OR 97201-5682

Penny Bewick
New Edge Networks
3000 Columbia House Blvd., Suite 106
Vancouver, WA 98661

Lisa Crowley
Covad Communications Company
7901 Lowry Boulevard
Denver, Colorado 80230

Karen L. Clauson
Eschelon Telecom, Inc.
730 2nd Avenue South, Suite 1200
Minneapolis, MN 55402

Joan S. Burke
Osborn Maledon, P.A.
2929 N. Central Avenue, 21st Floor
Phoenix, AZ 85067-6379

Eric S. Heath
Sprint Communications Company L.P.
100 Spear Street, Suite 930
San Francisco, CA 94105

Charles Kallenbach
American Communications Services, Inc.
131 National Business Parkway
Annapolis Junction, MD 20701

Jeffrey W. Crockett
Snell & Wilmer, LLP
One Arizona Center
Phoenix, AZ 85004-0001

Todd C. Wiley
Gallagher & Kennedy, P.A.
2575 East Camelback Road
Phoenix, AZ 85016-9225

Michael B. Hazzard
Kelley, Drye & Warren, LLP
1200 19th Street, NW, Fifth Floor
Washington, DC 20036

Daniel Waggoner
Davis Wright Tremaine
2600 Century Square
1501 Fourth Avenue
Seattle, WA 98101-1688

Timothy Berg
Fennemore Craig, P.C.
3003 North Central Ave., #2600
Phoenix, AZ 85012

Raymond S. Heyman
Randall H. Warner
Roshka Heyman & DeWulf
Two Arizona Center
400 N. Fifth Street, Suite 1000
Phoenix, AZ 85004

Diane Bacon, Legislative Director
Communications Workers of America
Arizona State Council
District 7 AFL-CIO, CLC
5818 N. 7th Street, Suite 206
Phoenix, AZ 85014-5811

Andrea P. Harris
Senior Manager, Regulatory
Allegiance Telecom, Inc.
2101 Webster, Suite 1580
Oakland, CA 94612

Andrew Crain
Qwest Corporation
1801 California Street, Suite 4900
Denver, CO 80202

Janet Livengood
Regional Vice President
Z-Tel Communications, Inc.
601 S. Harbour Island Blvd., Suite 220
Tampa, FL 33602

Charles W. Steese
Qwest Corporation
1801 California Street, Suite 4900
Denver, CO 80202

Bill Haas
Richard Lipman
McLeodUSA Telecommunications
Services, Inc.
6400 C Street SW
Cedar Rapids, IA 54206-3177

Brian Thomas
Vice President – Regulatory
Time Warner Telecom, Inc.
520 S.W. 6th Avenue, Suite 300
Portland, OR 97204

Diane R. Finch