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2001 NOV -2 P 4: 37

AZ CORP COMMISSION
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IN THE MATTER OF U S WEST
COMMUNICATIONS, INC.'S COMPLIANCE
WITH SECTION 271 OF THE
TELECOMMUNICATIONS ACT OF 1996

)
)
) DOCKET NO. T-00000A-97-0238
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NOTICE OF FILING

The Arizona Corporation Commission Staff ("Staff") by its undersigned attorneys, hereby files its Supplemental Reports on Checklist Items 7 and 10.

RESPECTFULLY SUBMITTED this 2nd day of November 2001.

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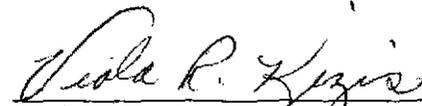
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**IN THE MATTER OF QWEST CORPORATION'S
SECTION 271 APPLICATION**

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

SUPPLEMENTAL REPORT ON QWEST'S COMPLIANCE

With

**CHECKLIST ITEM: NO. 7 - 911/E911, DIRECTORY
ASSISTANCE AND
OPERATOR SERVICES**

NOVEMBER 2, 2001

I. FINDINGS OF FACT

A. PROCEDURAL HISTORY

1. On February 16, 2001 in Decision No. 63385, the Commission approved Checklist Item No. 7 - 911/E911, Directory Assistance and Operator Services.

2. In the Conclusions of Law portion of the approved Order, Qwest¹ was required to update its SGAT language agreed to in other region Workshops and resolution by the Hearing Division /Commission of the issue of how to treat issues arising in other State Workshops which the parties would like to bring back to Arizona after the record has closed.

3. On March 26, 2001, the Hearing Division of the Commission issued a procedural order indicating that a party may request to supplement the record in Arizona on a checklist item by filing a brief within 10 business days from the date the issue is first declared at impasse in another jurisdiction. Other parties were ordered to file replies to the request within 7 business days, and Staff shall file a report, including its procedural and substantive recommendations for the resolution for the dispute.

4. On April 9, 2001, AT&T Communications of the Mountain States, Inc. ("AT&T") and WorldCom, Inc. ("MCIW") (collectively referred to herein as "Joint Intervenors") filed a request to supplement the record on Checklist Items 3, 7 and 10 with disputed issues from other Region workshops. On October 12, 2001, Qwest filed its supplementary response.

5. *The following issues have been disputed by AT&T and MCIW - references to "license" and "solely" and forecasting provisions.*

B. DISCUSSION

1. Checklist Item No. 7

a. FCC Requirements

6. Section 271(c)(2)(B)(vii) of the Telecommunications Act of 1996 requires a 271 applicant to provide or offer to provide: "[n]ondiscriminatory access to -- (I) 911 and E911 services; (II) directory assistance services to allow the other carrier's customers to obtain telephone numbers; and (III) operator call completion services."

¹ As of the date of this Report, U S WEST has merged with Qwest Corporation, which merger was approved by the Arizona Commission on June 30, 2000. For purposes of this Report, all references to U S WEST have been changed to Qwest.

b. Disputed Issues From Other State Workshops

1. Summary of CLEC Position

a. "License" and "Solely"

7. MCIW objected to Qwest's SGAT Sections 10.4.2.4, 10.5.1.1.2 and 10.6.2.1 stating that by using the concept of a "license", Qwest is improperly restricting CLECs' access to the DA list information which is contrary to requirements of Checklist Item 7. *Id.* at p. 26-27. According to SGAT Section 10.4.2.4, both Qwest and CLEC will grant one another a "license" to use end user listings and the directory assistance list information. *Id.* at p. 27. Qwest does not have the right to claim a copyright of mere facts. *Id.* The names, telephone numbers and addresses of Qwest's customers are simply facts, which are not subject to protection as intellectual property. *Id.* Thus, licensing of these pieces of factual data is not legally protected and would not be in the public interest. *Id.* Each party owns its respective end user and DA listing data and it is improper for Qwest to claim an intellectual right in such data supplied by the other party to the Agreement. *Id.* Qwest's attempt to claim licensing rights to the other party's data is inappropriate. *Id.*

8. In the Colorado workshop, Qwest agreed to remove all references to "license" in the Colorado SGAT Section 10.4.2.4, 10.5.1.1.2 and 10.6.2.1, thereby eliminating the impasse issue by revising these sections. *Id.* at p. 28-29. However, the original SGAT language is still in the SGAT in Arizona. *Id.* By retaining the concept of "license" in these provisions, Qwest is improperly restricting CLECs' access to the DA list information, contrary to the requirement of Checklist Item No. 7. *Id.* at p. 29-30.

9. MCIW also stated that in Qwest's Arizona SGAT, DA list information is improperly restricted "solely" for purposes of providing DA to local exchange end users in both Sections 10.5.1.1.2 and 10.6.2.1. *Id.* at p. 30. In Colorado, Qwest revised Section 10.5.1.1.2 to address this issue, but not in Section 10.6.2.1. *Id.* Qwest must incorporate the Colorado changes in Section 10.5.1.1.2 and eliminate the reference to "solely" in Section 10.6.2.1 to resolve this issue. *Id.*

b. Forecasting

10. Finally, Qwest has included in Sections 10.5.2.12 and 10.7.2.14 new forecasting obligations for CLECs with respect to the provision of operator services and directory assistance UNEs. *Id.* at p. 30. Qwest has since announced its intent to remove all forecasting requirements for UNEs. *Id.* These new provisions are inconsistent with this announcement and Qwest needs to rationalize these two seemingly conflicting positions. *Id.* Qwest also needs to clarify how it intends to use these forecasts and whether it intends to build trunks to meet the CLECs' forecasted needs. *Id.*

2. Summary of Qwest's Response

a. "License" and "Solely"

11. Qwest argued that in its Motion to Admit SGAT Changes filed with the Arizona Commission on February 12, 2001, Qwest submitted revised SGAT language for Sections 10.4.2.4, 10.5.1.1.2, 10.6.2.1, and 10.6.2.1.1 that incorporates the consensus language on this issue developed in Washington and Colorado and later uncontested in the Multi-State proceeding. Id. at p. 11. Qwest believes that all of MCIW and AT&T's concerns on this issue were resolved in the February 12 Motion to Admit SGAT Changes. Id.

12. Regarding the use of the term "solely", Qwest has already made the agreed upon revisions in Section 10.5.1.1.2 as reflected in Qwest's February 12 Motion to Admit SGAT Changes. Id. at p. 11-12. With respect to Section 10.6.2.1, the parties agreed in Colorado and Washington that the term "solely" would not be deleted from this provision. Id. Qwest submitted the identical agreed upon language in the Multi-State proceeding and neither MCIW nor AT&T raised an issue regarding Section 10.6.2.1. Id. The agreed upon language provides that CLECs can use Qwest's DA List Information for the purpose of providing DA service to their local exchange end user customers. Id. Qwest believes this issue has been resolved. Id.

b. Forecasting

13. AT&T and MCIW oppose forecasting language Qwest proposed in the multi-state proceeding for DA and OS. Id. at p. 12. Qwest states that it has agreed to delete this language from the Arizona SGAT and as such, this issue has been resolved. Id.

3. Discussion and Staff Recommendation

14. With respect to the terms "license" or "solely", Staff has verified that Qwest has submitted revised SGAT language for Sections 10.4.2.4, 10.5.1.1.2, 10.6.2.1, and 10.6.2.1.1 that incorporates the consensus language on this issue developed in Washington and Colorado and later uncontested in the Multi-State proceeding. As a result, Staff believes this issue is now closed.

15. Regarding AT&T's and MCIW's opposition to forecasting language, Staff has verified that Qwest deleted this language from the Arizona SGAT and as such, this issue has now been resolved and is closed.

c. Verification of Compliance

16. All outstanding issues on Checklist Item 7 have now been resolved. Based upon the testimony, comment and exhibits submitted, Staff recommends that Qwest be found to comply with the requirements of Checklist Item No. 7. Qwest's compliance is contingent upon its meeting any relevant performance measurements in the OSS test now underway in Arizona.

II. CONCLUSIONS OF LAW

1. 47 U.S.C. Section 271 contains the general terms and conditions for BOC entry into the interLATA market.
2. Qwest is a public service corporation within the meaning of Article XV of the Arizona Constitution and A.R.S. Sections 40-281 and 40-282 and the Arizona Commission has jurisdiction over Qwest.
3. Qwest is a Bell Operating Company as defined in 47 U.S.C. Section 153 and currently may only provide interLATA services originating in any of its in-region States (as defined in subsection (I)) if the FCC approves the application under 47 U.S.C. Section 271(d)(3).
4. The Arizona Commission is a "State commission" as that term is defined in 47 U.S.C. Section 153(41).
5. Pursuant to 47 U.S.C. Section 271(d)(2)(B), before making any determination under this subsection, the FCC is required to consult with the State commission of any State that is the subject of the application in order to verify the compliance of the Bell operating company with the requirements of subsection (c).
6. In order to obtain Section 271 authorization, Qwest must, inter alia, meet the requirements of Section 271(c)(2)(B), the Competitive Checklist.
7. Checklist Item No. 7 requires Qwest to provide or offer to provide:"[n]ondiscriminatory access to -- (I) 911 and E911 services; (II) directory assistance services to allow the other carrier's customers to obtain telephone numbers; and (III) operator call completion services."
8. Based upon the testimony, comment and exhibits submitted, Qwest complies with the requirements of Checklist Item No. 7.

**IN THE MATTER OF QWEST CORPORATION'S
SECTION 271 APPLICATION**

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

SUPPLEMENTAL REPORT ON QWEST'S COMPLIANCE

With

**CHECKLIST ITEM: NO. 10 - DATABASES AND
ASSOCIATED SIGNALING**

NOVEMBER 2, 2001

I. FINDINGS OF FACT

A. PROCEDURAL HISTORY

1. On February 16, 2001 in Decision No. 63384, the Commission approved Checklist Item No. 10 - Databases and Associated Signaling.

2. In the Conclusions of Law portion of the approved Order, Qwest¹ was required to update its SGAT language agreed to in other region Workshops and resolution by the Hearing Division /Commission of the issue of how to treat issues arising in other State Workshops which the parties would like to bring back to Arizona after the record has closed.

3. On March 26, 2001, the Hearing Division of the Commission issued a procedural order indicating that a party may request to supplement the record in Arizona on a checklist item by filing a brief within 10 business days from the date the issue is first declared at impasse in another jurisdiction. Other parties were ordered to file replies to the request within 7 business days, and Staff shall file a report, including its procedural and substantive recommendations for the resolution for the dispute.

4. On April 9, 2001, AT&T Communications of the Mountain States, Inc. ("AT&T") and WorldCom, Inc. ("MCIW") (collectively referred to herein as "Joint Intervenors") filed a request to supplement the record regarding checklist items 3, 7 and 10. Qwest filed its supplementary response on October 12, 2001.

5. One disputed issue from other State workshops was imported into the record by WorldCom involving Checklist Item 10 - access to the calling name assistance ("CNAM") database.

B. DISCUSSION

1. Checklist Item No. 10

a. FCC Requirements

6. Section 271(c)(2)(B)(x) of the Telecommunications Act of 1996 requires a section 271 applicant to provide or offer to provide "[n]ondiscriminatory access to databases and associated signaling necessary for call routing and completion."

¹ As of the date of this Report, U S WEST has merged with Qwest Corporation, which merger was approved by the Arizona Commission on June 30, 2000. For purposes of this Report, all references to U S WEST have been changed to Qwest.

7. Section 271(c)(2)(B)(ii) of the Act requires a section 271 applicant to demonstrate that it offers "[n]ondiscriminatory access to network elements in accordance with the requirements of sections 251(c)(3) and 252(d)(1)."

8. Section 251(c)(3) in turn establishes an incumbent LECs "duty to provide, to any requesting telecommunications carrier for the provision of a telecommunications service, nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory in accordance with the terms and conditions of the agreement and the requirements of [section 251]... and section 252."

b. Disputed Issues From Other Region Workshops

1. Summary of CLEC's Position

9. MCIW states that Qwest refuses to provide CLECs full access to its CNAM database. *Id.* at p. 31. Qwest proposed to limit CLECs access to the CNAM database to individual queries, as opposed to obtaining bulk transfer of all of the database. *Id.* This is reflected in Qwest's SGAT Sections 9.17.2.3 and 9.17.2.4. *Id.* In the case of the CNAM database, "per dip" or "per query" access is grossly inferior to the access Qwest itself enjoys and will create discriminatory advantages for Qwest. *Id.* at p. 32. Bulk access to the CNAM database would allow CLECs to structure their databases to suit their customers' needs as contemplated by the Act. *Id.* The query-only access makes CLECs dependent on Qwest's systems and prevents CLECs from structuring their own calling name databases to provide efficient, equal-in-quality service to their customers. *Id.* Only by requiring bulk transfer of the CNAM database with updates, can the Arizona Commission assure the nondiscriminatory access to the UNE that the Act requires. *Id.*

10. While Qwest argues that Rule 51.319 limits access to a per dip or per query basis, the FCC concluded that complete and global access to a LEC's CNAM database was not "technically feasible" over a signaling network. *Id.* at p. 32. However, MCIW is not seeking access to the database over the signaling network. *Id.* at p. 33. Rather, global access is technically feasible by means other than the signaling network in much the same way MCIW populates its directory assistance databases. *Id.* Qwest must provide access to the entire database in order to satisfy the Act's nondiscriminatory access requirement. *Id.*

11. The access MCIW seeks would permit it to provide Caller ID service to its customers with the same level of efficiency as Qwest. *Id.* at p. 33. Limiting MCIW to a per-query or "dip" access prevents MCIW from controlling the service quality, management of the database, or from adding new features, thereby allowing only the provision of inferior service. *Id.* Thus, by enjoying superior access to its CNAM data – data that cannot be accessed or used anywhere else except on a per query basis – Qwest

limits MCIW to an inferior service that it can provide more efficiently, quickly, and cheaply. *Id.* at p. 34.

2. Summary of Qwest's Response

12. Qwest argued that MCIW's request for a bulk transfer of the CNAM database fails to meet MCIW's burden of establishing that this new issue affects Qwest's compliance with either Section 251 or 271. *Id.* at p. 12. Qwest argued that MCIW's request is not required by FCC rules and is unfounded in both law and fact. *Id.* Qwest stated that the FCC has consistently required access to call-related databases through signaling transfer points on a "per query" basis. *Id.* at p. 13-14. Qwest states that MCIW has provided no legal authority for the proposition that FCC rules require a bulk transfer of the entire database.

13. Qwest further stated that in the March 19, 2001 Report, the Multi-State Facilitator found that Qwest does not have to provide bulk transfer of CNAM information. The Facilitator found that MCIW did not present evidence that would demonstrate that self-provisioning or the use of alternative databases would materially affect its ability to offer its services. This failure to make more than a very general and factually unsupported claim of necessity and impairment led to the conclusion that MCIW has not established the conditions that would call for the establishment of bulk transfer of the CNAM database. (Report at page 39)

16. Qwest argues that the Commissions for the States of Iowa, Montana, New Mexico, North Dakota, Utah and Wyoming have adopted the Facilitator's recommendation. Qwest claims this was also the recommendation and decision of the Staff and Commissions in Washington, Oregon and Colorado.

3. Discussion and Staff Recommendation

17. MCIW's request goes beyond what is currently required by FCC rules. The FCC's rules currently require access to call-related databases through signaling transfer points on a "per query" or "per dip" basis. *Id.* at p. 13-14. MCIW has cited no authority for the proposition that FCC rules require a bulk transfer of the entire database. *Id.*

18. The administrative law judges in Washington and Oregon and the Facilitator in the Multi-State proceeding all determined that Qwest's policies allowing access on a "per dip" or "per query" basis comply with 47 U.S.C. § 271(c)(2)(B)(x). *Id.* at p. 14. ACC staff has verified the preceding information provided by Qwest. Staff agrees with the resolution of this issue for the reasons stated in para. 17 above and for the additional reasons cited in the Multi-State Report.

19. Finally, MCIW's claim that it must have bulk access to the CNAM to populate and maintain its own calling-name database should be raised before the FCC. Id. at p. 17. Staff believes that the FCC must first address the "technical feasibility" issue before MCIW's arguments in this regard would have merit. In addition, the SGAT in no way precludes MCIW from developing its own calling-name database, should it choose to do so.

c. **Verification of Compliance**

20. No outstanding issues remain on Checklist Item 10. Based upon the testimony, comment and exhibits submitted, Staff recommends that Qwest be found in compliance with the requirements of Checklist Item 10.

II. CONCLUSIONS OF LAW

1. 47 U.S.C. Section 271 contains the general terms and conditions for BOC entry into the interLATA market.

2. Qwest is a public service corporation within the meaning of Article XV of the Arizona Constitution and A.R.S. Sections 40-281 and 40-282 and the Arizona Commission has jurisdiction over Qwest.

3. Qwest is a Bell Operating Company as defined in 47 U.S.C. Section 153 and currently may only provide interLATA services originating in any of its in-region States (as defined in subsection (I)) if the FCC approves the application under 47 U.S.C. Section 271(d)(3).

4. The Arizona Commission is a "State commission" as that term is defined in 47 U.S.C. Section 153(41).

5. Pursuant to 47 U.S.C. Section 271(d)(2)(B), before making any determination under this subsection, the FCC is required to consult with the State commission of any State that is the subject of the application in order to verify the compliance of the Bell operating company with the requirements of subsection (c).

6. In order to obtain Section 271 authorization, Qwest must, inter alia, meet the requirements of Section 271(c)(2)(B), the Competitive Checklist.

7. Checklist Item No. 10 requires Qwest to provide access or offer to provide "[n]ondiscriminatory access to databases and associated signaling necessary for call routing and completion."

8. Qwest provides nondiscriminatory access to its signaling network and call-related databases through the terms of its proposed SGAT as well as the terms of

Commission-approved interconnection agreements. Although full access to the CNAM Database was an impasse issue in other jurisdictions, it was not an issue in Arizona. Had it been one, Arizona would have accepted the resolution described in the Multi-State Facilitator's report

9. Based upon the testimony, comment and exhibits submitted, Qwest complies with the requirements of Checklist Item No. 10.