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BEFORE THE ARIZONA CORPORATION COMMISSION RECEIVED

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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 STAFF'S  
PROPOSED REPORT ON QWEST'S  
COMPLIANCE WITH CHECKLIST  
ITEM NO. 2

AT&T Communications of the Mountain States, Inc., and TCG Phoenix  
(collectively, "AT&T") hereby file their Comments on Staff's Proposed Report on  
Qwest's Compliance with Checklist Item No. 2 -- Access to Unbundled Network  
Elements ("UNEs").

**I. INTRODUCTION**

AT&T supports Arizona Commission Staff's ("Staff's") general finding that a  
finding of noncompliance with Checklist Item 2 be made at this time for the reasons  
enumerated by Staff.<sup>1</sup> However, Staff arrives at some unsupportable conclusions in  
resolving a number of disputed issues that if properly resolved would further lend support  
to a finding of noncompliance.

AT&T does not have time and resources to verify the accuracy of every statement  
contained in the Staff Report. Therefore, if AT&T does not comment on a statement it

<sup>1</sup> Staff Report at 2.

should not be construed as agreement with the statement on the part of AT&T in this or any other proceeding. Furthermore, should AT&T elect not to comment on the Staff's decision or recommendation on a disputed issue, it should not be construed as agreement by AT&T with Staff's decision or recommendation in this or any other proceeding.

## **II. ARGUMENTS**

### **A. Miscellaneous Provisions**

#### **1. Paragraph 15 of Staff's Report.**

Staff's Report states that, "[a]bsent commercial usage, the Commission will consider the results of carrier-to-carrier readiness of a BOC' OSS." First, AT&T believes the reference to Commission is the Federal Communications Commission ("FCC"), but it is unclear. Second, because of the reference to Commission, AT&T is not sure Staff intends to limit the scope of the Arizona Commission's review absent data on commercial usage to "results of carrier-to-carrier readiness of a BOC' OSS."

The FCC has suggested a number of ways a Bell operating company ("BOC") can provide evidence or nondiscriminatory access to its operations support systems ("OSS") absent commercial usage: carrier-to-carrier testing, independent third-party testing and internal testing.<sup>2</sup> AT&T suggests that all 3 of these methods be identified in the Staff Report, considering that the Arizona Commission will rely on the independent third-party test being conducted.

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<sup>2</sup> *Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in Michigan*, CC Docket No. 97-137, Memorandum Opinion and Order, FCC 97-298 (rel. Aug. 19, 1997), ¶ 138 ("*Ameritech Michigan Order*").

**2. Paragraph 19 of Staff's Report.**

In its Staff Report, Staff identifies 3 combination obligations of Qwest. AT&T disagrees with Staff that Qwest has only the 3 limited obligations referred to by Staff. The Ninth Circuit Court of Appeals has upheld a state commission's authority to impose an obligation on Qwest to combine network elements on behalf of competitive local exchange carriers ("CLECs").<sup>3</sup> Therefore, in addition to the 3 obligations enumerated, the Staff Report should reflect the obligation to combine UNEs on behalf of CLECs when ordered by the Commission and contained in an interconnection agreement.

**3. Paragraph 25 of Staff's Report.**

Paragraph 25 of the Staff Report states that "[t]he test was carried out in accordance with the Master Test Plan ("MTP") and Test Standards Document ("TSD")." AT&T disagrees. AT&T filed a Motion to Suspend OSS Testing that identifies instances where the TSD was not followed. AT&T also identified instances in its Retail Parity Evaluation Brief. Further evidence of noncompliance became apparent during the Relationship Management Evaluation ("RME") workshop. AT&T suggests changing the sentence to read: "The Master Test Plan ("MTP") and the Test Standards Document ("TSD") describe how the test is to be carried out." This statement is more objective and no opinion or conclusion is inherent in the statement. The test is not complete and it is inappropriate to make such "findings" in this Staff Report, since no evidence was presented on this issue, nor was the issue briefed.

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<sup>3</sup> Staff acknowledges the Ninth Circuit Court of Appeals decision in paragraph 19.

**4. Paragraph 26 of Staff's Report.**

Staff's Report states at paragraph 26: "The Test Administrator and Pseudo-CLEC maintained the greatest degree of 'blindness' practical." AT&T objects to this statement. There is no evidence to support this statement, it is the opinion of Staff, and it is inappropriate to make such a finding in the Staff Report before the test is complete. Once again, AT&T would suggest the sentence be amended to eliminate any conclusion or finding: "The Test Administrator and the Pseudo-CLEC were to maintain the greatest degree of 'blindness' practicable."<sup>4</sup>

**5. Paragraphs 30-31 of Staff's Report.**

AT&T takes exception to the simplistic legal opinion rendered in paragraphs 30-31. The FCC's analysis is not so simple. For example, there may be disagreement over the reliability of Qwest's data. The Qwest data may not reconcile with the CLEC's data. Quite simply, AT&T does not see the need for the paragraphs at all, and since the issues are not germane to this Staff Report, AT&T recommends that the paragraphs be stricken.

**6. Paragraph 33 of Staff's Report.**

Once again, Staff inappropriately renders an opinion without any evidentiary support or discussion in the workshops; Staff concludes that "the CGE&Y and HP test was both independent and blind." If the issue had been before the parties for comment and resolution, AT&T may have provided evidence contrary to this conclusion.

AT&T also takes exception to the following sentence: "All meetings, including executive sessions, between CGE&Y and HP and Qwest were noticed to all TAG members. CGE&Y and HP were very careful to ensure that they did not receive

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<sup>4</sup> AT&T notes that the Staff Report speaks of the OSS test in the past tense. The test is not complete. Retesting continues.

preferential treatment.” AT&T objects to Staff arriving at these test conclusions in this Staff Report. The issue was not before the workshop and no evidence was taken on these issues. If the issue had been before the workshop, AT&T may have provided evidence contrary to any such conclusion. First, there is evidence that not all meetings were noticed to TAG members. Second, there is evidence that HP did receive preferential treatment, for example in the installation of T-1 lines.<sup>5</sup> These conclusions are inappropriate and should be removed from the Staff Report.

**7. Paragraph 40 of Staff's Report.**

Paragraph 40 identifies “a variety of methods that the ILEC should provide to allow competitive carriers to combine unbundled network elements with their own facilities. The issue is really one of access to UNEs. Section 251(c)(3) of the Telecommunications Act of 1996 requires the ILEC to provide nondiscriminatory access to UNEs “at any technically feasible point.” Any suggestion in Staff’s Report that ILECs can determine the methods of access is unsupported by the Act.

**B. Disputed Issue No. 1b - Stand-Alone Test Environment (“SATE”)**

AT&T agrees with Staff that “Qwest must modify its SATE to reflect the proposed versioning changes sufficiently ahead of the scheduled introduction to its production environment....” It appears to AT&T that, based on Staff’s recommendation, Qwest must 1) provide CLECs 30-days notice of any software release or upgrade to its production OSS and 2) coincident with the notice, release a modified SATE that incorporates the changes to the production environment identified in the notice and contained in the release or upgrade.

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<sup>5</sup> Staff never did answer AT&T’s inquiries regarding the T-1s installed after HP moved to its new location.

Although Staff's decision is well-intentioned, and AT&T agrees that a pre-notification date should be incorporated in the SGAT, the matter is more complex than Staff's solution. Generally, the CLECs need the EDI specification before they can develop their side of the interface. After receipt of the specifications, it can take 4 to 6 weeks to develop the CLEC side of the interface. After the CLECs develop their side of the interface, testing can begin. Although the SATE should be made available before the release or upgrade in the production environment, it should not be forgotten that Qwest does support the existing version 6 months after a new release. So, it is not always necessary to have the ability to complete all testing the day of a new release.

AT&T believes this issue should be discussed by the CLECs and Qwest and language proposed and, hopefully, agreed to that addresses the amount of time SATE must be available prior to release of the production upgrade or release. AT&T suggests that Staff change its recommendation by striking the last sentence (beginning with "Based upon these requirements...") and inserting in lieu thereof: "Staff recommends reopening the terms and conditions workshop and holding workshops to draft language for the SGAT that establishes a predetermined number of days for advance notice and release of the SATE prior to the introduction of the release or upgrade in the production environment. The parties should also establish a minimum number of days for release of the EDI development specifications prior to the release or upgrade of the production environment."

**C. Disputed Issue Nos. 1(c), 1(d) and 1(e)**

Disputed Issues Nos. 1(c), 1(d) and 1(e) can be discussed together because the Staff's recommendations for these 3 issues are essentially the same. Staff identifies issue

1(c) as whether AT&T's comprehensive test language should be adopted or such language should be negotiated with Qwest on a case-by-case basis. Issue 1(d) is whether AT&T's proposed SGAT language concerning comprehensive testing is appropriate and should be included in the SGAT?<sup>6</sup> Issue 1(e) is whether AT&T's proposed revisions to Qwest proposed test language should be adopted.

AT&T first takes exception to Staff's finding in 1(c) that Qwest's willingness to negotiate comprehensive test language in Minnesota "demonstrates the willingness of Qwest to negotiate on a case-by-case basis..."<sup>7</sup> AT&T must strenuously disagree. AT&T had to file a complaint with the Minnesota Commission to get Qwest to negotiate the terms of a comprehensive production test. It was the unwillingness of Qwest to come to the actual terms of a test, even though the Minnesota interconnection agreement generally provided for such testing, that caused AT&T to propose specific, comprehensive language.

Staff appropriately concludes that CLECs are entitled to some language in the SGAT "which addresses the availability of the SATE, preproduction notification of CLECs of any new IMA versioning releases and the terms and conditions for comprehensive production testing." However, AT&T disagrees with the rest of the Staff's recommendation: "Staff believes that the Qwest proposed language provides a good starting point. Staff recommends that Qwest and the CLECs work on appropriate language as part of the HP evaluation of Qwest's SATE with HP's assistance."<sup>8</sup>

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<sup>6</sup> AT&T believes the word "not" should be stricken from the identification of disputed issue 1(d).

<sup>7</sup> Staff Report, ¶ 242.

<sup>8</sup> *Id.*

First, Qwest's language is not a good starting point because Qwest really has no language on comprehensive production testing. This is because Qwest proposes that the parties negotiate on a case-by-case basis. AT&T's language should be used as a starting point because it provides a thorough process for comprehensive testing.

Second, negotiating language in the context of HP's evaluation of the SATE with HP's assistance is unworkable and beyond the scope of, nor is compatible with, HP's engagement to test the SATE. Advocating or supporting a particular party's language or position makes it more difficult for HP to maintain its independence in its evaluation of SATE.

The issues raised by AT&T regarding comprehensive testing were raised in the workshops on the checklist items. Language in the SGAT regarding testing was generally discussed in the terms and conditions workshop. That is the appropriate place to discuss any SGAT language on comprehensive testing.

In its recommendation on 1(d), "Staff agrees with AT&T that the SGAT should contain language which clearly spells out Qwest's obligation to provide for such [comprehensive] testing".<sup>9</sup> However, once again, Staff recommends using Qwest's language as a starting point and that Qwest and the CLECs work to develop language with HP's assistance. For the reasons stated in response to Staff's recommendation on 1(c), AT&T proposes using AT&T's language as a starting point and removing the issue to the terms and conditions workshop.

Regarding issue 1(e), AT&T's proposed revisions to Qwest's proposed test language, Staff adopts its recommendations for issues 1(c) and 1(d), *i.e.*, use Qwest's

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<sup>9</sup> *Id.*, ¶ 246.

language as a starting point and negotiate with HP's assistance. Qwest's language is a logical starting point in this instance. For the reasons previously stated, the issue should be removed to the terms and conditions workshop.

**D. Disputed Issue No. 3. Is Qwest obligated to build UNEs on a nondiscriminatory basis?**

AT&T has maintained that Qwest must build UNEs for CLECs on a nondiscriminatory basis pursuant to section 251(c)(3). The FCC has held that this obligation means that Qwest must provide to CLECs UNEs on the same terms and conditions that it provides UNEs to itself or its retail customers.<sup>10</sup> Qwest has made it clear in numerous jurisdictions that it may not agree to build a facility for a CLEC but decide to build the same facility for a retail customer.<sup>11</sup> This is discriminatory.

The Staff has concluded that “[n]one of the FCC rulings or Court decisions support imposing upon Qwest any further obligation to construct new facilities beyond “existing” network on behalf of the CLECs. This, of course, presumes that within the “existing” network, to the extent additional capacity is needed, Qwest will provide it.”<sup>12</sup> If Staff is saying that Qwest need not build capacity outside its service, AT&T would agree. If this recommendation also means that, within its service territory, Qwest must add capacity (whether new or expanded) if needed, whether for a CLEC customer or a Qwest customer, on the same terms and conditions and on a nondiscriminatory basis,

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<sup>10</sup> *Local Competition Order*, ¶ 315.

<sup>11</sup> “[T]here may be situations where we would make a different decision for an end-user customer than we would make for a CLEC. TR 3549 (Wash. April 24, 2001). See TR 3211-3212 (Wash. March 14, 2001) where Qwest provides an example where it may decide not to change out electronics for a CLEC but may do so for its own customer.

<sup>12</sup> Staff Report, ¶ 281.

AT&T would agree this language is consistent with section 251(c)(3).<sup>13</sup> If this language would also require Qwest to change out electronics to add capacity to its transport facilities to expand capacity for either a CLEC or Qwest's retail customers, AT&T would agree that Staff's language is consistent with the Act and the FCC's orders.

AT&T requests that Staff embellish, or flush out, its recommendation a little more. This would assist the parties in determining the extent of Qwest's obligations to add capacity pursuant to Staff's recommendation.<sup>14</sup>

**E. EEL Disputed Issue No. 1- Should Termination Liability Assessments ("TLAs") Apply to the Conversion of Tariff Services to UNEs?**

Staff generally identifies the issue adequately. It recommends adoption of Qwest's proposal with minor changes to provide adequate time for the CLECs to select Qwest's proposal should the Commission adopt it.

AT&T has two problems with Qwest's proposal: the start date in condition 1 and condition 3 in its entirety. First, condition 1 requires that the tariffed service be ordered between October 9, 1999, and May 16, 2001. This is too limiting and ignores Qwest's legal obligation to provide combinations since the date of the Act. The FCC stated it was not going to identify the EEL as a network element, but it specifically noted that the EEL was a combination of a loop and dedicated transport.

The ILECs have been obligated to provide combinations since the date of the Act. The FCC stated in its August 8, 1996, First Report and Order that ILECs must combine and may not separate UNEs. The obligation of Qwest to not separate combinations of

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<sup>13</sup> Note that the CLEC can only be charged cost-based rates pursuant to section 252.

<sup>14</sup> AT&T also requests clarification on the meaning of the sentence: "In addition, it may be required to construct or make additions for certain types of unbundled loops and line parts based on FCC rules a decisions." Staff Report, ¶ 281.

UNEs has always been in effect. Therefore, special access circuits that were essentially the combination of a loop and dedicated transport should have been available at least as early as the effective date of the FCC's First Report and Order. However, Qwest refused to provide combinations until the U. S. Supreme Court decision. A beginning date of October 9, 1999, ignores Qwest's legal obligation to provide the combination of loops and dedicated transport since 1996. It is this failure to meet its legal obligation that precipitated this issue in the first place. The beginning date in condition 1 should commence no later than the effective date of the FCC's First Report and Order establishing UNEs released on August 8, 1996.

Condition 3 states that Qwest must not have had to build the facilities to install the private lines. This simply highlights the nondiscriminatory nature of Qwest's process for determining whether it will build UNEs or not (or will build retail services or not). It is also inconsistent with the Staff's recommendation that Qwest add capacity if needed.

**F. EEL Disputed Issue No. 2 - Can CLECs Connect UNEs to Special Access or Private Line Circuits? (EEL-12)**

Staff sees this issue as the same as UNE-C-2(a) and incorporates the position it took regarding issue UNE-C-2(a).<sup>15</sup> Staff further states that the "FCC currently prohibits *commingling or combining loops or loop transport combinations with tariffed special access services*. Staff recommends that [Qwest] modify provisions to be consistent with this requirement."<sup>16</sup> Staff fails to address WorldCom's request, that language agreed to by Qwest in other jurisdictions be included in the SGAT to resolve this issue. Furthermore, the issue is not the same as UNE-C-2(a).

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<sup>15</sup> Staff Report, ¶ 308.

<sup>16</sup> *Id.*, ¶ 308.

First of all, EUDIT is not an EEL, so the use restrictions are not applicable. The EEL is a combination of loop and transport. The restriction applies to connecting loops or loop/transport combinations to tariffed services. The EUDIT as defined by Qwest is dedicated transport between a Qwest wire center and a CLEC wire center. However, it may also be transport between a Qwest wire center and an interexchange carrier (“IXC”) point of presence (“POP”), since the FCC said ILECs could not restrict the use of UNEs. It was this use of dedicated transport between the Qwest wire center to the IXC POP that caused some concern.

The FCC has made it clear that ILECs cannot place any restrictions on the use of UNEs.<sup>17</sup> The FCC reaffirmed its position in the *UNE Remand Order*.<sup>18</sup>

The FCC, in its *UNE Remand Order*, made it clear that requesting carriers can order loop and transport combinations to provide interexchange service without any requirement to provide a certain amount of local exchange traffic.<sup>19</sup> This would permit carriers to convert special access circuits to lower-priced UNEs. The ILECs subsequently argued that they would lose substantial sums of universal service support. As a result, the FCC modified its conclusion in paragraph 486 of the *UNE Remand Order*, stating that CLECs or IXCs could not convert special access to combinations of loop and transport unless it provided a significant amount of local exchange service to a particular customer.<sup>20</sup> In its *Supplemental Order Clarification*, the FCC clarified what it meant by “a significant amount of local exchange service.”<sup>21</sup> However, the FCC never

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<sup>17</sup> *Local Competition Order*, ¶ 356. 47 C.F.R. § 51.309(a).

<sup>18</sup> *UNE Remand Order*, ¶ 484.

<sup>19</sup> *Id.*, ¶ 486.

<sup>20</sup> *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, *Supplemental Order*, FCC 99-370 (rel. Nov. 24, 1999), ¶ 2 (“*Supplemental Order*”).

<sup>21</sup> *Id.*, *Supplemental Order Clarification*, ¶ 22.

extended the requirement “of a significant amount of local exchange service” to other than a loop/transport combination. There is no basis, then, to extend the restriction contained in paragraph 22 of the *Supplemental Order Clarification* to dedicated transport generally.

In its *UNE Remand Order*, the FCC noted that the record was insufficient for the FCC to determine how its rules should apply in the “discrete situation” where a requesting carrier uses dedicated transport between the incumbent LEC’s SWC and an IXC switch or POP, in lieu of special access.<sup>22</sup> The FCC concurrently issued its *Fourth Further Notice of Proposed Rulemaking* to take comments on the use of dedicated transport in this “discrete situation.”<sup>23</sup> It was unclear, however, whether the FCC had prohibited the use of dedicated transport from the IXCs POP to the ILECs wire centers during the comment phase, considering its prior pronouncement and rules that ILECs could not place any restrictions on UNEs.<sup>24</sup>

The FCC made its position a little clearer in its *Supplemental Order* and *Supplemental Order Clarification*. Language in this order suggested that its decision in the *UNE Remand Order* placed a “temporary constraint” on the use by requesting carriers of dedicated transport from the IXCs POP to the ILEC’s SWC as a substitute for special access.<sup>25</sup> However, Qwest’s initial language went far beyond any temporary constraint by imposing local use restrictions on dedicated transport from and to all permissible

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<sup>22</sup> *UNE Remand Order*, ¶ 489. This connection is referred to as EUDIT by Qwest.

<sup>23</sup> *Id.*, ¶¶ 492-496.

<sup>24</sup> *UNE Remand Order*, ¶ 484; 47 C.F.R. § 51.309(a).

<sup>25</sup> *Supplemental Order*, ¶¶ 4, n. 5 and 8 and 9; *Supplemental Order Clarification*, ¶ 3, n. 9.

locations.<sup>26</sup>

The language in MCI's brief was agreed to by the parties to address this issue, and the language was agreed to by the parties. The Staff should order its inclusion with one minor change: the word "EUDIT" should be stricken and in lieu thereof the follow phrase inserted "dedicated transport from Qwest's wire center to the CLEC wire center." This change is necessary because Staff has recommended eliminating the EUDIT/UDIT distinction.

### III. CONCLUSION

AT&T recommends that Staff adopt the changes proposed in its Comments. AT&T also requests that Staff review the need for the lengthy discussion of OSS, as it appears to AT&T that much of the language is unnecessary. More importantly, Staff should change the language to make clear the test is ongoing and should eliminate any statements that appear to be conclusions or findings of fact regarding OSS testing.

Dated this 26th day of October, 2001.

**AT&T COMMUNICATIONS OF THE  
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<sup>26</sup> Qwest has proposed language in a subsequent workshop to address the CLECs concerns: "CLEC shall not use EUDIT as a substitute for special or Switched Access Services, except to the extent CLEC provides such services to its end user customers in association with local exchange services. Pending resolution by the FCC, Qwest will not apply the local use restrictions contained in 9.23.3.7.2." If adopted in Colorado in lieu of the present § 9.6.2.4, this language would resolve the issue of SGAT § 9.6.2.4 for AT&T.

## CERTIFICATE OF SERVICE

I certify that the original and 10 copies of AT&T's Comments on Staff's Proposed Report on Qwest's Compliance with Checklist Item No. 2 in Docket No. T-00000A-97-0238 were sent by overnight delivery on October 26, 2001 to:

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