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AZ CORP COMMISSION
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November 9, 2001

VIA FEDERAL EXPRESS

Arizona Corporation Commission
Utilities Division
1200 West Washington
Phoenix, Arizona 85007

Re: *Arizona 271 Docket no. T-00000A-97-0238*

Dear Sir or Madam:

Enclosed for filing in the above referenced docket is the Non-confidential Version of *Covad Communications Company's Supplemental Submission of Data Regarding Qwest's Commercial Performance in the State of Arizona*. Please note that a confidential version will be forwarded to the legal division for distribution to those who have signed the appropriate Protective Agreement.

Please contact me at 720-208-3354 with any questions concerning this filing.
Thank you.

Sincerely,

Adrienne M. Anderson
Paralegal

Enclosures

Cc: ACC- Legal Division

Arizona Corporation Commission

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BEFORE THE ARIZONA CORPORATION COMMISSION

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CARL J. KUNASEK
Chairman
JIM IRVIN
Commissioner
WILLIAM A. MUNDELL
Commissioner

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) DOCKET NO. T-00000A-97-0238
OF 1996)
)
)
)

**COVAD COMMUNICATIONS COMPANY'S SUPPLEMENTAL SUBMISSION
OF DATA REGARDING QWEST'S COMMERCIAL
PERFORMANCE IN THE STATE OF ARIZONA**

Covad Communications Company ("Covad") respectfully provides the following Supplemental Submission of Data Regarding Qwest's Commercial Performance in the State of Arizona. With this Supplemental Submission, Covad provides additional data regarding its view of Qwest's performance for Covad in Arizona for the months of August, September and October 2001.

Covad incorporates by reference its Combined Response to Qwest Corporation's Performance Data Filings and Submission of Data Regarding Qwest's Commercial Performance in the State of Arizona as if fully set forth herein.

I. INTRODUCTION

The Commission cannot forward to the Federal Communications Commission (the "FCC") an affirmative endorsement of Qwest's application for relief pursuant to Section 271 of the Telecommunications Act of 1996 (the "Act") unless and until Qwest demonstrates to the Commission that it satisfies, in both paper and practice, the

competitive checklist,¹ and that the Arizona local services market is fully and irreversibly open² to competition. Careful review and critical scrutiny of Qwest's and CLECs' performance data thus is both appropriate and necessary to permit the Commission to determine whether Qwest has fulfilled these absolute prerequisites to Section 271 relief.

II. LEGAL FRAMEWORK

A necessary prerequisite to the approval of Qwest's application to provide inter-LATA long distance service is proof that Qwest has "fully implemented" the § 271 competitive checklist, thereby presumptively opening its local telecommunications markets to competition.³ Qwest thus must provide "actual evidence demonstrating its present compliance with the statutory conditions for entry,"⁴ which require, among other things, that Qwest provide nondiscriminatory access to unbundled network elements,⁵ such as unbundled loops. Promises of future performance are irrelevant to whether Qwest currently is satisfying its obligations under Section 271; Qwest must demonstrate *current* compliance with the statutory conditions for entry.⁶

This Commission is charged with the critical function of determining to a reasonable degree of certainty that Arizona's local markets are open to competition.⁷ Because the FCC relies heavily upon a state's rigorous factual investigation, review and

¹ *In the Matter of Application by SBC Communications, Inc., Southwestern Bell Telephone Co., And Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In Region, InterLATA Services in Texas*, Mem. Op. and Order, CC Docket No. 00-65, ¶52 (Jun. 30, 2000) ("*SBC Texas 271 Order*").

² *In the Matter of Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York*, Mem. Op. and Order, CC Docket No. 99-295, FCC 99-404 (Dec. 22, 1999), ¶423 ("*BANY 271 Order*").

³ *In the Matter of the Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order*, CC Docket Nos. 96-978 & 95-185 (Rel. Aug. 8, 1996), ¶ 3 ("*Local Competition Order*").

⁴ *BANY 271 Order*, ¶ 37.

⁵ 47 U.S.C. § 271(a)(2)(B)(ii).

⁶ *BANY 271 Order*, ¶ 37.

⁷ 47 U.S.C. § 271(d)(2)(B).

analysis of Qwest's compliance, or not, with a particular checklist item, this Commission's review of the performance data before it may not be undertaken lightly. To the contrary, before approving Qwest's request for § 271 relief, the Commission must ensure that Qwest has provided sufficient evidence to prove, by a preponderance of the evidence, that it has fully implemented⁸ each checklist item. The ultimate burden of proof as to its commercial performance on all checklist items lies with Qwest, even if "no party files comments challenging compliance with a particular requirement."⁹

III. PERFORMANCE DATA

A. Legal Principles Applicable to the Commission's Review of the Parties' Performance Data.

The FCC has provided guidance regarding the caliber of commercial performance a BOC must achieve in order to satisfy the statutory conditions for entry into the long distance market. Stated succinctly, a BOC must demonstrate that the service quality it provides to itself does not differ in any statistically significant manner from the service quality it provides to its CLEC customers, as demonstrated by data reported under agreed-upon performance measures.¹⁰ While continued improvement suggests that any provisioning problems are being resolved, a deterioration in service quality suggests that provisioning problems exist and thus that the BOC is not in checklist compliance. Consequently, "disparity with respect to one performance measure may support a finding of statutory noncompliance, particularly if the disparity is substantial or has endured for a long time, or if it is accompanied by other evidence of discriminatory conduct or

⁸ *BANY 271 Order*, ¶ 44.

⁹ *Id.*, ¶ 47.

evidence that competing carriers have been denied a meaningful opportunity to compete.”¹¹

B. Preparation of Covad’s Data

In preparing its data for the performance data workshop, Covad first compiled data for the months of April/May through July, 2001 for unbundled 2-wire non-loaded loops and line shared loops for the PO-5, OP-4 and OP-5 measurements. Covad also reviewed May-July 2001 data for unbundled 2-wire non-loaded loops for the MR-3 and MR-6 metrics. Covad then applied the business and other rules contained in the PIDs for those measures for which Covad sought reconciliation and, finally, generated its performance results accordingly. Following the generation of the performance data results, Covad went back over the data to determine whether there were any anomalies in the data and, where appropriate, corrected such anomalies. Covad filed this first set of data for May through July 2001 with the Commission on November 1, 2001.

Additional data regarding Qwest’s commercial performance in Arizona is now available. Covad therefore provides below this additional data for the Commission’s review in connection with its determination as to whether Qwest has satisfied its obligations under Section 271 of the Act.

Although a few months have passed since Covad compiled its first batch of data, Qwest’s performance has not improved to the point where it may be found to be in checklist compliance. Indeed, the picture from Covad’s perspective remains grim. This picture, painted according to the very terms, conditions and exclusions identified in the

¹⁰ *Application of Verizon New York Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks Inc. and Verizon Select Services, Inc. for Authorization to Provide In-Region, Inter LATA Services in Connecticut*, CC Docket No. 01-100, FCC 01-269 (Sept. 19, 2001), ¶ 8.

¹¹ *Id.*, ¶ 9.

PIDs, demonstrates that Qwest is not in compliance with its obligations under Section 271 of the Act.

C. The Performance Data Demonstrates That Qwest Is *Not* Performing In A Commercially Acceptable Manner And That Qwest Is *Not* In Compliance With Its Obligations Under Section 271.

Contrary to Qwest's unverified representations, Qwest regularly fails to meet the applicable benchmark or parity PID standard. Critically, Qwest's failure of performance often comes in the context of those PIDs that most directly impact Covad's core business and, as a consequence, Covad's relationship with its end user customer at a time when that end user is first forming an impression about Covad. It is under these circumstances, where Qwest fails to meet its parity obligation and/or to provide CLECs with a meaningful opportunity to compete, that the opportunity for Arizona consumers to reap the benefits of the Act – better quality of service and competitive choice – is completely stymied and the possibility of a competitive Arizona local market significantly lessened. Covad sets forth below the performance data for the PO-5, OP-4, OP-5, MR-3 and MR-6 PIDs, which demonstrates that Qwest has not satisfied its obligations under Section 271 of the Act.

1. PO-5 (Aggregated): Firm Order Confirmations on Time for Non-Loaded and Line Shared Loops.

PO-5 measures, on a monthly basis, the timeliness of the Firm Order Confirmation – or FOCs – returned by Qwest to Covad. Under PO-5, Qwest is obligated to return a FOC on time for 95% of the orders submitted by Covad. As currently defined in the PIDs, PO-5 obligates Qwest to return a FOC for 2-wire non-loaded and line shared loops in 24 hours, a standard Qwest rarely meets in the aggregate. Additionally, pursuant to a separate side agreement between Qwest and Covad, Qwest has 72 hours (excluding

hours on weekends and holidays) to return a FOC and is obligated to provide a timely FOC on 90% of the orders submitted by Covad. Even with that more generous “side agreement” interval, Qwest’s FOC performance is extraordinarily poor, as reflected by both Qwest’s and Covad’s performance data.

A review of Covad’s PO-5 (aggregated) data underscores the fact that Qwest’s FOC return performance remains flatly unacceptable. Specifically, for unbundled 2-wire non-loaded loops, Qwest returned a FOC within 72 hours [CONFIDENTIAL] the time in August 2001; [CONFIDENTIAL] of the time in September 2001; and [CONFIDENTIAL] of the time in October 2001. See Covad’s Summary of Performance Data, attached hereto as *Exhibit 1*, p. 1.¹²

Although Qwest’s FOC performance for line shared loops was somewhat better than for the unbundled loops, it nonetheless remained substandard and is insufficient to show that it is performing adequately for Covad. More particularly, Qwest returned a FOC within 72 hours [CONFIDENTIAL] of the time in August 2001; [CONFIDENTIAL] of the time in September 2001; and [CONFIDENTIAL] of the time in October 2001. See *Id.* Thus, Qwest not only fails to meet the 90% benchmark to which it agreed in the additional three months reviewed, but also it plainly fails to provide adequate wholesale service to Covad in connection with FOC receipt.

2. OP-4 and OP-3: Installation Intervals and Installation Commitments Met for Unbundled and Line Shared Loops.

OP-4 “evaluates the timeliness of Qwest’s installation of services for customers, focusing on the average time to install service.” In other words, Qwest commits to meeting, in the aggregate of all orders placed by a CLEC, the particular interval specified

¹² The information contained in Exhibit 3 is confidential and filed under seal.

for any given product. Under OP-4, Qwest is obligated to provision an unbundled 2-wire non-loaded loop within six days; and, for line shared loops, as currently proposed by Qwest, it is obligated to install a line shared loop within 3.3 days. Under OP-3, Qwest is committed to delivering 90% of all unbundled loops ordered by Covad within six business days and 90% of all line shared loops within 3.3 business days. While Qwest's current unbundled loop performance is encouraging, its line shared loop performance is demonstrably insufficient to satisfy its Section 271 obligations.

a. Line Sharing

A key indicator of Qwest's statutorily inadequate commercial performance in the State of Arizona is its line shared loop delivery performance. In fact, the poor results reported by Qwest and reflected in Covad's November 1, 2001 data filing, take on added dimensions of deficiency when Covad's data is reviewed. For line shared loops, Qwest installed such loops, on average, in [CONFIDENTIAL] days in August, [CONFIDENTIAL] days in September, and [CONFIDENTIAL] days in October. *Exhibit 1*, p. 2. Thus, Qwest not only failed to meet the installation interval benchmark to which it agreed, but also it plainly fails to provide adequate wholesale service to Covad in connection with the installation of line shared loops.

Qwest's consistent, chronic and repeated poor performance in provisioning line shared loops for Covad's end user customers amply demonstrates why Qwest cannot be found to be in compliance with its obligations under Section 271. The FCC has required ILECs to provide CLECs unbundled access to the high frequency portion of the loop in order to facilitate line sharing pursuant to its authority to identify a minimum list of

network elements that must be unbundled on a nationwide basis.¹³ In the *Line Sharing Order*, the FCC concluded that “*lack of access to high frequency portion of the local loop materially diminishes the ability of CLECs to provide certain types of advanced services to residential and small business users, delays broad facilities based market entry, and materially limits the scope and quality of competitor service offerings.*” *Line Sharing Order*, 14 F.C.C.R. at 20916. The FCC recognized that line sharing “is vital to the development of competition in the advanced services market, *especially for residential and small business users.*” *Id.*

It is a truism that poor performance impedes and, potentially eliminates, the development of competition in the xDSL market for residential and small business users. Qwest’s poor performance thus harms not only Covad, by impairing and impeding its ability to compete, but also deprives Arizona residential consumers and small businesses of the intended benefits of the 1996 Act – competitive options and quality of service choices. Qwest’s poor line sharing performance, standing alone, demonstrates that Qwest cannot be found to be in compliance with its obligations under Section 271 of the Act.

b. Unbundled Loops

Although Qwest appeared to provide satisfactory performance with regard to the installation interval for Covad’s non-loaded loops in the May-July time period, Qwest’s performance has deteriorated since then such that it is no longer in checklist compliance. Qwest installed Covad’s non-loaded loops, on average, in [CONFIDENTIAL] days for August, [CONFIDENTIAL] days in September and [CONFIDENTIAL] days in

¹³ *Deployment of Wireline Services Offering Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order, CC Docket

October. *Exhibit 1*, p. 2. Thus, Qwest missed the six day benchmark in the last two months reviewed.

3. OP-5 (New Service Quality) for Unbundled and Line Shared Loops.

OP-5 “evaluates quality of ordering and installation of services, focusing on (A) the average monthly extent that new order installations were free of trouble reports for thirty (30) calendar days following installation and (B) the percentage of new service installations that experienced a trouble report during the period from the installation date to the date the order is posted complete.” In other words, OP-5 measures whether Qwest provisions loops that are delivered, and remain, free of troubles in the first, critical thirty days of service for an end user customer. Under OP-5, Qwest is obligated to provide trouble free 2-wire non-loaded and line shared loops at parity with the comparable loops/services installed by Qwest for its own end user customers.

Although Qwest’s OP-5 performance appears to be improving, Covad is greatly concerned by the erratic nature of Qwest’s performance. Thus, Covad urges the Commission to carefully scrutinize Qwest’s OP-5 data in the next few months to ensure that Qwest’s OP-5 performance remains constant rather than its current yo-yo pattern.

a. Unbundled Loops

In the three most recent months reviewed by Covad, Qwest’s OP-5 performance has improved. More specifically, for 2-wire non-loaded loops, [CONFIDENTIAL] were trouble free in August, [CONFIDENTIAL] were trouble free in September and [CONFIDENTIAL] were trouble free in October. *Exhibit 1*, p. 3.

No. 98-147 and Fourth Report and Order in CC Docket 96-98, 14 F.C.C.R. 20912, 20915 (1999) (“*Line Sharing Order*”).

b. Line Shared Loops

Like the non-loaded loops, Qwest's new service installation quality for Covad's line shared loops is on the rise. In the three most recent months reviewed by Covad, [CONFIDENTIAL] of its line shared loops were trouble free in August, [CONFIDENTIAL] were trouble free in September, and [CONFIDENTIAL] were trouble free in October. *Exhibit 1*, p. 3.

4. MR-3: Out of Service Cleared within 24 Hours for Non-Loaded Loops.

MR-3 "evaluates timeliness of repair for specified services, focusing on cases where the out-of-service cases were closed within the standard estimate for specified services." In other words, under MR-3, one looks at the percentage of out of service trouble reports that are cleared within 24 hours of Qwest's receipt of a trouble ticket. For purposes of this measure, for 2-wire non-loaded loops, Qwest is obligated to clear OOS reports at parity with clearance of its own OOS reports for ISDN-BRI. While Qwest recently proposed a standard for clearance of OOS Reports for line shared loops (parity with Res and Bus POTS), at the time Covad prepared its data, no standard was proposed so Covad did not include line shared loops in this metric.

a. Non-Loaded Loops.

The data reported under this metric is damning to Qwest's attempt to prove checklist compliance. For instance, during the three months reviewed by Covad, Qwest cleared Covad OOS reports for 2-wire non-loaded loops within 24 hours [CONFIDENTIAL] of the time in August, [CONFIDENTIAL] of the time in September, and [CONFIDENTIAL] of the time in October. *Exhibit 1*, p. 4.

5. MR-6: Mean Time to Restore for Unbundled and Line Shared Loops.

MR-6 "evaluates timeliness of repair, focusing on how long it takes to restore service to proper operation." For purposes of this measure, for 2-wire non-loaded loops, Qwest is obligated to restore service to proper operation at parity with restoration of its own ISDN-BRI service. While Qwest recently proposed a standard for line shared loops (parity with Res and Bus POTS), at the time Covad prepared its data, no standard was proposed so Covad did not include line shared loops in this metric.

Like MR-3, the data reported under MR-6 fully demonstrates that Qwest has a long way to go before it may be found in checklist compliance. Specifically, during the three months reviewed by Covad, for 2-wire non-loaded loops, it took Qwest, on average, [CONFIDENTIAL] hours to clear Covad trouble reports for August, [CONFIDENTIAL] hours to clear Covad trouble reports in September, and an unbelievable [CONFIDENTIAL] hours to clear Covad trouble reports in October. See *Exhibit 1*, p. 5.

IV. CONCLUSION

The Texas Commission recently stated that "proper provisioning is essential to providing equal opportunity for competition in the xDSL market"¹⁴ because "[d]elays in provisioning serve to degrade the CLEC, and not the ILEC, in the mind of the customer at a time when the customer is forming first impressions about the CLEC."¹⁵ Here, as demonstrated by the performance data from both Qwest and Covad, Qwest is not

¹⁴ *Petition of Covad Communications Company and Rhythms Links, Inc. against Southwestern Bell Telephone Company for Post-Interconnection Dispute Resolution and Arbitration Under the Telecommunications Act of 1996 Regarding Rates, Terms and Conditions and Related Arrangements for Line Sharing, Public Utility commission of Texas, Docket Nos. 22168 and 22469 (June 2001) ("Texas Arbitration Decision")*, p. 135.

¹⁵ *Id.*

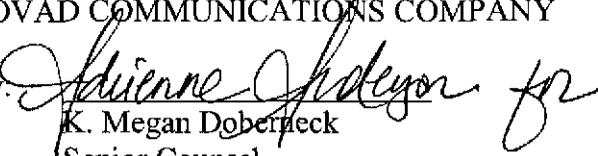
providing Covad with a meaningful or equal opportunity to compete in the Arizona market. That failure is fatal to Qwest's application for Section 271 relief. Accordingly, the Commission must reject Qwest's application for Section 271 relief at this time.

Dated this 9th day of November, 2001.

Respectfully submitted,

COVAD COMMUNICATIONS COMPANY

By:



K. Megan Doberneck

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EXHIBIT 1
(CONFIDENTIAL)

CERTIFICATE OF SERVICE

I, Adrienne Anderson, hereby certify that an original and ten (10) copies of the *Covad Communications Company's Supplemental Submission of Data Regarding Qwest's Commercial Performance in the State of Arizona*, docket no. T-00000A-97-0238, were sent for filing via overnight delivery on this 9th day of November 2001, to the following:

Arizona Corporation Commission
 Docket Control-Utilities Division
 1200 West Washington Street
 Phoenix, AZ 85007-2996

and a true and correct copy of *Covad Communications Company's Supplemental Submission of Data Regarding Qwest's Commercial Performance in the State of Arizona* was served electronically this 9th day of November 2001, on the following:

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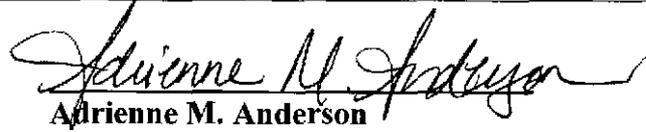
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and a true and correct copy of *Covad Communications Company's Supplemental Submission of Data Regarding Qwest's Commercial Performance in the State of Arizona* was sent via electronic mail; on this 9th day of November 2001, to the following:

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