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BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

DOCKETED

WILLIAM A. MUNDELL
CHAIRMAN

JIM IRVIN
COMMISSIONER

MARC SPITZER
COMMISSIONER

MAR 25 2002

DOCKETED BY

IN THE MATTER OF IN THE MATTER OF THE
APPLICATION OF QWEST COMMUNICATIONS
CORPORATION FOR APPROVAL OF
TRANSFER OF CERTIFICATES OF AUTHORITY
IN ASSOCIATION WITH INTERNAL
CORPORATE RESTRUCTURING.

DOCKET NO. T-02811B-01-0456
DOCKET NO. T-01051B-01-0456

DECISION NO. 64654

ORDER

BY THE COMMISSION:

On June 4, 2001, Qwest Communications Corporation ("QCC"), its subsidiary Phoenix Networks, Inc., dba Phoenix Telcom, Inc. and its affiliates LCI International Telecom Corp. dba Qwest Communications Services and USLD Communications, Inc. (collectively, "Applicants") filed a joint application ("Application") with the Arizona Corporation Commission ("Commission") for approval of transfer of Certificates of Convenience and Necessity ("CC&Ns"), assets, and customers in association with internal corporate restructuring. The Application also requested Commission authority, to the extent required, for certain mergers associated with Applicants' internal corporate restructuring; that the Commission deem inapplicable or waive any applicable statutory or regulatory subscriber authorization provisions regarding individual customer consent to the assignment of accounts in connection with the restructuring; and that the Commission reaffirm the limited waiver of the Commission's Affiliated Interests Rules ("Rules") previously granted by the Commission in Decision No. 58087 (November 23, 1992).

A public hearing was held on this matter at the Commission's offices in Phoenix, Arizona on October 18, 2001.

On December 7, 2001, the Commission issued Decision No. 64249 in this docket. Decision No. 64249 did not grant Applicants' request for a reaffirmation of the limited waiver of the Commission's Affiliated Interests Rules previously granted by the Commission in Decision No. 58087. Instead, Decision No. 64249 directed the Commission's Utilities Division Staff ("Staff") to review and analyze the purpose of and requirements of the limited waiver granted in Decision No.

1 58087 (November 23, 1992) and to provide the Commission with an analysis regarding whether the
2 limited waiver of A.A.C. R14-2-803 granted in Decision No. 58087 to US WEST Communications,
3 Inc. is appropriate for Qwest Communications International, Inc. and its affiliates in light of the fact
4 that Qwest Corporation intends to commence provision of competitive interLATA services through
5 its affiliate Qwest Communications Corporation at such time that Qwest Communications
6 International, Inc. and its affiliates receive authorization to provide interLATA services pursuant to
7 Section 271 of the Telecommunications Act of 1996.

8 On January 2, 2002, Staff filed a Staff Report in this docket in which it provided the
9 Commission with the analysis required by Decision No. 64249, and a recommendation, based on that
10 analysis, that the Commission grant the requested relief.

11 On January 9, 2002, QCC filed in this docket a Notice of Consummation of Merger. By that
12 filing, Applicants provided the Commission with formal notification that the mergers approved by
13 Decision No. 64249 were consummated as of December 31, 2001.

14 * * * * *

15 Having considered the entire record herein and being fully advised in the premises, the
16 Commission finds, concludes, and orders that:

17 **FINDINGS OF FACT**

18 1. QCC is a direct, wholly-owned subsidiary of Qwest Services Corporation, which, in
19 turn, is a direct, wholly-owned subsidiary of Qwest Communications International, Inc., the stock of
20 which is publicly traded on the New York Stock Exchange.¹ Pursuant to Commission Decision No.
21 60898 (May 22, 1998), QCC holds a CC&N in Arizona authorizing it to provide resold interLATA
22 and intraLATA services except for local exchange services.

23 2. Qwest Corporation is an affiliate of QCC. Qwest Corporation provides local exchange
24 service to over 3.0 million access lines in Arizona.

25 3. The Commission issued Decision No. 64249 in Docket No. T-02811B-01-0456 on
26 December 7, 2001.

27 _____
28 ¹ Prior to the merger of Qwest Communications International Inc. and U S WEST, Inc., Qwest Services Corporation was known as Qwest Corporation.

1 4. Decision No. 64249 authorized the requested asset transfers.

2 5. Decision No. 64249 cancelled the tariffs of Phoenix Networks, Inc., dba Phoenix
3 Telcom, Inc., LCI International Telecom Corp. dba Qwest Communications Services, and QCC.

4 6. Decision No. 64249 requires QCC to file a new tariff in Docket No. T-02811B-01-
5 0895. QCC's application for amendment of its CC&N is currently pending in that docket.

6 7. Decision No. 64249 neither granted nor denied QCC's request for a "reaffirmation" of
7 the limited waiver of the Commission's Affiliated Interests Rules previously granted by the
8 Commission to U S West Communications, Inc. in Decision No. 58087.

9 8. Decision No. 64249 directed Staff to review and analyze the purpose of and
10 requirements of the limited waiver granted in Decision No. 58087 and to provide the Commission
11 with an analysis regarding whether the limited waiver of A.A.C. R14-2-803 granted in Decision No.
12 58087 to US WEST Communications, Inc. is appropriate for Qwest Communications International,
13 Inc. and its affiliates in light of the fact that Qwest Corporation intends to commence provision of
14 competitive interLATA services through its affiliate QCC at such time that Qwest Communications
15 International, Inc. and its affiliates receive authorization to provide interLATA services pursuant to
16 Section 271 of the Telecommunications Act of 1996.

17 9. On January 9, 2002, QCC filed in this docket a Notice of Consummation of Merger to
18 formally notify the Commission that the mergers approved by Decision No. 64249 were
19 consummated as of December 31, 2001.

20 10. On January 2, 2002, Staff filed a Staff Report in this docket. The Staff Report
21 included the review and analysis directed by Decision No. 64249.

22 11. Decision No. 58087 granted to US West Communications, Inc. ("USWCI") a limited
23 waiver of A.A.C. R14-2-803.

24 12. Under the limited waiver granted in Decision No. 58087, USWCI, its parent US
25 WEST, Inc. ("USWT"), and all affiliates of USWCI not regulated by the Commission were required
26 to file a notice of intent to organize or reorganize a public utility holding company only for those
27 organizations or reorganizations which were likely to: 1) result in increased capital costs to USWCI;
28 2) result in additional costs allocated to the Arizona jurisdiction; or 3) result in a reduction of

1 USWCI's net operating income. No cumulative threshold or "exempt" amount applied to any
2 organization or reorganization planned by USWCI, its parent USWI, or any affiliate of USWCI that
3 would result in any or all of the three impacts listed above.

4 13. Decision No. 58087 required USWCI to file annually, at the time it provided the
5 information required by A.A.C. R14-2-805, an affidavit from its Chief Executive Officer which listed
6 the transactions for which USWCI, its parent USWI or any affiliate of USWCI not regulated by the
7 Commission, had not filed a notice of intent pursuant to the waiver granted, and which certified that
8 such transactions would not result in either increased capital costs to USWCI, additional costs being
9 allocated to the Arizona jurisdiction, or a reduction of USWCI's net operating income.

10 14. USWCI became Qwest Corporation on September 18, 2000.

11 15. Decision No. 58087 did not grant a waiver of A.A.C. R14-2-805.

12 16. Qwest Communications International, Inc. ("QCII") is the holding company and
13 ultimate parent of several entities, including Qwest Corporation and QCC. QCII is the counterpart of
14 the former USWI.

15 17. In its Staff Report, Staff states that QCII entities are divested and formed to suit the
16 QCII organizational goals, and that the formation and divestiture of QCII entities, or "organizations
17 and reorganizations" can be a common occurrence.

18 18. In its Staff Report, Staff states that the partial waiver of the Rules granted to USWCI
19 and its affiliates in Decision No. 58087 has served as a safety net through which transactions
20 inconsequential to Arizona have passed, while larger transactions with more significant consequences
21 to the Arizona jurisdiction have been processed. Staff listed several transactions that have required
22 Commission approval under the limited waiver. These transactions include the USWI acquisition of
23 a partnership interest in Time Warner Entertainment, L.P., the divestiture of USWCI's interest in Bell
24 Communications Research, Inc., and the separation of the U S WEST Communications Group from
25 U S. WEST Media Group.

26 19. Because Decision No. 58087 did not grant a waiver of A.A.C. R14-2-804,
27 reaffirmation of the waiver granted in that Decision will not preclude Commission oversight of any
28 future financial transactions between Qwest Corporation and any prospective affiliated competitive

1 interLATA telecommunications service provider, such as QCC.

2 20. Decision No. 58087 did not grant a waiver of A.A.C. R14-2-805, which requires all
3 public utility holding companies and Class A public utilities in Arizona to file their diversification
4 plans annually, along with other information, including, but not limited to, financial statements for
5 each subsidiary, a description of the plans for the utility's subsidiaries to change business activities,
6 an assessment of the effect of planned affiliated activities on the utility's capital structure, the bases
7 upon which the holding company allocates costs, the dollar amount transferred between the utility
8 and each affiliate, and most contracts between affiliates and the utility.

9 21. Staff indicates that the restrictions and requirements that the Telecommunications Act
10 of 1996 ("Act") sets in place concerning Bell Operating Companies ("BOCs"), such as Qwest
11 Corporation, and their transactions with affiliates that provide competitive services, provide a layer of
12 oversight in addition to the Rules. Section 272 of the Act will require Qwest Corporation and its
13 competitive in-region interLATA telecommunications services provider, or "Section 272 affiliate" to
14 keep separate books, records and accounts, and to have separate officers, directors and employees.
15 Section 272 of the Act will also require that all transactions between the entities are arms-length
16 transactions. In addition, the Act prohibits a Section 272 affiliate from obtaining credit under any
17 arrangement that would give a creditor recourse to the assets of a BOC such as Qwest Corporation.

18 22. Staff explained in the Staff Report that under the Act, a BOC with Section 272
19 affiliates is required to obtain and pay for a joint Federal/State audit every two years conducted by an
20 independent auditor to determine whether the BOC has complied with Section 272 of the Act, and
21 that the results of the audit must be submitted to the Federal Communications Commission ("FCC")
22 and the State commission of each state in which service is provided.

23 23. The Staff Report pointed out that in a Report and Order released on December 24,
24 1996, the FCC adopted accounting safeguards related to the Act. Staff stated that those safeguards
25 prescribe how incumbent local exchange carriers such as Qwest Corporation must account for
26 transactions with affiliates, and how costs incurred in the provision of both regulated
27 telecommunications services and nonregulated services are allocated.

28 24. Staff believes that the previous waiver granted to USWCI in Decision 58087 has

1 provided adequate protection of Arizona ratepayers from costs related to affiliates. Staff also
2 believes that in the event QCII and its affiliates receive approval to provide in-region interLATA
3 service in Arizona through a Section 272 affiliate, that Section 272 of the Telecommunications Act of
4 1996 will provide additional protection.

5 25. Staff recommends that Decision No. 58087 be upheld and applied to QCC and its
6 affiliates in its entirety.

7 **CONCLUSIONS OF LAW**

8 1. Qwest Communications Corporation and Qwest Corporation are public service
9 corporations within the meaning of Article XV of the Arizona Constitution.

10 2. The Commission has jurisdiction over this matter and has authority to issue this Order
11 pursuant to A.A.C. R14-2-801 *et seq.*

12 3. Staff's recommendations are reasonable and should be adopted.

13 4. Qwest Communications Corporation's request for a reaffirmation of the limited waiver of
14 the Commission's Affiliated Interests Rules previously granted by the Commission in Decision No.
15 58087 should be granted.

16 5. As the successor to USWCI, Qwest Corporation should be required to make the annual
17 filings with the Commission that Decision No. 58087 required of USWCI.

18 **ORDER**

19 IT IS THEREFORE ORDERED that the limited waiver of the Commission's Affiliated
20 Interests Rules previously granted to US WEST Communications, Inc. by Commission Decision No.
21 58087 (November 23, 1992) is hereby reaffirmed to apply in its entirety to Qwest Communications
22 Corporation, Qwest Corporation, their affiliates, and their parent Qwest Communications
23 International, Inc. as described below.

24 IT IS FURTHER ORDERED that Qwest Communications Corporation, Qwest Corporation,
25 their affiliates, and their parent Qwest Communications International, Inc. are hereby granted a
26 limited waiver of A.A.C. R14-2-803, subject to the conditions described below.

27 IT IS FURTHER ORDERED that Qwest Communications Corporation, Qwest Corporation,
28 their affiliates, and their parent Qwest Communications International, Inc. are required to file a notice

1 of intent to organize or reorganize a public utility holding company only for those organizations or
2 reorganizations that are likely to: 1) result in increased capital costs to Qwest Corporation; 2) result
3 in additional costs allocated to the Arizona jurisdiction; or 3) result in a reduction of Qwest
4 Corporation's net operating income. No cumulative threshold or "exempt" amount shall apply to any
5 organization or reorganization planned by Qwest Corporation, Qwest Communications Corporation,
6 their parent Qwest Communications International, Inc., or any of their affiliates, that would result in
7 any or all of the three impacts listed above.

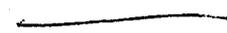
8 IT IS FURTHER ORDERED that Qwest Corporation shall file annually, at the time it
9 provides the information required by A.A.C. R14-2-805, an affidavit from its Chief Executive Officer
10 that lists the transactions for which Qwest Corporation, Qwest Communications Corporation, their
11 parent Qwest Communications International, Inc., or any of their affiliates, has not filed a notice of
12 intent pursuant to the waiver granted herein, and which certifies that such transactions will not result
13 in either increased capital costs to Qwest Corporation, additional costs being allocated to the Arizona
14 jurisdiction, or a reduction of Qwest Corporation's net operating income.

15 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

16 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

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18 CHAIRMAN

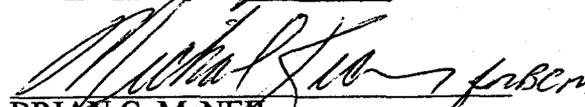
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18 COMMISSIONER

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18 COMMISSIONER

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21 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
22 Secretary of the Arizona Corporation Commission, have
23 hereunto set my hand and caused the official seal of the
24 Commission to be affixed at the Capitol, in the City of Phoenix,
25 this 25TH day of MARCH, 2002.

24 
25 BRIAN C. McNEIL
26 EXECUTIVE SECRETARY

27 DISSENT _____
28 TW:dap

1 SERVICE LIST FOR:

QWEST COMMUNICATIONS CORPORATION and
QWEST CORPORATION

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3 DOCKET NO.:

T-02811B-01-0456 and T-01051B-01-0456

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