

OPEN MEETING ITEM



0000050877

ORIGINAL



COMMISSIONERS  
JEFF HATCH-MILLER - Chairman  
WILLIAM A. MUNDELL  
MARC SPITZER  
MIKE GLEASON  
KRISTIN K. MAYES

ARIZONA CORPORATION COMMISSION

22

DATE: June 1, 2006  
DOCKET NO.: T-00000A-97-0238  
TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Jane Rodda. The recommendation has been filed in the form of an Opinion and Order on:

QWEST CORPORATION  
(Audit Waiver Request)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00 p.m.** on or before:

JUNE 12, 2006

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

JUNE 27 AND 28, 2006

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250. For more information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.

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**BEFORE THE ARIZONA CORPORATION COMMISSION**

COMMISSIONERS

JEFF HATCH-MILLER, Chairman  
WILLIAM A. MUNDELL  
MARC SPITZER  
MIKE GLEASON  
KRISTIN K. MAYES

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

DECISION NO. \_\_\_\_\_

**ORDER**

Open Meeting  
June 27 & 28, 2006  
Phoenix, Arizona

**BY THE COMMISSION:**

\* \* \* \* \*

Having considered the entire record herein and being fully advised in the premises, the Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

**FINDINGS OF FACT**

1. On May 21, 2002, the Commission issued Decision No. 64836 which determined whether Qwest Corporation ("Qwest") was in compliance with Checklist Item No. 4 of the 14 point checklist that specifies the access and interconnection a Bell Operating Company ("BOC") must provide to other telecommunications carriers in order to satisfy the requirements of Section 271 of the Federal Telecommunications Act of 1996.

2. Checklist Item No. 4 concerns access to the local loop.

3. In Decision No. 64836, the Commission adopted Statement of Statement of Generally Available Terms and Conditions ("SGAT") language that provides for an independent audit of Qwest's loop qualification systems. In that Decision, the Commission ordered:

An audit shall be conducted by an independent third party selected by the Commission 18 months after approval of Qwest Corporation's Section 271 application, of Qwest's company records, back office systems and of databases to determine that Qwest is providing the same access to loop qualification information to CLECs to which any Qwest employee has

1 access. Thereafter, audits by an independent third-party selected by the  
2 Commission shall be conducted on a periodic basis, but no more than  
3 every 18 months upon request and demonstration of need by a CLEC  
4 providing DSL services. Decision No. 64836 at p 32.

5 4. Qwest received Federal Communications Commission approval of its Section 271  
6 application on December 2, 2003. Thus, under the terms of Decision No. 64836, the subject audit  
7 would be scheduled to commence on or around June 3, 2005.

8 5. On March 29, 2005, Qwest filed an Application for Waiver from the Independent  
9 Audit Requirement of Decision No. 64836. In support of its request, Qwest alleged that since it  
10 received Section 271 approval, it has been providing loop qualification data to CLECs, pursuant to  
11 SGAT provisions, in a manner that confirms Qwest's system is working and that issues surrounding  
12 non-discriminatory CLEC access have been resolved.

13 6. By Procedural Order dated April 20, 2005, the Commission set deadlines for  
14 responding to Qwest's Application for Waiver. The Procedural Order required Staff to file a Staff  
15 Report on the request by May 31, 2005.

16 7. Pursuant to the April 20, 2005 Procedural Order, Dieca Communications, Inc. dba  
17 Covad Communications Company ("Covad") filed a Response on May 11, 2005. Covad was the  
18 only party to file a response to the request. Covad opposed a waiver.

19 8. On April 20, 2005, Qwest and Commission Utility Division Staff ("Staff") notified  
20 the Hearing Division that Qwest desired to talk with Covad about its objections and expressed the  
21 belief that the Staff Report would be more fully informed after the results of the Qwest/Covad  
22 discussions. Qwest and Staff requested an extension of the deadline for the Staff Report.

23 9. By Procedural Order dated May 27, 2005, the Commission extended the deadline for  
24 the May 31, 2005 Staff Report pending further Order of the Commission.

25 10. At a Procedural Conference on June 1, 2005, Qwest and Covad reported that they  
26 were engaging in discussions that might resolve the issues raised by Covad.

27 11. By Procedural Order dated June 13, 2005, the Commission scheduled a Procedural  
28 Conference for July 6, 2005 to determine the status of the parties' discussions. The June 13, 2005,  
Procedural Order suspended Qwest's obligations to engage in a third-party audit under Decision No.  
64836 pending Commission resolution of the waiver request.

1           12.     At the July 6, 2005 Procedural Conference, the parties reported that they had not been  
2 able to resolve their differences and that the parties, including Staff, were still engaged in discovery.  
3 The parties recommended another status conference in approximately 30 days.

4           13.     By Procedural Ordered dated July 6, 2005, a Procedural Conference was set for  
5 August 4, 2005. At the August 4, 2005 Procedural Conference, Qwest indicated that it intended to file  
6 a revised wavier request and requested at least 30 days to have it docketed. No party objected. All  
7 parties agreed that the matter could be submitted to the Administrative Law Judge based on the  
8 pleadings without oral argument or a hearing.

9           14.     By Procedural Order dated August 9, 2005, the Commission ordered Qwest to file its  
10 revised waiver request by September 6, 2005; that interested parties file comments on Qwest's  
11 revised waiver request by September 27, 2005; and that Staff file its Staff Report containing its  
12 analysis and recommendations by October 18, 2005.

13           15.     After a request by Qwest for a brief extension, by Procedural Order dated September  
14 12, 2005, the Commission extended the filing date for Qwest's revised request until September 20,  
15 2005. The September 12, 2005 Procedural Order also extended the date for responses and the Staff  
16 Report.

17           16.     On September 20, 2005, Qwest filed a Revised Application for Wavier From  
18 Independent Audit Requirement of Decision No. 64836.

19           17.     On October 4, 2005, Covad filed a Response to Qwest's Revised Application for  
20 Waiver.

21           18.     On October 26, 2005, Staff filed its Staff Report.

22           19.     Qwest did not file reply comments to the Staff Report.

23 Qwest's Position

24           20.     Qwest characterizes Covad's concerns as revolving around the accuracy, due to  
25 timing, of the loop data that Covad accesses in the Raw Loop Data Wire Center download. The Raw  
26 Loop Data Wire Center download is a bulk extract of an entire wire center's loop data including the  
27 most recent updates to the Loop Qualification Database ("LQDB") on the date the extract is created.  
28 (Qwest Sept. 20, 2005 Waiver Application at 2-3). Qwest states that the Raw Loop Data Wire Center

1 data file that Covad uses is in a "flat file," meaning that it is a snapshot of loop information. Qwest  
2 states that on any given day, the bulk data file information may not contain the most current  
3 information for any given loop that was changed after the date of the last bulk extract. Qwest states it  
4 has informed Covad that Qwest's existing hardware and software, and information technologies  
5 systems do not provide bulk updates to the data bases more frequently than the 20 business day  
6 refresh cycle and cannot be made to do so without significant expense. (Id. at 3).

7 21. Qwest states that since Covad was the only party to express concerns that center on the  
8 bulk extract loop qualification data file, and that more extensive auditing than that raised by the  
9 Covad issue is unwarranted and should be waived.

10 22. In its revised waiver request, Qwest proposes the following scope of audit:

11 (a) The independent third party auditor will assess the process for updating the Loop  
12 Qualification Database ("LQDB") to verify that bulk updates to the database and therefore bulk  
13 updates available to Qwest personnel are no more frequent than the 20 business day refresh cycle  
14 experienced by Covad through its use of the Raw Loop Data Wire Center download.

15 (b) The assessment would include review of:

- 16 (i) Existing Qwest documentation such as Qwest Information Technologies'  
17 Software Component Specifications;
- 18 (ii) Existing Qwest procedures for scheduling and running IT jobs that execute the  
19 refresh of loop data in the LQBD and the creation of the Bulk RLD Wire  
20 Center files;
- 21 (iii) Existing Qwest procedures identifying the available methods for executing a  
22 loop qualification.

23 (c) At the conclusion of the assessment, the auditor will attest to:

- 24 (i) The frequency of bulk updates to the source of all loop qualification/make-up  
25 queries, i.e., LQDB;
- 26 (ii) Availability of bulk loop qualification/make-up information by Qwest  
27 personnel.

28

1           23.     Qwest argues that the Regional Oversight Commission (“ROC”)<sup>1</sup> Operations Support  
2 System (“OSS”) Tests were third party tests of Qwest’s OSS and provided independent confirmation  
3 that Qwest’s OSS complies with the Act.

4           24.     The ROC members, other than Arizona, agreed to pursue the OSS testing to evaluate  
5 compliance with the Act. Qwest states that ROC Test 12.7 was designed to review “DSL loop  
6 qualification processes and procedures developed and employed by Qwest to support both retail and  
7 wholesale customers.” Qwest attached the final ROC Test 12 and 12. 7 to its revised waiver request.  
8 Part of the ROC testing focused on whether “parity exists in the design implementation, and use of  
9 Qwest’s loop qualification process.” Qwest states that the ROC tests determined that internal process  
10 flows are consistent for both retail and wholesale operations and that back office systems provided  
11 consistent results for both Wholesale and Retail queries; and further, that the same database, the Loop  
12 Qualification Database, is the single source for all queries. Qwest argues that the ROC Tests 12 and  
13 12.7 are detailed, robust and thorough independent evaluations of Qwest’s loop qualification tools,  
14 and are conclusive evidence that Qwest’s loop qualification tools provide to CLECs the same access  
15 to loop qualification information as provided to any Qwest employee. Thus, Qwest argues, there is no  
16 evidence that another complete audit of Qwest’s systems is warranted now. Qwest asserts that its  
17 tailored audit proposal as stated above is calculated to address the concerns raised by Covad.

18 Covad’s Position.

19           25.     Covad states that Qwest does not appear to understand its position. Covad states it  
20 does not receive timely and accurate loop qualification data (as compared to the three other regional  
21 BOCs), and that this underscores a serious weakness in Qwest’s processes which calls into question  
22 whether the information is being made available to Covad on a non-discriminatory basis. Covad  
23 asserts that in 2002 when Qwest was attempting to obtain a favorable recommendation from the  
24 Commission to allow Qwest to provide long distance in Arizona, Qwest agreed to submit to an  
25 independent audit 18 months after entry of the Order, and now Qwest is attempting to evade this  
26 obligation. (Covad Oct. 4, 2005 Response at 1-2).

27  
28 <sup>1</sup> The ROC is comprised of the 14 state commissions regulating telecommunications in Qwest’s operating area.

1           26.     Covad states that Qwest's revised application is fine as far as it goes, but that it does  
2 not go far enough. Covad states that the purpose of the audit is designed to determine whether Qwest  
3 is providing CLECs with non-discriminatory access to its loop qualification information and systems,  
4 but by limiting the audit to an examination of a single loop qualification system, Covad asserts Qwest  
5 would render it impossible for an auditor to know whether in fact Qwest's other loop qualification  
6 information and if systems are offered and available to CLECs on the same basis as to Qwest  
7 employees.

8           27.     Covad states that its need for raw loop data is driven by the demand for DSL loops  
9 each month and it relies on accurate data provided in the raw loop data files. Covad states that other  
10 loop qualification systems that Qwest purportedly offers do not allow Covad to qualify a large  
11 number of loops at the same time.

12           28.     Covad argues the burden is on Qwest to demonstrate why a waiver should be granted.  
13 Covad asserts that without an audit, it would be difficult for a CLEC to know if there is sufficient  
14 basis to support a complaint.

15           29.     Covad asserts that Qwest's reliance on the ROC OSS test misses the point. Covad  
16 states that this Commission performed its own 3<sup>rd</sup> party Section 271 audit of Qwest's systems, and  
17 based upon that evaluation, ordered Qwest to undergo an audit 18 months after entry of the Order.  
18 Furthermore, Covad claims there have been changes to Qwest's loop qualification systems since the  
19 ROC tests that have never been independently reviewed or audited.

20 Staff's Recommendations

21           30.     Staff's investigation into this request indicates that in the 16 months prior to the Staff  
22 Report, no CLECs have asked for loop qualification audits as part of their interconnection  
23 agreements.

24           31.     In response to Staff data requests, Qwest estimated the cost of an audit as required  
25 under Decision No. 64836 to be \$140,000, and that it would require 6-8 weeks to complete. Qwest  
26 estimates that the cost of the limited audit it proposes would cost \$50,000 and take 3-4 weeks. Based  
27 on its experience, Staff believes the estimates are reasonable.

28           32.     Staff concluded that absent more detailed evaluation and analysis, no evidence exists

1 to substantiate discriminatory behavior by Qwest related to its compliance with Decision No. 64836.

2 33. Staff states that accepting Qwest's revised application would waive the independent  
3 audit required by Decision No. 64836 while shifting the focus from non-discriminatory access to  
4 information accuracy.

5 34. Staff notes that Qwest accepted the independent audit condition within Decision No.  
6 64836, and believes that Qwest must have assumed its full compliance and anticipated acceptable  
7 results. Staff states that while the Commission may consider new information at any time, there is no  
8 evidence in Decision No. 64836 that Qwest attempted to make its acceptance of the independent  
9 audit conditional on compliance and results.

10 35. Staff recommends that the audit should be conducted as described in Decision No.  
11 64836. Staff generally agrees that the intent of the independent audit condition in Decision No.  
12 64836 was to determine if Qwest is providing CLECs with non-discriminatory access to its loop  
13 qualification information and systems. Staff states that while it does not discount claims of  
14 compliance and good results, there is no way to make an independent determination without an audit.

15 Resolution

16 36. Qwest's request for a waiver from Decision No. 64836 and its proposed limited audit  
17 focuses on one system and would not provide a thorough answer to the question that was the concern  
18 in Decision No. 63836—namely is Qwest providing access to loop qualification data in a non-  
19 discriminatory manner?

20 37. The Commission was aware of the ROC but chose to require its own independent  
21 audit. Qwest has not demonstrated why our determination in Decision No. 64836 should be  
22 modified.

23 38. We concur with Staff that the independent audit of the loop qualification systems  
24 should proceed as contemplated in Decision No. 64836. Qwest has not convinced us that such an  
25 audit is unnecessary or superfluous.

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**CONCLUSIONS OF LAW**

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1. 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 Commission has jurisdiction over Qwest.
2. The Commission has jurisdiction over Qwest and the subject matter of its application.
3. Notice of the proceeding was provided in accordance with law.
4. The recommendation set forth in Findings of Fact Nos. 35 is fair, reasonable and in the public interest and should be adopted.

**ORDER**

IT IS THEREFORE ORDERED that Qwest Corporation's revised Application for Waiver of the Independent Audit Requirement of Decision No. 64836 is denied.

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IT IS FURTHER ORDERED that Qwest Corporation shall proceed with the audit as required by Decision No. 64836 and present the name(s) of the independent auditor(s) for Staff approval no later than July 31, 2006.

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

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN \_\_\_\_\_ COMMISSIONER \_\_\_\_\_

COMMISSIONER \_\_\_\_\_ COMMISSIONER \_\_\_\_\_ COMMISSIONER \_\_\_\_\_

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this \_\_\_\_ day of \_\_\_\_\_, 2006.

\_\_\_\_\_  
BRIAN C. McNEIL  
EXECUTIVE DIRECTOR

DISSENT \_\_\_\_\_

DISSENT \_\_\_\_\_

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