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AZ CORP COMMISSION
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Arizona Corporation Commission

DOCKETED

DEC 17 2002

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Attorneys for Qwest Corporation

BEFORE THE ARIZONA CORPORATION COMMISSION

IN THE MATTER OF QWEST
COMMUNICATIONS INTERNATIONAL
INC.'S, QWEST SERVICES
CORPORATION'S, AND QWEST
CORPORATION'S NOTICE OF SALE,
REQUEST FOR WAIVER, OR
APPLICATION FOR APPROVAL OF THE
SALE OF THE ARIZONA OPERATIONS OF
QWEST DEX, INC.

DOCKET No. T-01051B-02-0666

**QWEST'S RESPONSE TO STAFF'S
REQUEST FOR A PROCEDURAL
ORDER**

Qwest Corporation ("Qwest") hereby opposes adoption of Staff's proposed schedule as set forth on its December 4, 2002 Request for Procedural Order. Qwest reiterates that time is of the essence in completing the sale by Qwest Communications International, Inc. ("QCII") and certain of its affiliates of the directory publishing assets held by QwestDex, Inc. ("Dex"). Accordingly, Qwest respectfully requests that the Arizona Corporation Commission ("Commission") deny Staff's proposed hearing schedule and proceed with its review of Qwest's August 30, 2002 request for waiver of the Affiliated Interest Rules¹ or approval of the Sale of Directory Assets,²

¹ A.A.C. R14-2-801 through A.A.C. R14-2-806 (the "Rules").

² Qwest has asserted and continues to assert that the Sale of Directory Assets is not subject to Commission regulation based on its 1988 Mountain Bell Settlement Agreement, which acknowledged that these directory assets

1 pursuant to the schedule proposed by Qwest herein.

2 On August 30, 2002, Qwest submitted its Notice of Sale, Request for Waiver or
3 Application for Approval pursuant to R14-2-803. The Commission rules clearly contemplate that
4 any action by Staff relating to utility or affiliate reorganization shall occur within 120 days of
5 notification, or, as is the case here, by December 28, 2002. See A.A.C. R14-2-803(A). The rules
6 require that the utility or affiliate notify Staff 120 days prior to such reorganization in an effort to
7 accommodate the time-sensitive nature of these transactions. That is also why the same rules
8 require that Staff proffer initial questions to the applicant 30 days (or by Sept. 29 in this case)
9 after such notice has been filed. See R14-2-803(B). In addition to these deadlines, Staff must act
10 on Qwest's request for waiver within 30 days (or by September 29) of its filing for the waiver or
11 the waiver is deemed to be effective by operation of law. See R14-2-806(C). Under R14-2-
12 806(C), Staff was to have acted on the request for waiver by September 29, 2002 or the waiver
13 would be deemed effective by operation of law. On September 13, 2002, Staff requested and
14 Qwest agreed to grant an additional 90 days until December 30, 2002 to act on the waiver. Under
15 R14-2-803(B), Staff was to have notified Qwest of any questions which it had concerning the
16 application or supporting information by October 29, 2002. On October 25, 2002, Staff requested
17 and Qwest agreed to grant an additional 60 days until December 30, 2002. From Qwest's
18 viewpoint, the extension requests up to this point have been reasonable and have afforded Staff
19 the extra time it needed to act on Qwest's request for waiver, while at the same time Qwest could
20 be assured that the review of the transaction was moving forward, consistent with the intent of the
21 Commission's rules.

22 The Commission's rules are designed to accommodate reorganizations in a manner that is
23 necessary to enable such transactions to effectively close in a constantly changing financial
24 market. Moreover, many transactions of this nature, as here, specifically state that "time is of the

25 were no longer held by U S WEST Communications, the regulated public service corporation. As such, Staff's
26 request is particularly unreasonable since the delay may be caused without having first determined whether the
Commission even has the jurisdiction to delay the Sale at all.

1 essence.” This statement, literally construed, means exactly what it appears to mean. Each day
2 that this transaction does not close it is subject to ongoing “deal risk,” meaning the risk that, for
3 whatever reason, the transaction is not completed. As QCI has repeatedly stated in documents
4 filed with the SEC, and as analysts have observed, it is critical that QCI complete the Dex sale to
5 address its financial situation and de-lever its balance sheet.³ Further, the purchase agreement
6 provides that the transaction must close by December 15, 2003. While this provides a back end
7 date, it is one that Qwest hopes will never become a factor, as it desires to close the second phase
8 of the transaction well in advance of that date, to mitigate “deal risk” and help ensure the
9 financial stability of both QCI and Qwest. Unless this Commission acts under the guidelines as
10 specified in R14-2-803, the transaction could fail.

11 In its December 4, 2002 Request for a Procedural Order, Staff proposed a schedule that
12 contemplates that the Commission will review and approve the transaction through a lengthy
13 hearing process, rather than grant a waiver. The Staff proposed the following extended schedule:
14 Qwest Direct Testimony due on February 4, 2003; Staff/Intervenor Rebuttal Testimony due on
15 April 1, 2003; Qwest Surrebuttal Testimony due on May 6, 2003; Staff Rejoinder Testimony due
16 on June 17, 2003; and Hearing commencing on June 24, 2003. Assuming that the post-hearing
17 process is consistent with Arizona practice, post-hearing briefs would be filed sometime in mid to
18 late August, and the Hearing Division would not issue a draft order until September 2003. That
19 draft order would then be subject to a 10-day comment period, and the issue might be considered
20 by the Commission, at the earliest, in mid to late October, with a written order to follow
21 sometime thereafter. Even then any Commission order may not become final, as parties may file

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23 ³ As noted in a recent Reuters news article, “Proceeds from the sale of these directories, which totaled \$2.75 billion,
24 will be used to pay down the \$3.4 billion bank debt at Qwest Services Corp. to \$2.0 billion. The ratings and outlook
25 for Qwest already incorporated the receipt of these proceeds by year-end 2002. However, the company still faces the
26 challenge of obtaining state regulatory approvals for the close of the western region, and the close of this \$4.3 billion
transaction is expected to occur in 2003. These additional proceeds are critical in enabling the company to meet
upcoming maturities both on the bank debt and public debt, which total about \$7 billion from 2003 through 2005, of
which about \$4.8 billion is due through 2004, after the \$1.4 billion pay-down of the \$3.4 billion bank loan.” S&P
Comments on Qwest Communications International, Reuters News Service, November 12, 2002.

1 applications for rehearing, which under Arizona law would extend this time period for at least 20-
2 40 days. Given these considerations, Staff's request is not reasonable and is extremely prejudicial
3 to Qwest and QCI.⁴ It eliminates any margin for error based on the December 15, 2002 drop-
4 dead date, and creates significantly more deal risk than a more reasonable schedule that would
5 allow the transaction to close earlier in 2003.

6 Staff's request is also not reasonable in light of the Commission rules that are designed to
7 expedite Commission approval of transactions such as this one, as discussed above. Qwest has
8 already agreed to multiple extensions, but is unwilling to agree to more or to an extended
9 schedule in light of the need to close this transaction as quickly as possible. Now, Staff requests
10 that it be granted yet another 90 days to complete its investigation and provide testimony for a
11 June 24, 2003 hearing, without citing compelling reasons for such a delay.

12 Staff cites the "considerable discovery which needs to be undertaken" as its reason for
13 further delay. Staff, however, has already conducted lengthy discovery (i.e., approximately 125
14 data requests) here and has access to massive amounts of discovery in both Utah and Washington
15 containing the same information necessary to evaluate Qwest's Arizona filing, since it has
16 retained the same consultant, Mr. Michael Brosch, that was hired by parties in Utah and
17 Washington. Mr. Brosch has had the benefit of being able to review answers to discovery
18 questions on this transaction for quite some time. There is no reason why Staff cannot continue
19 discovery during the testimony phase of this docket. Staff also cites Qwest's jurisdictional
20 arguments that will require "extensive time and analysis" to respond as a reason for delay.
21 Qwest's jurisdictional arguments are legal arguments that, in Arizona, require an analysis of one
22 document - the 1988 Mountain Bell Settlement Agreement entered into and approved by this
23 Commission. Neither of these reasons forms a reasonable basis for continued delay, particularly

24 _____
25 ⁴ According to S&P analyst Catherine Cosentino, "[n]ear-term liquidity remains a source of concern to Standard &
26 Poor's, particularly if the \$4.3 billion second phase of the company's directories sale is delayed beyond 2003.' S&P
Cuts Qwest Debt Rating to Near Default Status, Reuters News Service, November 20, 2002.

1 in light of the time sensitivity involved in this transaction.

2 Qwest made its filing in August 2002 within days of announcing the sale, in order to be
3 able to close this transaction as soon as possible, but in any event, well in advance of the drop-
4 dead date in December 2003. Qwest relied on the rules governing reorganization of utilities and
5 affiliates as a gauge for the time necessary for completing the transaction. When it filed, Qwest
6 made clear that time was of the essence and that the continued financial stability of QCII and
7 Qwest was at stake. That fact is still true. Qwest respectfully requests that the Staff's motion be
8 denied and instead, the Commission considers an expedited schedule in line with the schedules
9 for consideration of this transaction already in place in Utah and Washington.

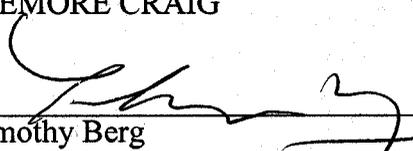
10 Qwest proposes the following schedule:

11 Qwest Direct Testimony	January 21, 2003
12 Staff/Intervenor Rebuttal Testimony	February 18, 2003
13 Qwest Surrebuttal Testimony	March 4, 2003
14 Hearing Commences	March 13, 2003

15 Qwest believes that the above schedule is necessary given the urgent nature of this
16 proceeding and the extent of discovery already provided to Staff on these issues. Should the
17 Commission determine that it requires further input from Qwest and Staff prior to establishing an
18 expedited procedural schedule for this docket, Qwest requests that a Procedural Conference be
19 held at the earliest available opportunity.

20 DATED this 16th day of December, 2002.

21 FENNEMORE CRAIG

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ORIGINAL and **13 COPIES** filed
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