



0000055799

ORIGINAL

25H

BEFORE THE ARIZONA CORPORATION COMMISSION

RECEIVED

WILLIAM A. MUNDELL
CHAIRMAN
JIM IRVIN
COMMISSIONER
MARC SPITZER
COMMISSIONER

DOCKETED

2002 DEC 24 A 9:32

DEC 24 2002

AZ CORP COMMISSION
DOCUMENT CONTROL

DOCKETED BY *CR*

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

PROCEDURAL ORDER

BY THE COMMISSION:

On August 30, 2002, Qwest Communications International, Inc. ("QCI"), Qwest Services Corporation ("QSC") and Qwest Corporation ("QC") (collectively "Qwest") filed a Notice with the Arizona Corporation Commission ("Commission") pursuant to A.A.C. R14-2-803, A.A.C. R14-2-804, and A.A.C. R14-2-806, of the sale of its directory publishing assets in Arizona owned by QwestDex, Inc. ("Dex") to an unrelated third-party buyer. In the Notice, Qwest requests that the Commission declare that: (1) this transaction falls within the scope of the waiver granted in Commission Decision No. 58087; or (2) the sale of Directory Assets is not subject to Commission regulation based on a 1988 Mountain Bell Settlement Agreement. Alternatively, Qwest requests in the Notice, that the Commission waive compliance, in part, with the Affiliated Interest Rules or approve the Sale of Directory Assets. Dex holdings LLC is the unaffiliated buyer of the Dex assets.

On December 4, 2002, Commission Staff ("Staff") filed a Request For a Procedural Order, proposing a schedule for filing testimony and a hearing to commence on or around June 24, 2003. Staff states that it commenced discovery immediately after Qwest filed its Notice and recently hired a consultant to assist it with its evaluation and recommendations. Staff anticipates that there remains considerable discovery with regard to Qwest's filing. Staff states that at its request, in letters dated September 16, 2002 and October 25, 2002, Qwest waived and/or extended the deadlines set forth in A.A.C. R14-2-806C and R14-2-803B until December 30, 2002. In addition to the procedural schedule, Staff requests suspension of all deadlines set forth in the rules until a final Commission

1 Order is released.

2 On December 16, 2002, the Residential Utility Consumer Office ("RUCO"), an Intervenor,
3 filed a Response to Staff's Request for a Procedural Order. RUCO had no objection to the proposed
4 schedule, except it requested that the hearing not start on June 24, 2002, as RUCO is involved in two
5 other Commission matters which are set to commence on June 23, and June 24, 2003, respectively.

6 On December 16, 2002, Qwest filed a Response to Staff's Request for a Procedural Order.
7 Qwest opposed Staff's proposed schedule and argues that time is of the essence in completing the
8 sale of the Dex directory publishing assets. Qwest believes that Staff's proposed schedule is not
9 reasonable and extremely prejudicial to Qwest, as it creates more "deal risk" and does not provide a
10 margin of error based on the December 15, 2002, drop-dead date contained in the purchase
11 agreement. Qwest argues that Staff has not cited compelling reasons for additional delay, as it has
12 already engaged in considerable discovery and has access to "massive amounts" of discovery in Utah
13 and Washington related to the same transaction.

14 Qwest believes that all extensions granted to date have been reasonable to allow Staff time to
15 act on Qwest's request for a waiver, but is not willing to agree to additional extensions or an extended
16 schedule. Qwest proposed a schedule that contemplates a hearing on or about March 13, 2003.

17 On December 19, 2002, Staff filed a reply to Qwest's opposition. Staff states that Qwest's
18 argument that the Affiliated Interest Rules contemplate that Staff must act on affiliate reorganizations
19 within 120 days is misplaced. Staff argues the Commission always has the right to suspend or waive
20 any deadline contained in its own rules, as necessary, to complete a review of the issues presented.
21 Staff also asserts that its proposed schedule contemplates a hearing only one month later than the
22 hearing set by the Washington Commission to consider the same transaction. Staff states that
23 Qwest's proposed schedule more closely aligns with the hearing set by the Utah Commission.
24 Further, Staff asserts, its request for a Procedural Order and hearing assumes that the Commission has
25 jurisdiction over this matter, and Qwest is free to make legal arguments to the contrary. Staff states
26 that it requested the schedule it did in order to guarantee that it has adequate time to conduct a
27 thorough review, including all potential implications for Arizona ratepayers.

28 Commission Rule R14-2-803 requires that a utility or affiliate notify the Commission at least

1 120 days prior to a reorganization. R14-2-803B requires Staff to notify the applicant of any questions
 2 regarding the notice within 30 days of receipt of the notice. The Commission must within 60 days of
 3 the notice determine whether to hold a hearing. R14-2-806C provides that if the Commission fails to
 4 approve, disapprove, or suspend for further consideration an application for waiver within 30 days of
 5 the request for waiver, the waiver is effective by operation of law on the 31st day. The Rules do not
 6 contain any other deadlines. Based on Qwest's agreement to extend the deadlines set forth in R14-2-
 7 803, by December 30, 2002, the Commission must determine whether to hold a hearing.

8 There does not appear to be a dispute that a hearing is required in this matter, or that the
 9 deadlines in R14-2-806C be suspended to allow for such hearing and final order. The dispute is over
 10 how long it will take the Commission to hold a hearing and issue a final Order. Given the complexity
 11 of issues raised and the number of existing dockets affecting Qwest, Qwest's proposed schedule, with
 12 a hearing in mid-March is too aggressive. On the other hand, Staff's proposed schedule, while not
 13 unreasonable, may be unnecessarily extended and may pose a strain on Commission resources in
 14 light of previously scheduled hearings in other matters. The following schedule is a reasonable
 15 compromise, allowing sufficient time for the parties to engage in discovery and analysis and
 16 addressing Qwest's concerns that the matter be considered expeditiously:

17	Qwest/Dex Holdings Direct Testimony	January 28, 2003
18	Staff/Intervenor Rebuttal Testimony	March 4, 2003
19	Qwest/Dex Holdings Surrebuttal Testimony	April 1, 2003
20	Staff/Intervenor Rejoinder	April 22, 2003
21	Pre-hearing Conference	April 29, 2003
22	Hearing Commences	May 6, 2003

23 IT IS THEREFORE ORDERED that a hearing in this matter shall commence on May 6,
 24 2003, at 10:00 a.m., or as soon thereafter as is practical, at the Commission's offices, 1200 W.
 25 Washington, Phoenix, Arizona.

26 IT IS FURTHER ORDERED that a pre-hearing conference for the purpose of scheduling
 27 witnesses shall commence on April 29, 2003, at 10:00 a.m., or as soon thereafter as is practical, at the
 28 Commission's offices, 1200 W. Washington, Phoenix, Arizona.

1 IT IS FURTHER ORDERED that Qwest and Dex Holdings LLC shall reduce to writing and
2 file the testimony of its witnesses and associated exhibits to be presented at the hearing on or before
3 January 28, 2003.

4 ~~IT IS FURTHER ORDERED that Staff and Intervenors shall reduce to writing and file the~~
5 ~~rebuttal testimony of their witnesses and associated exhibits on or before March 4, 2003.~~

6 IT IS FURTHER ORDERED that Qwest and Dex Holdings LLC shall reduce to writing and
7 file surrebuttal testimony of its witnesses and associated exhibits to be presented at the hearing on or
8 before April 1, 2003.

9 IT IS FURTHER ORDERED that Staff and Intervenors shall file any rejoinder testimony and
10 associated exhibits on or before April 22, 2003.

11 IT IS FURTHER ORDERED that any objections to any testimony or exhibits that have been
12 pre-filed as of April 22, 2003, shall be made before or at the April 29, 2003 pre-hearing conference.

13 IT IS FURTHER ORDERED that any substantive corrections, revisions, or supplements to
14 pre-filed testimony shall be reduced to writing and filed no later than five days before the witness is
15 scheduled to testify.

16 IT IS FURTHER ORDERED that the parties shall prepare a brief, written summary of the
17 pre-filed testimony of each of their witnesses and shall file each summary at least two working days
18 before the witness is scheduled to testify.

19 IT IS FURTHER ORDERED that copies of summaries should be served upon the Presiding
20 Officer, the Commissioners, and the Commissioners' aides as well as the parties of record.

21 IT IS FURTHER ORDERED that intervention shall be in accordance with A.A.C. R14-3-105,
22 except that all motions to intervene must be filed on or before April 15, 2003.

23 IT IS FURTHER ORDERED that discovery shall be as permitted by law and the rules and
24 regulations of the Commission, except that: until April 1, 2003, any objection to discovery requests
25 shall be made within 7 days¹ of receipt and responses to discovery requests shall be made within 10
26 days of receipt; thereafter, objections to discovery requests shall be made within 5 days and responses
27

28 ¹ "Days" means calendar days.

1 shall be made in 7 days¹; the response time may be extended by mutual agreement of the parties
 2 involved if the request requires an extensive compilation effort.

3 IT IS FURTHER ORDERED that, in the alternative to filing a written motion to compel
 4 discovery, any party seeking discovery may telephonically contact the Commission's Hearing
 5 Division to request a date for a procedural hearing to resolve the discovery dispute; that upon such a
 6 request, a procedural hearing will be convened as soon as practicable; and that the party making such
 7 a request shall forthwith contact all other parties to advise them of the hearing date and shall at the
 8 hearing provide a statement confirming that the other parties were contacted.²

9 IT IS FURTHER ORDERED that Qwest shall provide public notice of the hearing in this
 10 matter, in the following form and style:

11
 12 **PUBLIC NOTICE OF HEARING ON THE**
APPLICATION OF
 13 **QWEST COMMUNICATIONS, INTERNATIONAL, INC.,**
QWEST SERVICES CORPORATION
 14 **AND QWEST CORPORATION**
 15 **FOR WAIVER OR APPROVAL OF THE SALE OF**
THE ARIZONA OPERATIONS OF QWEST DEX, INC.
DOCKET NO. T-01051B-02-0666.

16 On August 30, 2002, Qwest Communications International, Inc., Qwest Services
 17 Corporation and Qwest Corporation (collectively "Qwest") filed a Notice with the
 18 Arizona Corporation Commission pursuant to A.A.C. R14-2-803, A.A.C. R14-2-804
 19 and A.A.C. R14-2-806 of the sale of its directory publishing assets in Arizona owned
 20 by Qwest Dex, Inc. Qwest requests that the Commission declare that this transaction
 21 falls within the scope of the waiver granted in Commission Decision No. 58087; or the
 22 sale of directory assets is not subject to Commission regulation based on a 1988
 Mountain Bell Settlement Agreement. Alternatively, Qwest requests in the Notice,
 that the Commission waive compliance, in part, with the Affiliated Interest Rules or
 approve the Sale of Directory Assets. Copies of Qwest's Notice are available at its
 office and the Commission's offices for public inspection during regular business
 hours.

23 The Commission will hold a hearing on this matter beginning May 6, 2003 at 10:00
 24 a.m. at the Commission's offices, 1200 West Washington, Phoenix, Arizona. Public
 comments will be taken on the first day of the hearing.

25 The law provides for an open public hearing at which, under appropriate
 26 circumstances, interested parties may intervene. Intervention shall be permitted to any
 person entitled by law to intervene and having a direct and substantial interest in the
 matter. Persons desiring to intervene must file a written motion to intervene with the

27
 28 ² The parties are encouraged to attempt to settle discovery disputes through informal, good-faith negotiations
 before seeking Commission resolution of the controversy.

Commission, which motion should be sent to Qwest or its counsel and to all parties of record, and which, at the minimum, shall contain the Docket No. T-01051B-02-0666 and the following:

1. The name, address, and telephone number of the proposed intervenor and of any party upon whom service of documents is to be made if different than the intervenor.
2. A short statement of the proposed intervenor's interest in the proceeding (e.g., a customer , a stockholder of the Company, etc.).
3. A statement certifying that a copy of the motion to intervene has been mailed to Qwest or its counsel and to all parties of record in the case.

The granting of motions to intervene shall be governed by A.A.C. R14-3-105, except that all motions to intervene must be filed on or before April 15, 2003. The granting of intervention, among other things, entitles a party to present sworn evidence at hearing and to cross-examine other witnesses. However, failure to intervene will not preclude any customer from appearing at the hearing and making a statement on such customer's own behalf.

The Commission does not discriminate on the basis of disability in admission to its public meetings. Persons with a disability may request a reasonable accommodation such as a sign language interpreter, as well as request this document in an alternative format, by contacting Shelly Hood, ADA Coordinator, voice phone number 602/542-3931, E-mail shood@cc.state.az.us. Requests should be made as early as possible to allow time to arrange the accommodation.

IT IS FURTHER ORDERED that Qwest shall publish the above Notice at least once in a newspaper of general circulation within its Arizona service area by January 31, 2003, and shall mail to each of its customers a copy of the above notice commencing with its next billing cycle, such notification to be complete no later than February 28, 2003.

IT IS FURTHER ORDERED that Qwest shall file certification of publication and mailing as soon as practicable after the notification has been completed.

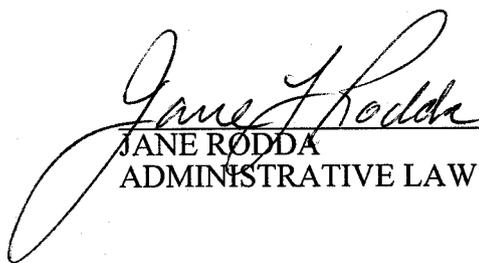
IT IS FURTHER ORDERED that notice shall be deemed complete upon publication and mailing of same, notwithstanding the failure of an individual customer to read or receive the notice.

IT IS FURTHER ORDERED that all deadlines set forth in R14-2-803 and R14-2-806 shall be suspended pending a final a final Commission Order.

...
...
...
...

1 IT IS FURTHER ORDERED that the Presiding Officer may rescind, alter, amend, or waive
2 any portion of this Procedural Order either by subsequent Procedural Order or by ruling at hearing.

3 DATED this 20th day of December, 2002.

4
5
6 
7 JANE RODDA
8 ADMINISTRATIVE LAW JUDGE

9 Copies of the foregoing mailed/delivered
10 this 20th day of December, 2002 to:

- 11 Timothy Berg
- 12 Theresa Dwyer
- 13 FENNEMORE CRAIG
- 14 3003 North Central Avenue, Suite 2600
- 15 Phoenix, Arizona 85012-2913
- 16 Attorneys for Qwest Corporation

- 17 Scott S. Wakefield, Chief Counsel
- 18 Residential Utility Consumer Officer
- 19 1110 West Washington, Suite 220
- 20 Phoenix, Arizona 85007

- 21 Thomas H. Campbell
- 22 Michael T. Hallam
- 23 LEWIS AND ROCA
- 24 40 N. Central Avenue
- 25 Phoenix, Arizona 85004
- 26 Attorneys for WorldCom

- 27 Thomas F. Dixon
- 28 Senior Attorney
- WorldCom, Inc.
- 707 17th Street, 39th Floor
- Denver, Colorado 80202

- Russell P. Rowe
- William C. Brittan
- Campbell, Bohn, Killin, Brittan & Ray, LLC
- 270 St. Paul Street, Suite 200
- Denver, Colorado 80206

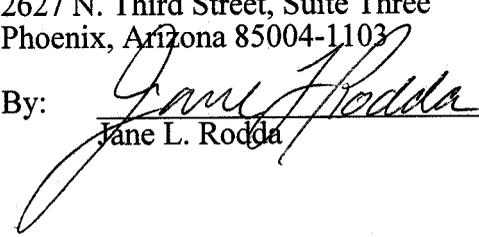
- Philip J. Roselli
- Qwest Services Corporation
- 1801 California Street
- Denver, Colorado 80202

1 Wendy Moser
2 Qwest Services Corporation
3 1801 California Street
4 Denver, Colorado 80202

3 Christopher Kempley, Chief Counsel
4 Legal Division
5 ARIZONA CORPORATION COMMISSION
6 1200 West Washington Street
7 Phoenix, Arizona 85007

6 Ernest Johnson, Director
7 Utilities Division
8 ARIZONA CORPORATION COMMISSION
9 1200 West Washington Street
10 Phoenix, Arizona 85007

9 Arizona Reporting Service, Inc.
10 2627 N. Third Street, Suite Three
11 Phoenix, Arizona 85004-1103

11 By: 
12 Jane L. Rodda

12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28