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BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

WILLIAM A. MUNDELL
Chairman

JIM IRVIN
Commissioner

MARC SPITZER
Commissioner

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TROY & TRACY DENTON, et al.,)
COMPLAINANTS,)
VS.)
QWEST CORPORATION,)
RESPONDENT.)

DOCKET: T-01051B-02-0535
(Consolidated)

STAFF'S RESPONSE TO QWEST
CORPORATION'S MOTION TO
JOIN NECESSARY PARTIES, AND
ALTERNATIVE MOTION TO
FURTHER CONSOLIDATE

The Arizona Corporation Commission ("Commission") Utilities Division Staff ("Staff") hereby submits its Response to Qwest Corporation's ("Qwest") Motion to Dismiss for Failure to Join Necessary Parties and Alternative Motion to Further Consolidate.

In its Motion, Qwest requests dismissal of the Consolidated Complaints under 47 U.S.C. Section 214(e)(3) since it argues that the Commission has not joined other Arizona carriers to determine which of those is best able to serve the Complainants' area. In addition, Qwest argues that the Commission does not have authority under State law to require Qwest to provide service in open territory in Arizona. In the alternative, Qwest requests that the Commission consolidate this Docket with the current investigation into the Arizona Universal Service Fund ("AUSF").

Qwest's request to dismiss the Consolidated Complaints should be denied. Staff believes that the Commission does have the necessary authority under State law to address the issues raised by the Complainants and order whatever relief it deems appropriate, including requiring Qwest to, in some instances, serve consumers located outside its current exchange boundaries. Staff also believes that should the Commission elect to proceed under Section 214(e)(3) of the Federal Act, it can make the required factual determinations set forth in Section 214(e)(3) of the Federal Act within the context of this case, if necessary. The FCC has not adopted any rules to-date which apply to State

1 proceedings under 47 U.S.C. Section 214(e)(3). Qwest's argument that the Commission must abide
2 by the FCC's Notice of Proposed Rulemaking in CC Docket No. 96-45¹ is misplaced. Therefore,
3 Staff does not believe that dismissal of the Consolidated Complaints on the grounds cited by Qwest
4 is appropriate.

5 Staff also objects to consolidating this Docket into AUSF Docket No. RT-00000H-97-0137.
6 The scope of the AUSF Docket, and the issues raised therein, are much broader than the specific
7 relief requested by the Complainants. While Staff acknowledges that one of the issues it is
8 examining in the AUSF Docket is rules to implement Section 214(e)(3) of the Federal Act on an
9 ongoing basis, this does not prevent the Commission from addressing the issues presented in this
10 case. In addition, the nature of the two Dockets is very different, in that the AUSF Docket will be
11 proceeding as a rulemaking while the relief requested by the Complainants in this Docket is much
12 more specific in nature.

13 RESPECTFULLY SUBMITTED this 27th day of November, 2002.

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23 Original and fifteen (15) copies
24 of the foregoing filed this
25 27th day of November, 2002 with:

26 Docket Control
27 Arizona Corporation Commission
28 1200 West Washington Street
Phoenix, Arizona 85007

Copies of the foregoing have
been mailed on this 27th day
of November, 2002 to:

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¹ Federal-State Joint Board on Universal Service: Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas, CC Docket No. 96-45, Notice of Proposed Rulemaking (Rel. September 30, 1999).

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