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EXCEPTION

BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission

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NOV 26 2001

2001 NOV 26 P 4: 05

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7 **IN THE MATTER OF THE EMERGENCY**
8 **APPLICATION OF TELIGENT SERVICES,**
9 **INC. TO DISCONTINUE LOCAL**
10 **EXCHANGE SERVICE AND FOR A**
11 **WAIVER OF R14-2-1107(B)**

Docket No. T-03761A-01-0911

12 **EXCEPTIONS OF TELIGENT SERVICES, INC.**

13
14 Teligent Services, Inc. ("Teligent") submits the following exceptions and comments
15 on the proposed order in this docket.

16 1. Teligent respectfully requests that the Commission find that an additional
17 publication of legal notice of its above-captioned application (the "Application") in a
18 newspaper will not, under the circumstances, accomplish the objectives of A.A.C. R14-2-
19 1107.B. In addition, Teligent requests that the Commission find that the notice Teligent
20 already sent directly to each affected customer by overnight mail satisfies the requirements
21 of A.A.C. R14-2-1107.B. That notice describes in some detail the contents of the
22 Application, which is all that is required under A.A.C. R14-2-1107.B. The further time
23 delay as well as the cost of publishing such notice in the legal notices portion of the paper
24 would appear to accomplish no purpose at this time as it is highly unlikely that any customer
25 who received a direct letter would receive better notice from a small legal notice printed in a
26 newspaper. Teligent submits that the type of legal notice contemplated by Rule 1107.B
27

ROSHKA HEYMAN & DEWULF, PLC

ONE ARIZONA CENTER
400 EAST VAN BUREN STREET - SUITE 800
PHOENIX, ARIZONA 85004
TELEPHONE NO 602-256-6100
FACSIMILE 602-256-6800

1 involves situations where direct customer notice is impractical because the volume or
2 identity of customers impacted cannot be determined. In the instant circumstances, Teligent
3 knows precisely how many as well as the identity of each of its affected customers and as a
4 result, has sent each an *individually addressed notice letter* ensuring that these customers
5 receive "actual" rather than mere constructive notice. Moreover, later this week, Teligent
6 will send a further personal notice to all its affected Arizona customers reiterating the
7 December 15 date and informing them of who to contact at Teligent for help in transitioning.
8 Due to Teligent's current financial status, it is critical that its customers in the Phoenix
9 market area move quickly to secure alternative service prior to when Teligent's local
10 network facilities are no longer operational. Teligent's limited resources will best be
11 devoted at this time to assisting its customers in such effort to ensure that none are left
12 without service as a result.

13 2. Teligent is aggressively acting to transition all customers to other carriers
14 before December 15, 2001 when it believes it will no longer have facilities or systems
15 available to continue the provision of uninterrupted local exchange service. Teligent has
16 been faced with similar circumstances in other markets over the past several months –
17 although without the same certainty as to the loss of facilities – and each time has managed
18 to transition all cooperating customers within a relatively short period of time. Much of
19 Teligent's success in those circumstances is because the state public utilities commissions in
20 the jurisdictions involved have encouraged the local incumbent carrier, which included
21 Qwest in Colorado and Oregon, to cooperate with Teligent and to prioritize the transition of
22 Teligent customers to them when those customers have desired to take alternative service
23 from the ILEC. Interestingly, CLECs have reported no difficulty in doing a transition within
24 a 30-day period. Similarly, Teligent requests that the Commission direct Commission Staff
25 to also contact Qwest in an effort to facilitate the transition of those Teligent customers
26 desiring to transition to Qwest by the December 15 date. Teligent does not take this
27 discontinuance of service lightly and seeks to avoid inconveniencing and disrupting

1 customers anymore than necessary. To accomplish this, however, requires the cooperation
2 of the alternative carrier. To that end, Teligent has contacted Qwest and is working with
3 them to ensure that any customers wishing to transition to Qwest will be able to get dial tone
4 with the same number by December 15, 2001. Teligent understands that Qwest has already
5 assigned a specific Qwest service manager to assist in transitioning affected Teligent
6 Arizona customers and Qwest has represented that it should be able to transition these
7 customers within a 15 calendar day timeframe.¹

8 3. Furthermore, Teligent would like to clarify the circumstances that have
9 caused the need for it to discontinue its local service networks as set forth in the application
10 in this docket. This is not a voluntary action where Teligent is merely choosing between
11 categories of services based on which business it desires to be in at this time. There are
12 little, if any, funds available to continue most of its services beyond the December 15, 2001
13 date. The services that will initially be affected when the funds cease are all services in
14 which Teligent is dependant on a third party for facilities necessary to provide some portion
15 of the service, *i.e.*, backhaul trunks, building leases, or for which multiple, labor-intensive
16 overhead support systems and processes are necessary to provision, such as local service
17 networks. These affected services include local switched service, which requires Teligent to
18 pay Qwest and numerous other telecommunications companies and suppliers for use of their
19 facilities or services. Because Teligent does not have control over these third party
20 facilities/services obtained from third parties – and because Teligent will no longer be able
21 to pay for such facilities necessary to provide these services to its end-user customers –
22 Teligent *cannot guarantee* that the third party will continue to provide the facilities or
23 services past December 15, 2001. Therefore, Teligent *cannot guarantee* that it will be able
24 to – and does not want to give the impression to customers that it can – provide affected
25

26 ¹ Teligent understands that the Commission received information indicating that Qwest
27 could not provision service for 60 to 90 days. Teligent has received confirmation from Qwest that
this is not a correct timeframe and that 15 days is the normal timeframe.

1 services past December 15, 2001. Teligent seeks to avoid the situation in which certain
2 customers of other carriers in Chapter 11, e.g. Northpoint, have found themselves, where the
3 carrier did not adequately foresee the gravity of its situation with respect to its ability to
4 continue providing service and consequently waited too long to notify customers, thereby
5 leaving them stranded. The only services that Teligent can ensure will be unaffected as of
6 December 15, 2001 are services where Teligent (or its customer) has complete control over
7 the facilities and premises used to provide those services such as its fixed-wireless private
8 links between locations and/or parties using exclusive Teligent facilities.²

9 The circumstances underlying Teligent's application – a bankruptcy filing and the
10 resulting orders from the bankruptcy court – puts Teligent in a very difficult position.
11 Teligent's operations since entering Chapter 11 in May 2001 have been dictated by the
12 bankruptcy court and its creditors. Teligent has attempted to comply with all applicable
13 regulatory requirements throughout this process, even when such requirements have imposed
14 additional and burdensome costs on it – costs which Teligent has not had the capital to
15 cover. This Commission's rules, to the extent they require Teligent to ensure that its local
16 Phoenix network remain operational beyond the date when Teligent believes it will no
17 longer be able to pay for the supporting facilities and services necessary to provide these
18 services, *i.e.*, December 15, are inconsistent with the bankruptcy court's order. Teligent
19 believes that the publication waiver it requested was and is a reasonable request given the
20 circumstances here. Teligent is also concerned that strict adherence to the Commission
21 process – and a communication of that extended process to Teligent's affected customers –
22 may be interpreted by those customers as a reason to delay their efforts to transition to other
23 carriers. Indeed, in conversations that Teligent had earlier today with Qwest, Qwest
24

25 ² Teligent will also be able to continue to resell long distance service that it offers on
26 a purely switchless reseller basis as Teligent incurs no inherent cost to provide this service
27 which it purchases in bulk and resells on a disaggregated basis and which involves little to no
back office support systems, networks or personnel.

1 indicated that if its customers would initiate a service request by November 29, it could
2 guarantee dial tone to them by December 15. Teligent does not want its Phoenix customers
3 to be lulled into a false sense that their service will continue throughout the Commission
4 process (when all of Teligent's other local service markets will cease to operate) when in
5 fact, third party suppliers have the ability and legal right to disrupt that service because
6 Teligent will no longer be able to pay them. As the Commission may know, pursuant to
7 bankruptcy law, suppliers are *entitled* to payment for any post-petition expenses incurred
8 *before* any other payments or debts are satisfied. If Teligent is unable to pay its current
9 suppliers, yet continues to accept their services and incurs a cost for those services, it will be
10 in direct violation of the bankruptcy court's order and the statute, a position it *cannot* find
11 itself in. Thus, Teligent fears that further delay on the part of the Commission to promptly
12 grant Teligent's request to cease service on December 15 will encourage customers to delay
13 a transition to another carrier and will result in those customers having no alternative service
14 when Teligent's network goes down.

15 CONCLUSION

16 In view of the foregoing, Teligent respectfully requests that the Commission modify
17 the proposed order by granting Teligent's application for a waiver of R14-2-1107.B in part
18 by:

- 19 (i) eliminating the requirement of publication of legal notice in a newspaper
20 and finding that the direct mail notice previously sent, coupled with
21 Teligent's planned follow-up notice later this week is sufficient to meet
22 Rule 1107.B; and
23 (ii) allowing Teligent to discontinue on December 15, 2001, any service on
24 which it is dependent on third party carriers and other suppliers for the
25 facilities necessary to provision that service.
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ROSHKA HEYMAN & DEWULF, PLC
ONE ARIZONA CENTER
400 EAST VAN BUREN STREET - SUITE 800
PHOENIX, ARIZONA 85004
TELEPHONE NO 602-256-6100
FACSIMILE 602-256-6800

1 DATED: November 26, 2001.

2 Respectfully submitted,

3 **TELIGENT SERVICES, INC.**

4 By 

5 Michael W. Patten
6 ROSHKA HEYMAN & DEWULF, PLC
7 Two Arizona Center
8 400 East Van Buren Street, Suite 800
9 Phoenix, Arizona 85004
10 (602) 256-6100

11 **ORIGINAL and 10 COPIES** of the
12 foregoing filed November 26, 2001, with

13 Docket Control
14 ARIZONA CORPORATION COMMISSION
15 1200 West Washington Street
16 Phoenix, Arizona 85007

17 **COPIES** of the foregoing hand-delivered
18 November 26, 2001, to:

19 Christopher Kempley, Esq.
20 Chief Legal Officer, Legal Division
21 ARIZONA CORPORATION COMMISSION
22 1200 West Washington Street
23 Phoenix, Arizona 85007

24 Ernest G. Johnson
25 Director, Utilities Division
26 ARIZONA CORPORATION COMMISSION
27 1200 West Washington Street
Phoenix, Arizona 85007

