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BEFORE THE ARIZONA CORPORATION COMMISSION

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COMMISSIONERS

MIKE GLEASON, Chairman  
WILLIAM A. MUNDELL  
JEFF HATCH-MILLER  
KRISTIN K. MAYES  
GARY PIERCE

IN THE MATTER OF THE MERGER OF QWEST CORPORATION AND QWEST LD CORP., CANCELLATION OF QWEST LD CORP.'S CERTIFICATE OF CONVENIENCE AND NECESSITY, AND APPLICATION FOR APPROVAL OF A LIMITED WAIVER FROM A.A.C. R14-2-1901 ET SEQ.

DOCKET NO. T-01051B-07-0527

DOCKET NO. T-04190A-07-0527

PROCEDURAL ORDER

**BY THE COMMISSION:**

On September 14, 2007, Qwest Corporation ("Qwest") and Qwest LD Corp. ("Qwest LD") (jointly "the Qwest entities") filed with the Arizona Corporation Commission ("Commission") a "Joint Notice of Merger; Application for Cancellation of Qwest LD Corp's CC&N and Approval of a Limited Waiver from A.A.C. R14-2-1901 Et Seq." The Qwest entities requested therein that the Commission issue an Order approving the merger of the Qwest entities under Arizona Revised Statutes ("A.R.S.") § 40-285(D), cancelling Qwest LD's Certificate of Convenience and Necessity ("CC&N"), and granting a waiver from certain authorization and notice provisions of Arizona Administrative Code ("A.A.C.") R14-2-1901 et seq. ("the anti-slamming rules"). The Qwest entities also requested that the Order be granted without a hearing.

On February 4, 2008, the Qwest entities filed an Amended Joint Notice and Application, withdrawing the request to cancel Qwest LD's CC&N and requesting that the Commission's Docket Control amend the case caption accordingly.

On May 15, 2008, the Commission's Utilities Division Staff ("Staff") issued a Staff Report in this matter, recommending that the Qwest entities' application be approved, subject to specified conditions. Staff also recommended that Qwest LD's CC&N be cancelled and that an expedited hearing be held in this matter.

On May 21, 2008, at the request of the Administrative Law Judge ("ALJ"), a telephonic procedural conference was held in this matter. The Qwest entities and Staff appeared through

1 counsel. In response to the question why the Qwest entities had not requested for Qwest LD's  
2 CC&N to be transferred to Qwest, their counsel explained that Qwest, as the successor in interest to  
3 the telephone companies that started doing business in Arizona before its statehood, has never been  
4 required to have a CC&N and thus does not need to have Qwest LD's CC&N transferred to it.  
5 Counsel for Staff generally agreed with Qwest's position.

6 When asked why the Qwest entities had withdrawn the request to have Qwest LD's CC&N  
7 cancelled, their counsel explained that the cancellation request had been withdrawn to simplify the  
8 process, after discussions with Staff. When asked why the Staff Report recommended cancellation of  
9 Qwest LD's CC&N, counsel for Staff stated that Staff's position is that the CC&N should be  
10 cancelled in this proceeding, as not cancelling it now will not simplify matters. Staff had initially  
11 been concerned that having Qwest LD comply with the notice requirements of A.A.C. R14-2-1107<sup>1</sup>  
12 could create great confusion among Qwest LD's customers, but ultimately determined that A.A.C.  
13 R14-2-1107 should not be applied in this matter. In light of Staff's current position, the Qwest  
14 entities agreed that cancellation of the CC&N would be appropriate and to make a filing requesting  
15 that cancellation.

16 The ALJ asked both the Qwest entities and Staff to provide the legal authority for the  
17 Commission to waive the anti-slamming rules, as those rules do not contain a waiver provision. As  
18 neither party was prepared to respond fully during the procedural conference, they agreed to make  
19 filings providing that legal authority and citing prior orders in which those rules have been waived.

20 On June 2, 2008, the Qwest entities filed a Second Amended Joint Notice of Merger;  
21 Application for Cancellation of Qwest LD Corp.'s CC&N and Approval of a Limited Waiver from  
22 A.A.C. R14-2-1901 et seq. ("Second Amended Application"). The Qwest entities requested therein  
23 that the Commission issue an Order approving the merger pursuant to A.R.S. § 40-285(D), cancelling  
24 Qwest LD's CC&N, and granting a waiver from certain authorization and notice provisions of the  
25 anti-slamming rules. According to the Second Amended Application, Qwest LD had approximately  
26 770,000 customers as of August 31, 2007.

27 Also on June 2, 2008, the Qwest entities filed the rebuttal testimony of David Ziegler,  
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<sup>1</sup> A.A.C. R14-2-1107 concerns applications for authorization to discontinue service by telecommunications providers.

1 supporting the Second Amended Application, responding to the Staff Report in this matter, and  
2 requesting Commission approval of the Second Amended Application.

3 On June 4, 2008, the Qwest entities filed a Request for Official Notice of Arizona Corporation  
4 Commission Authority to Grant Waiver from Anti-Slamming Rules. Qwest acknowledged that the  
5 anti-slamming rules do not contain a waiver provision, but cited several Commission Decisions in  
6 which the anti-slamming rules, or portions thereof, have been waived.<sup>2</sup>

7 On June 11, 2008, Staff filed Staff's Filing Regarding the Applicants' Request for Limited  
8 Waiver of the Slamming Rules. Staff stated that the anti-slamming rulemaking originally contained a  
9 waiver provision, which was removed at the request of the Attorney General's Office, but that case  
10 law supports the position that the Commission can waive application of its own rules, particularly  
11 when the application of a rule in a particular situation is not in the public interest. Staff also cited two  
12 Commission Decisions in which limited waivers of the anti-slamming rules were granted in the  
13 context of mergers or transfers of assets.<sup>3</sup>

14 Also on June 11, 2008, a Procedural Order was issued scheduling a hearing in this matter for  
15 July 22, 2008, at 9:30 a.m. and establishing other procedural deadlines and requirements.

16 On June 23, 2008, a telephonic procedural conference was held in this matter at the request of  
17 Staff and the Qwest entities. Staff and the Qwest entities appeared through counsel. During the  
18 procedural conference, Staff's request to have the July 22, 2008, hearing rescheduled was granted, as  
19 was the Qwest entities' request to be released from the July 1, 2008, deadline for publication of  
20 notice. The parties agreed to provide mutually acceptable alternate hearing dates, and it was  
21 determined that a Procedural Order would then be issued rescheduling the hearing and establishing  
22 other procedural deadlines and requirements.

23 Because the parties have not yet provided mutually acceptable alternate hearing dates, it is not  
24 yet possible to reschedule the hearing for a mutually acceptable date. It is necessary, however, not to  
25 delay any longer in vacating the July 22, 2008, hearing.

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27 <sup>2</sup> Qwest cited Decision No. 70218 (March 27, 2008), Decision No. 70057 (December 4, 2007), and Decision No. 67241  
28 (September 15, 2004). Qwest also cited A.A.C. R14-3-101(B) as authority for the Commission's granting a waiver of the  
anti-slamming rules, but that rule is inapposite, as it applies specifically to the rules of practice and procedure in 14  
A.A.C. 3, Article 1.

<sup>3</sup> Staff cited Decision No. 70057 (December 4, 2007) and Decision No. 69573 (May 21, 2007).

1 IT IS THEREFORE ORDERED that the **hearing** scheduled for **July 22, 2008, at 9:30 a.m.,**  
2 **is hereby vacated.**

3 IT IS FURTHER ORDERED that the procedural deadlines and requirements included in the  
4 Procedural Order issued on June 11, 2008, are hereby vacated.

5 IT IS FURTHER ORDERED that the Qwest entities and Staff shall, by **August 8, 2008,** file a  
6 document containing at least five mutually acceptable alternate hearing dates.

7 IT IS FURTHER ORDERED that all parties must comply with Rules 31 and 38 of the Rules  
8 of the Arizona Supreme Court and A.R.S. § 40-243 with respect to the practice of law and admission  
9 *pro hac vice*.

10 IT IS FURTHER ORDERED that withdrawal of representation must be made in compliance  
11 with A.A.C. R14-3-104(E) and Rule 1.16 of the Rules of Professional Conduct (under Rule 42 of the  
12 Rules of the Arizona Supreme Court). Representation before the Commission includes appearing at  
13 all hearings, procedural conferences, and Open Meetings at which the matter is scheduled for  
14 discussion, unless counsel has previously been granted permission to withdraw by the Administrative  
15 Law Judge or the Commission.

16 IT IS FURTHER ORDERED that the Ex Parte Rule (A.A.C. R14-3-113—Unauthorized  
17 Communications) applies to this proceeding and shall remain in effect until the Commission's  
18 Decision in this matter is final and non-appealable.

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

21 Dated this 14<sup>th</sup> day of July, 2008.

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24   
25 SARAH N. HARPRING  
26 ADMINISTRATIVE LAW JUDGE  
27  
28

1 Copies of the foregoing mailed/delivered  
this 11<sup>th</sup> day of July, 2008, to:

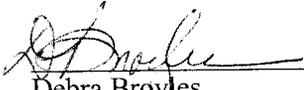
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