



BEFORE THE AFD 0000104582

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WILLIAM A. MUNDELL
Chairman
JAMES M. IRVIN
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MARC SPITZER
Commissioner

Arizona Corporation Commission
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ARIZONA CORPORATION COMMISSION
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IN THE MATTER OF U S WEST
COMMUNICATIONS, INC.'S
COMPLIANCE WITH § 271 OF THE
TELECOMMUNICATIONS ACT OF 1996

Docket No. T-00000A-97-0238

AT&T'S RESPONSE TO MODIFY
PROCEDURAL ORDER OF
JANUARY 15, 2002

AT&T Communications of the Mountain States, Inc. and TCG Phoenix

(collectively "AT&T") hereby respond to Staff's Motion to Modify Procedural Order of January 15, 2002.

I. INTRODUCTION

Staff's Motion seeks to establish a new date for Cap Gemini Telecom Media & Networks U.S., Inc. ("CGE&Y") to release the Final Report on CGE&Y's review of Qwest Corporation's ("Qwest") operation support systems ("OSS").¹ Staff also seeks to establish a date for a workshop to be held to discuss a number of ongoing issues related to the OSS test before the Final Report is released. Finally, Staff seeks to move back the date for filing Staff's Report and the parties' final comments on the Final Report and Staff's Report, consistent with the current schedule.

¹ On December 21, 2001, CGE&Y released the Draft Final Report. Workshops were held January 28 through January 31, 2001.

AT&T commends Staff for recognizing the need to address some of the remaining issues in a workshop and for moving back the release of the Final Report accordingly. However, Staff's proposal overlooks exceedingly important issues that AT&T believes need to be addressed now. Without addressing, or at least raising, all scheduling and procedural issues, Staff's Motion gives the impression that all testing issues will be resolved by the time the Final Report is released on February 28, 2002. Furthermore, it is unclear to AT&T what the procedure is and what Staff's obligations are for the remainder of the proceeding.

AT&T believes it is the appropriate time to address all the procedural issues to remove some of the uncertainty regarding the future schedule for the proceeding.

II. ARGUMENTS

A. Staff's Motion

Staff's proposal sets a date for one more workshop (February 21, 2002), sets the date for release of the Final Report (February 28, 2002), and recommends that the date for the Staff Report and the parties' comments be moved back based on the time scheduled for these activities in the current procedural schedule. AT&T has several problems with this proposal. First, it is AT&T's position the Final Report should not be released until testing is complete in accordance with the Master Test Plan ("MTP") and Test Standards Document ("TSD"). Second, AT&T can no longer agree to the time allotted for the parties to file their comments.

1. The Final Report

It is AT&T's position that the Final Report should not be released until the MTP and TSD are complied with and open issues resolved. AT&T's Comments on Draft Final Report identify a significant number of issues that have not been addressed by CGE&Y. A number of issues raised by AT&T demonstrate a failure to comply with the TSD.²

The present schedule does not require Staff to address the deficiencies until after the Final Report is addressed and then only in the Staff Report.³ It was always AT&T's understanding that test deficiencies would be resolved before the *Draft* Final Report was released, eliminating any procedural requirement to address disputed test issues.⁴ This has not occurred. Now Staff is recommending a date for the release of the Final Report and has chosen to ignore almost all of the problems raised in AT&T's Comments.⁵ Except for the few items being retested, Staff apparently believes the test is over. If the issues are not addressed by Staff, the Commission will have to resolve disputed issues regarding the overall conduct of the test before it can address the overall findings of CGE&Y contained in the Final Report and the recommendations of Staff contained in the Staff Report. In its final comments, AT&T will be forced to raise all the unresolved issues not addressed in the Final Report, leaving it up to the Commission to resolve the disputed testing issues.

² See, for example, AT&T's Comments on Draft Final Report at 4-13 and 19-32.

³ The Motion filed by Staff does not state that recommendations will be included in the Staff Report; however, oral representation by Staff have made it clear that Staff intends to include recommendations in its Staff Report.

⁴ This is the purpose of the exit criteria and TAG meetings.

⁵ Staff has required CGE&Y and HP to address several of the concerns raised by AT&T, specifically, the problems with the Daily Usage Files ("DUF") and the failure of CGE&Y to do the pre-order to order integration analysis for the EDI interface required by the TSD. Although raised in AT&T's comments on the stand-alone test environment ("SATE"), Staff has also instructed HP to review release 9.0.

AT&T filed a Motion to Suspend Testing, arguing that the MTP and TSD were not being complied with. Based on Staff's representations, one of them being that Staff and CGE&Y would comply with the MTP and TSD, AT&T withdrew its Motion to Suspend Testing. The MTP and TSD have not been complied with. Staff now seeks to obtain a new date for release of the Final Report, without addressing the deficiencies.

Staff should be required to instruct CGE&Y to address the issues raised by AT&T prior the release of the Final Report, or the matters should be sent to the TAG for resolution. Staff should be required to resolve all issues that may go to impasse in the event the TAG can not agree on a resolution of an issue raised by AT&T. This would provide a basis for resolving AT&T's Comments on the Draft Final Report. As it is now, AT&T's concerns can simply be ignored until the matter is before the Commissioners.

2. Final Comments On Final Report And Staff Report

It has always been AT&T's understanding that the Draft Final Report would be released after all Incident Work Orders ("IWOs") had been closed, testing and retesting had been completed and the exit criteria of the MTP and TSD had been met. Accordingly, the Draft Final Report would reflect the findings on all testing.

It has always been AT&T's further understanding that the Final Report would need to reflect only minor modifications necessary as a result of the information gathered in the workshop held immediately preceding its release. However, this is not what has transpired. Retesting continues after the release of the Draft Final Report on issues raised by AT&T *before* the release of the Draft Final Report. There is no question AT&T will see new findings and conclusions on the continuing retesting in the Final Report. For example, CGE&Y is reviewing Qwest's re-designed Change Management Process

("CMP"). CGE&Y just recently concluded retesting to determine if Qwest accurately provides the Daily Usage Logs ("DUF"). Results have not been released, nor has CGE&Y issued any IWOs.⁶ AT&T expects additional findings in the Final Report on CMP, DUF records, Customer Service records ("CSRs"), Firm Order Confirmations (FOCs"), and pre-order to order integration.

With the extent of the new findings that AT&T anticipates in the Final Report, AT&T can no longer support a schedule that gives the parties only 10 calendar days to file comments on the Final Report. AT&T must have adequate time to review the Final Report and the supporting documentation. Ten days is simply not enough time.

Furthermore, it has always been understood that the supporting test documentation would be placed in the viewing room on the date that a report was released. AT&T repeatedly has found during its review of the documentation located in the viewing room that all documentation was not available for review on the date a report was released, necessitating follow-up requests for access to documents.⁷ This information was subsequently provided, but the failure to place the information in the viewing room in the first instance delayed AT&T's review of the supporting documentation. AT&T has no reason to believe the same thing will not happen again when the Final Report is released.

⁶ AT&T was informed that CGE&Y the results of the retest will not be released until February 15, 2002. As part of the Regional Oversight Committee ("ROC") test, KPMG, the test administrator, finished the second retesting Qwest's provisioning of DUF records. KPMG found that Qwest is providing only 89% of the DUF records. This is unsatisfactory in KPMG's opinion.

⁷ The statement is not meant to be judgmental. There can be any number of reasons for this, including the quantity of documents covered by the report. The point is, for whatever reasons, all the documents have not always been in the viewing room the date a report is released.

To conclude, 10 calendar days does not provide parties sufficient time to review the Final Report and Staff Report, new test documentation, and prepare and file comments. AT&T requests that the parties be given 21 calendar days to file their comments.

B. Additional SATE Testing

On December 21, 2001, Hewlett-Packard ("HP") released its report on Qwest's SATE. AT&T raised a number of issues with HP's Report. Generally, AT&T believes SATE has not been proven to be adequate.

HP made a number of recommendations in its Report. Many of HP's recommendations were a result of the inability of HP to thoroughly test SATE because Staff placed a requirement on HP to release its Final Report no later than December 21, 2001. Because HP was unable to review a major release of SATE, HP recommended that a third party review the release of SATE 9.0, the next major release of SATE.

Unbeknownst to AT&T, Staff recently advised HP to review release 9.0 in accordance with its recommendation. Since Staff obtained no input from the TAG, AT&T is unclear how HP intends to perform the test on release 9.0.⁸ Furthermore, AT&T does not know when HP will complete the review of release 9.0. Because AT&T does not know the extent of testing it cannot say what the extent of its comments will be.⁹

⁸ This is of considerable concern to AT&T, as the scope of the testing is every bit as important as the decision to retest release 9.0. An inadequate test will result in issues regarding the adequacy of the test being raised after the test is complete. AT&T's fears are hypothetical, based on conversations between Qwest and HP that AT&T has only been able to listen in on.

⁹ AT&T is not suggesting that a completion date for testing release 9.0 be set; in fact, AT&T would oppose setting any date for release of HP's Report on release 9.0. Setting artificial test deadlines has caused numerous problems in the past.

In any event, some provision must be made to allow the parties an opportunity to review the test results, the supporting documentation, the HP report, and to file comments. This time must be adequate; at a minimum, AT&T must have 14 calendar days. Furthermore, Staff's Motion makes no mention of the HP test of release 9.0.¹⁰ Staff has not indicated whether it wishes to file a report on HP's testing of SATE. If Staff does wish to file a report on HP's testing of SATE, this needs to be factored in any schedule.

C. Unbundled Network Elements - Rates

The Commission is currently reviewing the rates for unbundled network elements ("UNEs"). The ALJ released a recommended decision on the first phase. However, the parties only recently pointed out a number of issues that were not addressed by the ALJ in the recommended order. The ALJ must address these issues and release a supplemental recommended order. The second phase of the proceeding is addressing the rate for unbundled switching. The ALJ has not released a recommended order on this phase.

The importance of the cost case cannot be underestimated. First, there is some debate whether the current rates are cost-based pursuant to section 252 of the Act. There is also debate whether the current rates are in the public interest.

The United States Court of Appeals for the District of Columbia recently ruled that the Federal Communications Commission ("FCC") had to address the appellants' "price squeeze" arguments during its public interest analysis. The same arguments raised by appellants were raised by AT&T in Arizona as a part of AT&T's public interest

¹⁰ AT&T understands HP's Report on release 9.0 will be separate and apart from the Final Report.

testimony. Staff has not identified the rates it intends to use in conducting its public interest analysis.

Some of the Commissioners have expressed an interest in reviewing the UNE rates either before or concurrently with their review of Qwest's Section 271 Application. This mitigates any attempt to release the Final Report with undue haste.

There is considerable uncertainty when the ALJ will release the phase 1 and phase 2 recommended orders for the Commissioners' consideration. Staff should be required to state whether it intends to address the price squeeze issue in its public interest analysis and what rates it intends to use to perform the analysis. If Staff intends to use the new rates, there is no reason to schedule comments on the Final Report without providing the parties adequate time.

D. Staff's Overall Finding On Section 271 Compliance

The schedule currently does not provide for Staff to make a finding on Qwest's overall compliance with section 271. The existing approach is piecemeal. Staff has commented on Quest's compliance with individual checklist items and other section 271 issues. Staff will provide a recommendation on whether Qwest's OSS are *nondiscriminatory and provide competitors a meaningful opportunity to compete*. AT&T assumes Staff will address the adequacy of Qwest's SATE.¹¹ However, there is no provision for Staff to make overall, final findings and conclusions. This is of some concern, considering all the agreements made by Qwest and the conditions contained in the Commission's earlier orders.

¹¹ As previously noted, the present schedule does not address this contingency.

AT&T believes Staff should be required to file a report on Qwest's overall compliance with section 271. The Commission has ordered Staff to review the Statement of Generally Available Terms and Conditions ("SGAT") and verify that Qwest has indeed incorporated the provisions it has agreed to add to the SGAT and the provisions ordered by the Commission to obtain findings of compliance.¹² Staff should be required to report whether these agreements and orders have been complied with before the Commissioners review Qwest's application. The procedural order should reflect this obligation and the filing of comprehensive Staff findings and conclusions.

III. CONCLUSION

AT&T is concerned that the Motion filed by Staff does not address all procedural and scheduling issues. AT&T is concerned that the Final Report will be released before all testing is complete. AT&T believes its Comments on the Draft Final Report should be addressed before the Final Report is released, not after. Either the Comments raised by AT&T must be addressed by CGE&Y or they must be resolved by the TAG, or by Staff if an issue goes to impasse.

The schedule does not provide the CLECs an opportunity to respond to HP's report on SATE release 9.0. AT&T does not seek a specific time for completion of the retest. This would restrict testing of release 9.0. However, AT&T does wish to obtain some recognition that CLECs will have an adequate opportunity to respond. AT&T acknowledges that it has been provided an opportunity to respond to all test reports. It

¹² For example, *see* Decision No. 64300: "IT IS FURTHER ORDERED that Commission Staff shall file within twenty days of Qwest Corporation's [compliance] filing, its recommendation to adopt or reject the proposed SGAT language and a procedural recommendation for resolving any remaining disputes." Similar language is contained in other orders.

does believe, however, that on occasion, the time allotted has not always been adequate. Staff should also indicate whether it needs time to file its own report on SATE.

Finally, Staff should issue comprehensive findings and conclusions that indicate whether Qwest has done what it promised and what the Commission has ordered. Qwest has agreed to a substantial number of SGAT changes to obtain findings of checklist compliance. The Commission has ordered other changes. These changes should not be taken for granted. Staff should verify that the final revised SGAT is complete and conforms to prior agreements and orders.

Retesting is ongoing. AT&T does not believe it is appropriate to set a date for release of the *Final Report* until AT&T's Comments are addressed, the retesting is complete and the findings support Qwest's compliance. By setting a date for release of the *Final Report*, the adequacy of any *Final Report* that ultimately is released is prejudiced, as any release date sets an artificial deadline that undermines the quality and adequacy of the test. There is ample evidence of this during this test.

AT&T respectfully requests that the ALJ take these matters under consideration when ruling on Staff's Motion and issuing her order. There is considerable uncertainty regarding the present state of testing and Qwest's compliance with section 271. Time and time again schedules have been set that subsequently had to be amended to address issues that remained unresolved. AT&T has pointed out a number of issues that remain unresolved, and that have no definite date for resolution. Except for setting a workshop date, AT&T does not believe any further scheduling dates should be set until Staff can come back and state affirmatively that all issues have been resolved and testing is complete.

Respectfully submitted this 12th day of February, 2002.

**AT&T COMMUNICATIONS
OF THE MOUNTAIN STATES, INC.
AND TCG PHOENIX**

By: 

Richard S. Wolters
AT&T
1875 Lawrence Street, Suite 1503
Denver, CO 80202
(303) 298-6741

Gregory Hoffman
AT&T
795 Folsom Street, Suite 2161
San Francisco, CA 94107
(415) 442-3776

CERTIFICATE OF SERVICE

I hereby certify that the original and 10 copies of **AT&T's Response to Modify Procedural Order of January 15, 2002**, Docket No. T-00000A-97-0238 were sent by overnight delivery on February 12, 2002 to:

Arizona Corporation Commission
Docket Control – Utilities Division
1200 West Washington Street
Phoenix, AZ 85007

and a true and correct copy was sent by overnight delivery on February 12, 2002 to:

Maureen Scott
Legal Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, AZ 85007

Mark A. DiNunzio
Arizona Corporation Commission
1200 West Washington Street
Phoenix, AZ 85007

Ernest Johnson
Director - Utilities Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, AZ 85007

Christopher Kempley
Arizona Corporation Commission
Legal Division
1200 West Washington Street
Phoenix, AZ 85007

Jane Rodda
Administrative Law Judge
Arizona Corporation Commission
400 West Congress
Tucson, AZ 85701-1347

and a true and correct copy was sent by U. S. Mail on February 12, 2002 to:

Thomas F. Dixon
WorldCom, Inc.
707 – 17th Street, #3900
Denver, CO 80202

Terry Tan
WorldCom, Inc.
201 Spear Street, 9th Floor
San Francisco, CA 94015

K. Megan Doberneck
Covad Communications Company
7901 Lowry Blvd.
Denver, CO 80230

Bradley Carroll
Cox Arizona Telcom, L.L.C.
20401 North 29th Avenue
Phoenix, AZ 85027-3148

Michael M. Grant
Gallagher and Kennedy
2575 East Camelback Road
Phoenix, AZ 85016-9225

Gena Doyscher
Global Crossing Local Services, Inc.
1221 Nicollet Mall, Suite 300
Minneapolis MN 55403

Traci Kirkpatrick
Davis Wright Tremaine LLP
1300 S.W. Fifth Avenue
Portland, OR 97201

Michael W. Patten
Roshka Heyman & DeWulf, PLC
400 North Fifth Street, Suite 1000
Phoenix, AZ 85004-3906

Joyce Hundley
United States Dept. of Justice
Antitrust Division
1401 H Street NW, Suite 8000
Washington, DC 20530

Daniel Pozefsky
Residential Utility Consumer Office
2828 North Central Ave., #1200
Phoenix, AZ 85004

Mark N. Rogers
Excell Agent Services, L.L.C.
2175 W. 14th Street
Tempe, AZ 85281

Mark P. Trincherro
Davis Wright Tremaine
1300 SW Fifth Ave., Suite 2300
Portland OR 97201-5682

Penny Bewick
New Edge Networks
3000 Columbia House Blvd., Suite 106
Vancouver, WA 98661

Andrea P. Harris
Senior Manager, Regulatory
Allegiance Telecom, Inc.
2101 Webster, Suite 1580
Oakland, CA 94612

Karen L. Clauson
Eschelon Telecom, Inc.
730 2nd Avenue South, Suite 1200
Minneapolis, MN 55402

Joan S. Burke
Osborn Maledon, P.A.
2929 N. Central Avenue, 21st Floor
Phoenix, AZ 85067-6379

Eric S. Heath
Sprint Communications Company L.P.
100 Spear Street, Suite 930
San Francisco, CA 94105

Charles Kallenbach
American Communications Services, Inc.
131 National Business Parkway
Annapolis Junction, MD 20701

Jeffrey W. Crockett
Snell & Wilmer, LLP
One Arizona Center
Phoenix, AZ 85004-0001

Todd C. Wiley
Gallagher & Kennedy, P.A.
2575 East Camelback Road
Phoenix, AZ 85016-9225

Michael B. Hazzard
Kelley, Drye & Warren, LLP
1200 19th Street, NW, Fifth Floor
Washington, DC 20036

Andrew Crain
Qwest Corporation
1801 California Street, Suite 4900
Denver, CO 80202

Daniel Waggoner
Davis Wright Tremaine
2600 Century Square
1501 Fourth Avenue
Seattle, WA 98101-1688

Janet Livengood
Regional Vice President
Z-Tel Communications, Inc.
601 S. Harbour Island Blvd., Suite 220
Tampa, FL 33602

Timothy Berg
Fennemore Craig, P.C.
3003 North Central Ave., #2600
Phoenix, AZ 85012

Charles W. Steese
Qwest Corporation
1801 California Street, Suite 4900
Denver, CO 80202

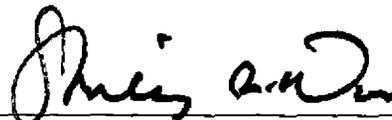
Raymond S. Heyman
Randall H. Warner
Roshka Heyman & DeWulf
Two Arizona Center
400 N. Fifth Street, Suite 1000
Phoenix, AZ 85004

Bill Haas
Richard Lipman
McLeodUSA Telecommunications
Services, Inc.
6400 C Street SW
Cedar Rapids, IA 54206-3177

Diane Bacon, Legislative Director
Communications Workers of America
Arizona State Council
District 7 AFL-CIO, CLC
5818 N. 7th Street, Suite 206
Phoenix, AZ 85014-5811

Brian Thomas
Vice President – Regulatory
Time Warner Telecom, Inc.
520 S.W. 6th Avenue, Suite 300
Portland, OR 97204

Executed on February 12, 2002 in San Francisco, California.



Shirley S. Woo