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BEFORE THE ARIZONA CORPORATION COMMISSION

1
2 WILLIAM A. MUNDELL
Chairman
3 JIM IRVIN
Commissioner
4 MARC SPITZER
Commissioner
5

6 IN THE MATTER OF THE U S WEST
COMMUNICATIONS, INC.'S COMPLIANCE
7 WITH SECTION 271 OF THE
COMMUNICATIONS ACT OF 1996
8

DOCKET NO. T-00000A-97-0238

NOTICE OF ERRATA FILING

9 On December 24, 2001, the Arizona Corporation Commission Staff ("Staff") filed its
10 Final Interim Report on Checklist Item 2, Access to Unbundled Network Elements (UNEs).
11 Staff hereby files this errata to the Final Interim Report on Checklist Item 2. Please substitute
12 the attached pages 57, 61 and 62 for the pages contained in Staff's December 24, 2001 filing.

13 RESPECTFULLY SUBMITTED this 4th day of February, 2002

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20 The original and ten (10) copies of the
21 foregoing were filed this 4th day
of February, 2002 with:

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Arizona Corporation Commission

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25 Copies of the foregoing were
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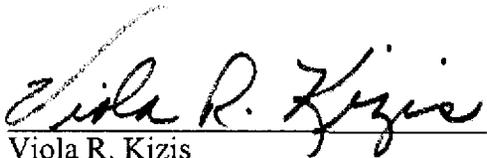
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b. Discussion and Staff Recommendation

267. This issue was also discussed as Checklist item 5 - Transport issue TR-5 and Checklist item 2 - UNEs issue UNE-P-10 (to be discussed later in this report). Consistent with TR-5, Staff recommends that the SGAT be modified to remove Qwest's ability to charge where there exists another available collocation location where regeneration would not be required, or where there would have been such a location, had Qwest not reserved space for its future use in the affected premises.

268. Understandably, Qwest wants to be compensated for all costs it incurs associated with collocation, but on the other hand, the ACC must ensure that the charge is not applied in a discriminatory fashion against the CLECs. In other words, Qwest must be incented to design the most efficient network possible for the CLECs as well as itself. As AT&T stated, Qwest, for all practical purposes, has the sole ability to determine the location of the CLEC's collocation arrangements, which could lead to regeneration, over which the CLEC would have no control. This result could lead to unequal treatment of all carriers since some may be required to pay regeneration while others do not, thus impeding Qwest in its obligation to provide network elements on a non-discriminatory basis to CLECs.

269. This issue recently arose in the Arizona Cost Docket to which Qwest resolved this issue by not requiring CLECs to pay for regeneration charges when there exists another available collocation location where regeneration would not be required or where there would have been such a location had Qwest not reserved space for its future use in the affected premises.

270. Regarding channel regeneration charges, Staff recommends that the SGAT be modified to eliminate Qwest's ability to charge where there exists another available collocation location where regeneration would not be required, or where there would have been such a location, had Qwest not reserved space for its future use in the affected premises.

DISPUTED ISSUE NO. 3: Is Qwest obligated to construct UNEs for CLECs other than certain types of unbundled loops and line ports? (CL2-13 and UNEC-8)

a. Summary of Qwest and CLEC Positions

271. AT&T argued that Qwest is obligated to build network elements on a nondiscriminatory basis for CLECs and that Qwest must build UNEs for CLECs under the same terms and conditions that Qwest would build network elements for itself (or its retail customers) at cost-based rates. AT&T May 18, 2001 Brief at p. 4. The SGAT does not provide for this. *Id.* The SGAT states that Qwest will provide CLECs access to UNEs "provided that facilities are available." *Id.* In the section of the SGAT regarding construction, Qwest states it will not build UNEs unless it believes, based on "an individual financial assessment," that it is in *Qwest's* interests to do so. *Id.*

same extent it would construct such facilities for itself to fulfill its COLR or ETC obligations. In addition, Qwest may be required to construct or make additions for certain types of unbundled loops and line ports based on FCC rules and decisions. None of the FCC rulings or Court decisions support imposing upon Qwest any further obligation to construct new facilities beyond the "existing" network on behalf of the CLECs. This, of course, presumes that within the "existing" network, to the extent additional capacity is needed, Qwest will provide it. Otherwise what would be the purpose behind the intricate and complex forecasting process that is undertaken between Qwest and the CLECs. Staff recommended that Qwest modify its SGAT language to be consistent with this recommendation.

289. In its Comments to Staff's Proposed Findings of Fact and Conclusions of Law, Qwest challenges and requests clarification of the last three sentences of paragraph 288. Comments at p. 3. Qwest states that the CLECs objected to any forecasting requirement for UNEs and that now there is no forecasting process at all undertaken between Qwest and the CLECs regarding UNEs. Qwest requests that the Commission reverse the Proposed Order, and adopt Qwest's proposed SGAT language which would require Qwest to evaluate a CLEC's request for special construction utilizing similar criterion to that Qwest uses to determine whether to construct facilities for retail customers. Comments at p. 5. Qwest's concern is to prevent the situation where a CLEC can demand that Qwest build a network on the CLEC's behalf. Qwest argues that the outcome would not only be unsupported by any authority, it contradicts the Act, controlling precedent, relevant FCC guidance and decisions from other state commissions. *Id.*

290. In its Comments to Staff's Proposed Findings of Fact and Conclusions of Law, AT&T argues that Qwest must build UNEs for CLECs on a nondiscriminatory basis pursuant to section 251(c)(3). Comments at p. 9. AT&T states that the FCC has held that this obligation means that Qwest must provide to CLECs UNEs on the same terms and conditions that it provides UNEs to itself or to its retail customers. *Id.* AT&T states that Qwest has made it clear that in numerous jurisdictions that it may not agree to build a facility for a CLEC but decide to build the same facility for a retail customer which is discriminatory. Comments at p. 9.

291. Staff believes that the points raised by both Qwest and AT&T have merit, and that its recommendation in its Proposed Findings of Fact and Conclusions of Law is obviously in need of clarification. First, there appears to be no dispute that Qwest must construct facilities if Qwest would be legally obligated to build such facilities to meet its Carrier of Last Resort (COLR) obligation to provide basic local exchange service or its Eligible Telecommunications Carrier (ETC) obligation to provide primary basic local exchange service. To clarify Staff's original position, Qwest is certainly not required to construct any and all network additions or modifications that a CLEC may request.⁵ This was not Staff's recommendation in its Proposed Findings of Fact and Conclusions of

⁵ Qwest states that it has already agreed to perform incremental facility work including conditioning, placing a drop, adding a network interface device, adding a card to existing equipment at the central office or remote locations, adding central office tie pairs, and adding field cross jumpers. Comments at p. 17.

Law. However, Staff agrees with AT&T that Qwest must provide CLEC's with UNEs on the same terms and conditions that it provides UNEs to itself or to its retail customers. In this regard, Qwest states that it would evaluate a CLEC's request for "special construction" utilizing similar criterion to that which Qwest uses to determine whether to construct facilities for retail customers. Qwest Comments at p. 5. Qwest also states that it has agreed to provide CLEC notification of major loop facility builds through the ICONN database. The notice will include the identification of any funded outside plant engineering jobs that exceeds \$100,000 in total cost, the estimated ready for service date, the number of pairs or fibers added, and the location of the new facilities (distribution area for copper distribution, route number for copper feeder, and termination CLLI codes for fiber). CLECs may then use this information to adjust their planning and marketing strategies accordingly.

292. Qwest's representation that it will consider CLEC requests using the same assessment process it uses for itself to determine whether to build for retail is critical and is really the important point in this discussion. It is also important that Qwest will treat CLEC orders the same as it would its own. Qwest states that if there is a funded construction job pending, it will take the CLEC's order and hold it, notifying the CLEC and holding the order until the construction job is completed. Staff recommends that Qwest be required to amend Section 9.19 of the SGAT as recommended by the Colorado Hearing Commissioner to state "Qwest will assess whether to build for CLEC in the same manner that it assesses whether to build for itself." Qwest should include objective assessment criteria within the SGAT or an appendix to the SGAT, if possible. Qwest should also amend Section 9.19 of the SGAT to further state: "Qwest shall treat CLEC orders the same as it would treat its own orders for new or additional service."

DISPUTED ISSUE NO. 4: Is prohibition on Qwest connecting UNEs with finished services for a CLEC appropriate? (UNEC-2(A)33)

a. Summary of Qwest and CLEC Positions

293. AT&T argues that the SGAT should be amended to remove any prohibition on connecting UNEs to finished services, except where expressly permitted by the FCC. AT&T May 18, 2001 Brief at p. 11. AT&T refers to SGAT section 9.23.1.2.2 which contains wording that prohibits CLECs from connecting UNEs to finished services, unless going through a collocation. *Id.* at p. 9. AT&T argues that these are not FCC limitations and the words "finished services" are not used by the FCC and the FCC does not allow restrictions on the use of UNEs. *Id.* AT&T makes the argument that connection is allowed at any technically feasible point and Qwest has not shown that accessing UNEs by connecting the UNE to a finished service is not technically feasible. *Id.* at p. 9-10. Qwest's restriction requires CLECs to construct their own separate networks because traffic cannot be aggregated on the same trunk groups. *Id.* at p. 10. AT&T acknowledges that the FCC has limitations on certain connections of UNEs to tariffed services but argues this is does not extend to all UNEs. *Id.*