

ORIGINAL



0000105458

BEFORE THE ARIZONA CORPORATION COMMISSION RECEIVED

WILLIAM A. MUNDELL  
COMMISSIONER  
JIM IRVIN  
COMMISSIONER  
MARC SPITZER  
COMMISSIONER

Arizona Corporation Commission

DOCKETED

MAR 21 2002

2002 MAR 21 P 4:13

AZ CORP COMMISSION  
REGULATORY CONTROL

DOCKETED BY	<i>ma</i>
-------------	-----------

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

**RESPONSE OF QWEST CORPORATION TO AT&T  
SUPPLEMENTAL AUTHORITY FILING**

Qwest Corporation ("Qwest") respectfully submits the following comments on the recent filing by AT&T Communications of the Mountain States, Inc. and TCG Phoenix (collectively "AT&T") of a Minnesota administrative law judge's recommended decision with respect to Qwest's compliance with Section 272.

1. Under Minnesota law, that ALJ recommendation "ha[s] no legal effect unless expressly adopted by the Commission as a final order."<sup>1</sup> As Qwest intends to demonstrate in its exceptions to that recommendation, a number of its positions are inconsistent with the determinations of every other authority that has addressed Qwest's Section 272 showing -- the Multistate Facilitator, the Nebraska Commission, the New Mexico Commission, the Washington Commission, the Montana Commission (in its preliminary report), and -- most recently -- the order of the Chairman of the Colorado Commission.<sup>2</sup>

<sup>1</sup> Minnesota ALJ Decision at 2.

<sup>2</sup> Qwest has previously provided this Commission with copies of each of the foregoing decisions.

2. The Minnesota ALJ actually rejected AT&T's principal claims here (as well as a number of its other claims). These involve Qwest's compliance with the FCC's accounting rules in the timeliness of its accrual and billing for transactions with its 272 affiliate. On these issues, the Minnesota ALJ concluded that "Qwest has demonstrated by a preponderance of the evidence that the Qwest BOC and the 272 Affiliate will comply with Section 272(b)(2)," the relevant subsection of the statute.<sup>3</sup> He recognized, as have the numerous other authorities cited above, that the transitioning of a new 272 affiliate's accounting controls will necessarily "take time to complete" and that past accounting discrepancies in transactions that predate that transition, contrary to AT&T's argument, are "not critical to issues of future compliance."<sup>4</sup> The ALJ report also found that "Qwest has described controls to assure ongoing compliance with GAAP in future transactions."<sup>5</sup> It also found Qwest in compliance with the Section 272(b)(4) requirement that the creditors of the 272 affiliate not have recourse to the assets of the BOC.<sup>6</sup>

3. With respect to other aspects of Section 272, the report stated that Qwest had not yet met its burden of demonstrating compliance but could do so by taking recommended actions.<sup>7</sup> These aspects of the Minnesota ALJ's decision ultimately derive from its assertion that the FCC decisions regarding Section 272 are based on a view of the statute that "does not have a common sense meaning," or that "the FCC may well reconsider" in the future.<sup>8</sup> While Qwest is in the process of reviewing the Minnesota ALJ's recommendations (some of which are in fact already in place at Qwest), they thus go well beyond what the FCC has required of other BOCs who have

---

<sup>3</sup> Minnesota ALJ Decision at ¶ 37.

<sup>4</sup> *Id.* at 42.

<sup>5</sup> *Id.* at ¶ 37. The Minnesota ALJ also found no merit in AT&T's allegation that Qwest's process for evaluating service requests is discriminatory (¶ 107) and rejected AT&T's request that Qwest be burdened with posting requirements not imposed by the FCC on other RBOCs (¶ 101) or marketing restrictions inconsistent with the Section 272(g) "safe harbor" previously outlined by the FCC (¶¶ 130-131).

<sup>6</sup> *Id.* ¶ 73.

<sup>7</sup> *Id.* at 40-43.

<sup>8</sup> *Id.* at ¶¶ 23, 61 & n.116.

received 271 approval. The FCC has made clear that a state commission may not “condition or delay BOC entry into intrastate interLATA services” with requirements inconsistent with those imposed by the FCC,<sup>9</sup> whether or not the state commission has a different view of what “common sense” requires. Qwest maintains that its evidence meets the requirements of section 272 as applied by the FCC and it requests that this Commission issue an order finding Qwest in compliance with Section 272.

DATED this 21<sup>st</sup>th day of March, 2002.

Respectfully submitted,

QWEST CORPORATION

By: 

Timothy Berg  
Theresa Dwyer  
FENNEMORE CRAIG, P.C.  
3003 North Central Ave., Suite 2600  
Phoenix, Arizona 85012-2913  
(602) 916-5421  
(602) 916-5999 (facsimile)

John L. Munn  
QWEST CORPORATION  
1801 California Street, Suite 4900  
Denver, CO 80202  
(303) 672-5823

*Attorneys for Qwest Corporation*

<sup>9</sup> First Report and Order and Further Notice of Proposed Rulemaking, *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended*, 11 FCC Rcd 21905 (1996) ¶ 47 (“Non-Accounting Safeguards Order”). It is axiomatic that if a state commission cannot condition or delay BOC entry into intrastate interLATA services, it also cannot condition or delay BOC entry into interstate interLATA entry with requirements inconsistent with those imposed by the FCC.

**ORIGINAL +10 copies filed this 21<sup>st</sup> day  
of March, 2002, with:**

Docket Control  
ARIZONA CORPORATION COMMISSION  
1200 West Washington  
Phoenix, AZ

**COPY of the foregoing delivered this day to:**

Maureen A. Scott  
Legal Division  
ARIZONA CORPORATION COMMISSION  
1200 W. Washington St.  
Phoenix, AZ 85007

Ernest Johnson, Director  
Utilities Division  
ARIZONA CORPORATION COMMISSION  
1200 W. Washington St.  
Phoenix, AZ 85007

Lyn Farmer, Chief Administrative Law Judge  
Jane Rodda, Administrative Law Judge  
Hearing Division  
ARIZONA CORPORATION COMMISSION  
1200 W. Washington  
Phoenix, AZ 85007

Caroline Butler  
Legal Division  
ARIZONA CORPORATION COMMISSION  
1200 W. Washington St.  
Phoenix, AZ 85007

**COPY of the foregoing mailed this day to:**

Eric S. Heath  
SPRINT COMMUNICATIONS CO.  
100 Spear Street, Suite 930  
San Francisco, CA 94105

Thomas Campbell  
LEWIS & ROCA  
40 N. Central Avenue  
Phoenix, AZ 85004

Joan S. Burke  
OSBORN MALEDON, P.A.  
2929 N. Central Ave., 21<sup>st</sup> Floor  
PO Box 36379  
Phoenix, AZ 85067-6379

Thomas F. Dixon  
WORLD COM, INC.  
707 N. 17<sup>th</sup> Street #3900  
Denver, CO 80202

Scott S. Wakefield  
RUCO  
2828 N. Central Ave., Ste. 1200  
Phoenix, AZ 85004

Michael M. Grant  
Todd C. Wiley  
GALLAGHER & KENNEDY  
2575 E. Camelback Road  
Phoenix, AZ 85016-9225

Michael Patten  
ROSHKA, HEYMAN & DEWULF  
400 E. Van Buren, Ste. 900  
Phoenix, AZ 85004-3906

Bradley S. Carroll  
COX COMMUNICATIONS  
20402 North 29<sup>th</sup> Avenue  
Phoenix, AZ 85027-3148

Daniel Waggoner  
DAVIS, WRIGHT & TREMAINE  
2600 Century Square  
1501 Fourth Avenue  
Seattle, WA 98101

Traci Grundon  
DAVIS, WRIGHT & TREMAINE  
1300 S.W. Fifth Avenue  
Portland, OR 97201

Richard S. Wolters  
Maria Arias-Chapleau  
AT&T Law Department  
1875 Lawrence Street, #1575  
Denver, CO 80202

Gregory Hoffman  
AT&T  
795 Folsom Street, Room 2159  
San Francisco, CA 94107-1243

David Kaufman  
E.SPIRE COMMUNICATIONS, INC.  
343 W. Manhattan Street  
Santa Fe, NM 87501

Alaine Miller  
XO COMMUNICATIONS, INC.  
500 108<sup>th</sup> Ave. NE, Ste. 2200  
Bellevue, WA 98004

Diane Bacon, Legislative Director  
COMMUNICATIONS WORKERS OF AMERICA  
5818 N. 7<sup>th</sup> St., Ste. 206  
Phoenix, AZ 85014-5811

Philip A. Doherty  
545 S. Prospect Street, Ste. 22  
Burlington, VT

W. Hagood Bellinger  
5312 Trowbridge Drive  
Dunwoody, GA 30338

Joyce Hundley  
U.S. DEPARTMENT OF JUSTICE  
Antitrust Division  
1401 H Street N.W. #8000  
Washington, DC 20530

Andrew O. Isar  
TELECOMMUNICATIONS RESELLERS ASSOC.  
4312 92<sup>nd</sup> Avenue, NW  
Gig Harbor, WA 98335

Raymond S. Heyman  
ROSHKA, HEYMAN & DEWULF  
400 N. Van Buren, Ste. 800  
Phoenix, AZ 85004-3906

Thomas L. Mumaw  
SNELL & WILMER  
One Arizona Center  
Phoenix, AZ 85004-0001

Charles Kallenbach  
AMERICAN COMMUNICATIONS SVCS, INC.  
131 National Business Parkway  
Annapolis Junction, MD 20701

Gena Doyscher  
GLOBAL CROSSING SERVICES, INC.  
1221 Nicollet Mall  
Minneapolis, MN 55403-2420

Andrea Harris, Senior Manager  
ALLEGIANCE TELECOM INC OF ARIZONA  
2101 Webster, Ste. 1580  
Oakland, CA 94612

Gary L. Lane, Esq.  
6902 East 1<sup>st</sup> Street, Suite 201  
Scottsdale, AZ 85251

Kevin Chapman  
SBC TELECOM, INC.  
300 Convent Street, Room 13-Q-40  
San Antonio, TX 78205

M. Andrew Andrade  
TESS COMMUNICATIONS, INC.  
5261 S. Quebec Street, Ste. 150  
Greenwood Village, CO 80111

Richard Sampson  
Z-TEL COMMUNICATIONS, INC.  
601 S. Harbour Island, Ste. 220  
Tampa, FL 33602

Megan Doberneck  
COVAD COMMUNICATIONS COMPANY  
7901 Lowry Boulevard  
Denver, CO 80230

Richard P. Kolb  
Vice President of Regulatory Affairs  
ONE POINT COMMUNICATIONS  
Two Conway Park  
150 Field Drive, Ste. 300  
Lake Forest, IL 60045

Janet Napolitano, Attorney General  
OFFICE OF THE ATTORNEY GENERAL  
1275 West Washington  
Phoenix, AZ 85007

Steven J. Duffy  
RIDGE & ISAACSON, P.C.  
3101 North Central Ave., Ste. 1090  
Phoenix, AZ 85012



A handwritten signature in cursive script, appearing to read "Steven J. Duffy", is written over a horizontal line.