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BEFORE THE 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 MOTION TO REQUIRE
QWEST TO SUPPLEMENT THE
RECORD**

AT&T Communications of the Mountain States, Inc. and TCG Phoenix (collectively, "AT&T") hereby move for an order requiring Qwest Corporation ("Qwest") to supplement the record.

Pursuant to section 252(e) of the Telecommunications Act of 1996 ("Act"), all interconnection agreements adopted by negotiation or arbitration shall be submitted to the state commission for approval. Interconnection agreements generally contain the terms for obtaining interconnection, services or network elements pursuant to section 251 of the Act. Although section 251 permits the incumbent local exchange carrier ("ILEC") and another carrier to voluntarily negotiate without regard to the requirements of section 251(b) and (c), section 252(a) makes it clear that the agreement must be filed with the state commission under subsection (e).

There are a number of reasons for filing interconnection agreements with the state commission. Section 252(e)(2) provides the reasons a state commission may reject an agreement. Generally, the state commission may reject an agreement if it discriminates against a

carrier not a party to the agreement or if it is “not consistent with the public interest, convenience or necessity.” 47 U.S.C. § 252(e)(2)(A)(i)-(ii). There is another reason that the filing of agreements with the state commission is necessary: Section 252(i) of the Act requires the ILEC to make available any interconnection, service or network elements provided under an agreement approved by a state commission to any other requesting party under the same terms and conditions.

The failure to file an agreement entered into between Qwest and another carrier, whether voluntarily or through arbitration, is a violation of the federal Act. It is readily apparent that agreements voluntarily entered into between Qwest and a competitive local exchange carrier (“CLEC”) that are not filed (secret agreements) create the potential for discrimination between CLECs and for agreements that are not in the public interest. Nor can other CLECs take advantage of agreements that are secret as permitted by the Act.

On February 14, 2002, the Minnesota Department of Commerce filed a complaint with the Minnesota Public Utilities Commission against Qwest Corporation alleging that it had entered into agreements with telecommunications carriers that it had failed to file for approval with the Minnesota Public Utilities Commission pursuant to section 252(e) and, consequently, failed to make available to other carriers pursuant to section 252(i) of the Act.¹ Qwest answered the Complaint, arguing that 1) the scope of section 252 filing requirements exceeds the Minnesota Commission’s jurisdiction; and 2) if the agreements should have been filed with the Commission under section 252 and were not, the agreements are void and unenforceable.²

¹ *In the Matter of the Complaint of the Minnesota Department of Commerce against Qwest Corporation*, Docket No. P-421/DI-01-814 (MN PUC Feb. 14, 2002) (“*Minnesota Complaint Case*”)

² *Minnesota Complaint Case*, Qwest Corporation’s Verified Answer to the Complaint of the Minnesota Department of Commerce, at 8 (“*Verified Answer*”).

Even from a casual reading of the terms of the Complaint, Qwest's Answer, and the agreements, one can easily see that the agreements involve the business relationship between Qwest and a carrier related to provision of local exchange service by using interconnection, services and network elements provided by Qwest. For example, one of the 6 Eschelon Telecom, Inc. ("Eschelon") agreements states:

3.1 The Parties have agreed that Qwest will calculate local usage charges associated with Unbundled Network Element Platform ("UNE-P") switching on Eschelon's interLATA and intraLATA toll traffic, and Eschelon will pay undisputed amounts within 30 days from Eschelon's receipt of the monthly invoice from Qwest. (See Attachment 3.2, ¶III(B) of the Interconnection Agreement Amendment Terms, Nov. 15, 2000). Qwest will calculate local usage charges in accordance with the procedures set forth on Attachment 3 to this Implementation Plan.³

It is obvious that this provision affects the provision of network elements under the terms of an interconnection agreement between Qwest and Eschelon. In its filing in Minnesota, Qwest redacted Attachment 3, arguing the attachment is a trade secret. Other CLECs definitely would have an interest in how Qwest will calculate usage charges for Eschelon and may wish to calculate local usage charges the same way.

If Qwest and a CLEC can define a term or condition of an agreement as being "beyond the detail that must be filed and approved under Section 252,"⁴ then it and the CLEC can negotiate terms that benefit a particular CLEC.⁵ What Qwest fails to understand is that every term or condition related to the provision of interconnection, services or network elements has an economic cost to a carrier, whether positive or negative. If a CLEC can negotiate different secret

³ QWEST/ESCHELON IMPLEMENTATION PLAN signed July 31, 2001. *Minnesota Complaint Case*, Filing of Contract Terms, Ex. 6. This is only one example; AT&T could provide many others.

⁴ *Verified Answer*, at 6. By calling the Eschelon agreement an implementation plan regarding "business-to-business administrative procedure," Qwest argues it falls outside the scope of section 252. *Id.* at 4.

⁵ Qwest has argued that there are other categories of agreements that fall outside of section 252. However, AT&T believes that Qwest's argument lacks legal merit. If the agreement with a carrier affects the provision of interconnection, services and network elements under section 251, it should be filed.

terms or conditions, the CLEC can change its costs without other CLECs' knowledge or benefit. Discrimination cannot be avoided, even if it is unintentional.

It is AT&T's understanding that Qwest has provided non-redacted copies of the agreements to the Minnesota Department of Commerce. Qwest should be ordered to file as an exhibit in this proceeding, copies of the same agreements, or any other agreements that are related to the provision of interconnection, services or network elements in Arizona that have not been filed with the Arizona Corporation Commission, whether or not the agreements are expired or have terminated for any reason.⁶

The Act makes it clear that the state commission can reject an agreement it believes is not in the public interest. Therefore, it is in the public interest to ascertain whether Qwest is in fact filing the necessary agreements with the Commission for approval. It is also in the public interest to determine if any CLECs received or are receiving preferential treatment. Otherwise, the Commission's statutory obligation, as well as the policy goals inherent in the Act, are nullified.

THEREFORE, AT&T respectfully requests that the Commission order Qwest to file as exhibits in this proceeding, all agreements made by Qwest since the effective date of the Act, in non-redacted form, whether currently in effect or terminated for whatever reason, that are related to the provision of interconnection, services and network elements in the State of Arizona under section 251 of the Act.

⁶ A recent article in the Minnesota Star Tribune stated that Qwest had terminated its 6 secret agreements with Eschelon Telecom. An Eschelon attorney alleged that the agreements were terminated so that other CLECs could not take advantage of the terms of the agreements. "More secret Qwest deals suspected," Steve Alexander, Minnesota Star Tribune, March 6, 2002.

Respectfully submitted this 8th day of March 2002.

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CERTIFICATE OF SERVICE

I hereby certify that the original and 10 copies of **AT&T's Motion to Require Qwest to Supplement the Record**, Docket No. T-00000A-97-0238, were sent by overnight delivery on March 8, 2002 to:

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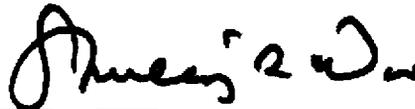
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