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BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

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WILLIAM A. MUNDELL
CHAIRMAN

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JIM IRVIN

COMMISSIONER

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[Signature]

AT&T CORPORATION
REGISTRATION CONTROL

MARC SPITZER
COMMISSIONER

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

Docket No. T-00000A-97-0238

**STAFF'S RESPONSE TO AT&T'S MOTION TO REQUIRE
QWEST TO SUPPLEMENT THE RECORD**

I. INTRODUCTION

On March 8, 2002, AT&T Communications of the Mountain States, Inc. and TCG Phoenix (collectively, "AT&T") filed a Motion to require Qwest Corporation ("Qwest") to supplement the record. The genesis of AT&T's request is a February 14, 2002 Minnesota Department of Commerce ("MDOC") complaint filed with the Minnesota Public Utilities Commission ("MPUC") which alleged that Qwest had entered into agreements with competitive telecommunications carriers which had not been filed with or approved by the MPUC as required by Section 252 of the 1996 Act. AT&T seeks a Commission Order, requiring Qwest 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 ACC, whether or not the agreements have expired or have terminated for any reasons. AT&T Motion at p. 4. For the following reasons, Staff opposes AT&T's Motion to Supplement the Record at this time because it believes that such action is premature, and that the issues raised would be better addressed through a separate process or proceeding.

II. BACKGROUND

In its Motion, AT&T argues that the failure to file an agreement entered into between Qwest and another carrier, whether voluntarily or through arbitration, is a violation of the 1996 Act. AT&T

1 Motion at p. 2. AT&T goes on to state that agreements voluntarily entered into between Qwest and
2 a CLEC that are not filed create the potential for discrimination between CLECs and for agreements
3 that are not in the public interest. Id.

4 In its Opposition filed on March 18, 2002, Qwest stated that is vigorously disputing the
5 complaint which was filed in Minnesota. Qwest Opposition at p. 1. Qwest states that it believes
6 that it has complied with all of its obligations under Section 252. Id. Qwest goes on to argue that
7 a "bare allegation" in another State, where proceedings are just beginning, is not a reason to clog this
8 proceeding with further filings. Qwest Opposition at p. 3. Qwest also states that the issue raised in
9 AT&T's Motion is now moot since Qwest has submitted the Arizona Agreements to the
10 Commission for it to review. Id. Qwest also argues that the MDOC itself acknowledges that not all
11 ILEC-CLEC agreements must be subjected to the regulatory processes of public filing and State
12 Commission review before taking effect. Qwest Opposition at pp. 4-5. Qwest also claims that it
13 filed a detailed rebuttal to each allegation offered in the Minnesota Complaint in addition to the legal
14 and jurisdictional arguments that it raised. Qwest Opposition at p. 5.

15 Qwest claims that the agreements fall into one of four categories all of which fall outside the
16 scope of the obligations imposed upon it under Section 252 of the 1996 Act pertaining to
17 interconnection agreements. The first category includes business-to-business administrative
18 procedures at a granular level; category two includes agreements settling historical disputes;
19 category three includes matters falling outside the scope of Sections 251 and 252; and category four
20 includes provisions where Qwest states that it will comply with the MPUC's orders pending further
21 proceedings. Qwest Opposition at pp. 6-7.

22 Finally, Qwest states that the Complaint presents novel and important issues of law. Qwest
23 states that an overbroad reading of Section 252 means that ILECs and CLECs would have to file
24 many agreements between them for which the 1996 Act did not actually intend to require State
25 approval. Id.

26 **III. DISCUSSION**

27 Staff agrees with AT&T that all interconnection agreements adopted by negotiation or
28 arbitration must be submitted to the State Commission for approval pursuant to Section 252(e) of

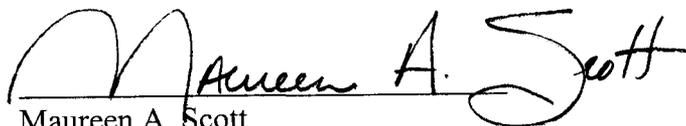
1 the 1996 Act. Staff also agrees that to the extent certain agreements were misclassified so as not
2 to be subject to the requirements of Section 252(e), whether intentionally or unintentionally, raises
3 serious concerns with regard to Qwest's compliance with the 1996 Act and whether CLECs in
4 Arizona are obtaining nondiscriminatory treatment and a level competitive playing field, something
5 which they are entitled to under the 1996 Act. Staff also agrees with AT&T that any party is free
6 to raise, and the Commission and/or FCC may consider in the public interest phase of this
7 proceeding, any ultimate determination that Qwest violated Section 252(e) of the 1996 Act in not
8 filing some of these agreements with it.

9 Having said all of this, however, Staff believes it is premature at this time to reopen and
10 supplement the record with the various agreements that are at issue here. Staff believes that rather
11 than use the 271 proceeding to conduct any underlying review of the agreements at issue and
12 determine whether Qwest violated Section 252(e), the agreements should be reviewed in a separate
13 proceeding or through a separate process. Staff intends to open a docket this week and establish a
14 schedule for comment on this issue by interested parties. If it is ultimately found that Qwest has
15 violated provisions of the 1996 Act in not filing the agreements with the ACC, it is Staff's position
16 that the parties would be free at that time to pursue their right to raise this issue in any relevant
17 proceeding before this Commission and/or the FCC.

18 **IV. CONCLUSION**

19 For the foregoing reasons, AT&T's Motion to Supplement the record should be denied. The
20 agreements at issue should be the subject of review in a separate process or procedure

21 RESPECTFULLY submitted this 3rd day of April, 2002.

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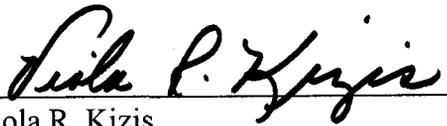
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