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**BEFORE THE ARIZONA CORPORATION COMMISSION**

Arizona Corporation Commission

WILLIAM A. MUNDELL  
CHAIRMAN  
JIM IRVIN  
COMMISSIONER  
MARC SPITZER  
COMMISSIONER

**DOCKETED**

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AZ CORP COMMISSION  
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IN THE MATTER OF QWEST CORPORATION'S  
COMPLIANCE WITH SECTION 252(e) OF THE  
TELECOMMUNICATIONS ACT OF 1996.

DOCKET NO. RT-00000F-02-0271

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

DOCKET NO. T-00000A-97-0238

**PROCEDURAL ORDER**

**BY THE COMMISSION:**

On November 7, 2002, the Hearing Division issued a Procedural Order that set the Section 252(e) matter for hearing on January 29, 2003 and established a schedule for pre-filed testimony.

On November 20, 2002, Qwest Corporation ("Qwest") filed with the Arizona Corporation Commission ("Commission") a Motion to Reconsider Procedural Order. Qwest requests that the Commission reconsider the requirement in the November 7, 2002, Procedural Order that Phase A of the Section 252(e) proceeding conclude prior to resolution of the public interest portion of the Section 271 case. Qwest argues such requirement would result in a six month delay of the 271 proceeding.

On December 2, 2002, AT&T Communications of the Mountain States, Inc. ("AT&T") filed a Response to Qwest's Motion. AT&T argues Qwest's request should be denied on the grounds that allowing the Section 271 investigation to conclude prior to the Section 252(e) proceeding would negate the effectiveness of procedures that permit the flow of information between the two dockets, would weaken the credibility of any decision in the Section 271 docket, and not advance the true interests of the Arizona consumers.

The Residential Utility Consumer Office ("RUCO") filed a Response to Qwest's Motion on December 2, 2002. RUCO also requests that the Commission deny Qwest's Motion, as the findings in the Section 252(e) proceeding are significant in determining whether Section 271 approval is in the

1 public interest.

2           On December 12, 2002, Staff filed Comments to Qwest's Motion. Staff argued there is no  
3 need to make a final decision on whether the Section 252(e) proceeding must conclude before the  
4 Commission makes its final 271 recommendation at this point in time. Staff recommended that the  
5 Administrative Law Judge and the Commission amend the November 7, 2002 Procedural Order to  
6 defer a decision on whether to proceed with the Section 271 application prior to conclusion of the  
7 Section 252(e) enforcement docket. Staff believes that if Qwest comes forward with adequate  
8 assurances that it acknowledges its mistakes and past improper conduct and has instituted safeguards  
9 to prevent re-occurrences, the Commission can at that time decide whether its concerns have been  
10 sufficiently addressed by Qwest to allow the Commission to proceed with the Company's Section  
11 271 application before conclusion of the Section 252(e) enforcement proceeding.

12           On November 27, 2002, Staff filed a Motion for Extension of Time to file its Direct  
13 Testimony and Exhibits in the Section 252(e) proceeding. Staff requests that it be given until January  
14 17, 2003, to file its testimony.<sup>1</sup>

15           On December 9, 2002, Qwest filed a Response to Staff's Motion for an Extension of Time.  
16 Qwest opposes Staff's request unless the Commission determines that it will allow the 252(e) matter  
17 to proceed separately from Qwest's Section 271 application.

18           On December 3, 2002, RUCO filed a Motion to Compel the names of the attorneys and other  
19 information requested in certain data requests and to postpone the section 252(e) hearing date by at  
20 least one month. RUCO states that Qwest refused to answer some of RUCO's data requests based on  
21 attorney client privilege. RUCO argues that a prima facie showing of fraud on the part of the client  
22 defeats the attorney client privilege. RUCO claims that it has met its burden of establishing a prima  
23 facie case of fraud in its filing of August 29, 2002, in which it outlines an alleged scheme between  
24 Qwest, Eschelon and McLeod to deceive the Commission and the public.

25           On December 12, 2002, Qwest filed an Opposition to RUCO's Motion to Compel. Qwest  
26 argues that RUCO has not presented evidence to support the required elements of fraud and has not  
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28 <sup>1</sup> Pursuant to the November 7, 2002 Procedural Order, Staff and intervenor testimony is due January 3, 2003.

1 shown that Qwest attorneys undertook representation of the company for the express purpose of  
2 defrauding the Commission and the public.

3 By Procedural Order dated December 4, 2002, all of the above-referenced motions were set  
4 for oral argument on December 13, 2002.

5 Upon consideration of the parties' positions, it is just and reasonable to modify the November  
6 7, 2002 Procedural Order, to eliminate the pre-determination that Phase A of the 252(e) proceeding  
7 needs to conclude prior to the Commission making final findings and conclusions in the public  
8 interest portion of the Section 271 proceeding. See Procedural Order, November 7, 2002, page 6,  
9 lines 2-4. If the Commission deliberates on the Public Interest portion of the Section 271  
10 investigation prior to findings and conclusions being made in the Section 252(e) matter, the  
11 Commission can determine at that time if the record is complete and whether it can make findings  
12 that Qwest's Section 271 application is in the public interest. Furthermore, to assist the Commission  
13 in any deliberations, and to avoid the need for duplicate filings in both dockets, it is just and  
14 reasonable to allow the parties to refer to, and for the Commission to rely upon, filings made in the  
15 Section 252(e) docket when they are relevant to its consideration of the public interest in the Section  
16 271 docket. This is consistent with the findings in our April 18, 2002 Procedural Order.

17 At the December 13, 2002 Procedural Conference, Qwest agreed to supplement its responses  
18 to RUCO's Motion to Compel, and the parties agreed that following supplementation they would  
19 contact the Administrative Law Judge if a discovery dispute remained.

20 On December 18 and 19, 2002, Qwest and RUCO contacted the Administrative Law Judge to  
21 inform her that they continue to have a dispute concerning the scope of the attorney client privilege.  
22 They requested a procedural conference to resolve the dispute, and RUCO has expressed a desire to  
23 file a Reply to Qwest's Opposition to its Motion to Compel. Consequently, a Procedural Conference  
24 will convene on December 30, 2002 for the purpose of addressing RUCO's Motion to Compel.

25 Given our conclusion that the 252(e) and 271 matters can proceed independently, Qwest's  
26 opposition to an extension of time in the 252(e) proceeding is moot. Because remedies in the Section  
27 252(e) matter may affect the CLECs' ability to opt into the previously un-filed agreements, we must  
28

1 balance the interests of all parties and believe it is important to proceed expeditiously with the  
2 Section 252(e) hearing. Due to the discovery dispute, Qwest has agreed with RUCO to a 10 day  
3 extension of the schedule. In its Motion, Staff requested an additional two weeks to file its testimony  
4 in order that Staff may give the matter the sufficient attention. RUCO has requested a month  
5 extension. A modified schedule will be addressed at the December 30, 2002 Procedural Conference.  
6 At a minimum, however, Staff and Intervenors will have a 10 calendar extension of time to file their  
7 direct testimony.

8 IT IS THEREFORE ORDERED that the November 7, 2002 Procedural Order shall be  
9 modified to eliminate the finding that the Phase A of the Section 252(e) proceeding conclude prior to  
10 the conclusion of the public interest inquiry in the Section 271 investigation.

11 IT IS FURTHER ORDERED that the Commission is deferring a determination of whether a  
12 final Order in the Section 252(e) docket is required prior to making a final recommendation on the  
13 Public Interest portion of the Section 271 docket, and that no determination either way is being made  
14 at this time.

15 IT IS FURTHER ORDERED that a Procedural Conference for the purpose of discussing the  
16 remaining discovery dispute, the modification of the hearing schedule and any other procedural  
17 issues the parties may want to raise, shall commence on December 30, 2002 at 10:00 a.m., or as soon  
18 thereafter as is practical, at the Commission's offices, 1200 W. Washington, Phoenix, Arizona.<sup>2</sup>

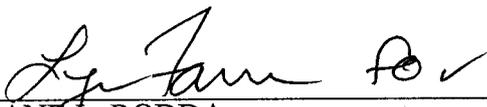
19 IT IS FURTHER ORDERED that the procedural schedule established in the November 7,  
20 2002 Procedural Order shall be suspended, pending the discussion on December 30, 2002 and further  
21 Order.

22 IT IS FURTHER ORDERED that that on-going discovery in the Section 252(e) matter shall  
23 be as permitted by law and the rules and regulations of the Commission, except that responses to  
24 discovery requests shall be made within 5 business days of receipt and objections to discovery  
25 requests shall be made within 3 business days. The response time may be extended by mutual  
26 agreement of the parties involved if the request requires an extensive compilation effort.

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28 <sup>2</sup> The call in number for those parties wishing to appear telephonically is (602) 542-9002.

1 IT IS FURTHER ORDERED that the Presiding Officer may rescind, alter, amend, or waive  
2 any portion of this Procedural Order either by subsequent Procedural Order or by ruling at hearing.

3 DATED this 20<sup>th</sup> day of December, 2002.

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6   
7 JANE L. RODDA  
ADMINISTRATIVE LAW JUDGE

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9  
10 Copies of the foregoing mailed/delivered  
this 20<sup>th</sup> day of December, 2002, to

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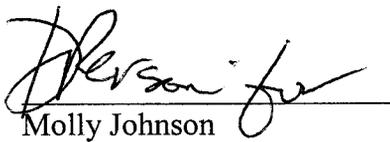
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