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BEFORE THE ARIZONA CORPORATION COMMISSION

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

DOCKET NO. T-00000A-97-0238

ARIZONA CORPORATION COMMISSION

Complainant,

v

QWEST CORPORATION,

Respondent.

DOCKET NO. T-01051B-02-0871

NOTICE OF ERRATA FILING

The Arizona Corporation Commission Staff ("Staff") hereby files its Errata to Staff's Post Hearing Brief filed October 15, 2003 amending the following pages and lines:

Page 15, line 1: Delete "___" from the end of the cite.

Page 18, beginning at line 2: The first full sentence should be amended as follows:
"Relevant sections of the Settlement Agreement contains-neither of these prerequisites - any CLEC may obtain obtaining the discount merely by having purchased 251(b) and (c) services during the relevant terms time period."

Page 18, line 12: A period should be added after the phrase "second time." The remainder of that sentence should be a separate sentence which reads as follows "This would result in a windfall to the CLEC."

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Page 20, line 4: Cite should read "(e.g. AT&T Tr. p. 278, AZ Dialtone Tr. p. 507-508)

Page 21, line 2: "Settlement Hearing" should be changed to "Settlement Agreement.

These four pages containing the above revisions are attached. Please substitute these pages for the pages contained in the Staff's Post Hearing Brief that was docketed on October 15, 2003.

RESPECTFULLY SUBMITTED this 16th day of October, 2003.

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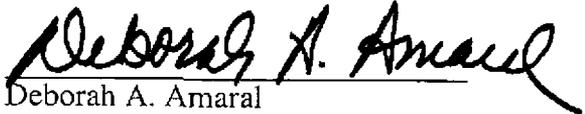
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1 Decision No. 65450 pp. 8-9.

2 Consequently, given the scope of each of the three Enforcement Dockets, Staff's focus has
3 always been upon Qwest's conduct, whether Qwest acted intentionally and willfully in certain
4 instances in violation of Commission processes and procedures and/or other state and federal
5 laws. In light of the above, to suggest that the focus of these cases was upon individual CLEC
6 harm and damages, as Time Warner and AT&T allege, is a mischaracterization of the
7 Commission's Orders.

8 This is not to say that Staff does not recognize that CLECs were adversely affected by
9 Qwest's secret agreements and that the provisions of any settlement should take this into
10 account. Staff did recognize this basic fact and did factor it into its negotiations with Qwest.

11 Related assertions by the CLECs (AT&T 1 at p.5) that the Agreement could not reflect
12 positions, priorities and principles the CLECs would want to see are simply unfounded. Staff
13 reviewed volumes upon volumes of documents, pleadings and other filing prepared on behalf of
14 CLECs, and was well aware of their positions, priorities and principles in its negotiations with
15 Qwest.

16
17 **B. AT&T and Time Warner's Claims That They Are Disadvantaged by
the Settlement Should Be Rejected**

18 AT&T and Time Warner urge the Commission to reject the Settlement Agreement
19 between Staff and Qwest largely for economic reasons. Various concerns were expressed at the
20 hearing and in prefiled testimony by AT&T and Time Warner that the level of the financial
21 penalties agreed to between Staff and Qwest was inadequate. AT&T and Time Warner were also
22 concerned that the direct financial benefits they were entitled to under the Settlement Agreement
23 was inadequate. These arguments should be rejected.

24 Staff initially recommended penalties of \$15,057,000 in the Section 252(e) proceeding,
25 \$7,415,000 in the Section 271 Sub-docket and \$189,000 in the Show Cause proceeding for total
26 penalties in the amount \$22,651,000. Exclusive of the CLEC credits, the payments provided for
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1 required to take on the related obligations of the Agreements in order to obtain the monetary
2 benefits contained therein. Relevant sections of the Settlement Agreement contain neither of
3 these prerequisites – any CLEC may obtain the discount merely by having purchased 251(b) and
4 (c) services during the relevant time.

5 **C. Both Staff and Qwest have Agreed to Review of the Release**

6 Staff believes that the Release that was circulated by Qwest has caused a considerable
7 amount of confusion as to the nature and scope of the Enforcement Dockets.

8 This is unfortunate, because the primary purpose behind the Release as put to Staff was to
9 prevent double recovery by the CLECs. In other words, if a CLEC opted into the Settlement
10 Agreement, it should not be allowed to later go into a Court and sue Qwest based upon the very
11 same cause of action and recover a second time. This would result in a windfall to the CLEC.
12 As offered in this fashion, Staff believes the Release is appropriate.

13 Staff does not believe that the Release should be overly broad but should be tailored to the
14 claims arising in the various Enforcement Dockets. Both Staff and Qwest have expressed their
15 agreement to the Staff and/or Commission reviewing and approving the terms of the Release.
16 Staff has even indicated its willingness to do so prior to approval of the Settlement Agreement.
17 Tr. p. 345-346.

18 **D. The CLECs May Elect Not to Opt-in To the Settlement**

19 Any claims by the CLECs that they are disadvantaged by the Settlement or that their due
20 process rights were somehow violated, is quickly dispelled by the simple fact that no CLEC is
21 required to opt-in to the Settlement Agreement. That is, a CLEC may choose not to opt-in and
22 pursue its remedies elsewhere.

23 **V. THE PROCESS SURROUNDING NEGOTIATION OF THE SETTLEMENT**
24 **AGREEMENT WAS REASONABLE**

25 **A. Staff Did Not Keep the Settlement Negotiations Secret**

26 Several parties attempted to cloak Staff and Qwest's settlement negotiations in a veil of
27 "secrecy", the result of some smoke-filled back room midnight talks designed to simply "cut a
28

1 **B. Staff Required CLEC Involvement When It Determined that A**
2 **Settlement with Qwest Was Likely**

3 At the hearing and in their prefiled testimony, AT&T, Time Warner, MTI and Arizona
4 Dialtone all complained that Staff had not included them in their negotiations with Qwest at an
5 earlier point in time. (e.g. AT&T Tr. p. 278, AZ Dialtone Tr. p. 507-508). These CLECs
6 attempted to portray the negotiations as being "intense and unending" for a period of
7 approximately two and a half months, at which time the Staff, as an afterthought, suddenly
8 decided to include the CLECs. See, Ex. TW-4. This completely mischaracterizes the entire
9 settlement negotiation process between Staff and Qwest. Because of other responsibilities, Staff
10 did not immediately call Qwest back after Qwest had placed the initial call to inquire about
11 settlement. In fact, it was sometime later that Staff finally returned Qwest's call. In addition, the
12 Director was gone for approximately a two week period during this time.

13 Staff included the CLECs at the time when it had an outline of basic settlement principles
14 that both it and Qwest could agree upon. However, as Staff Witness Johnson pointed out:

15 "...[T]he outline was intended to serve as a basis for subsequent
16 agreement. It was not a final agreement. As I recall, during the meetings
17 and subsequent thereto, Staff discussed, proposed and made modifications
18 to the 'Outline of Principles.'"

19 Ex. S-1, p. 6.

20 Therefore, contrary to AT&T Witness Pelto's position that "Staff's positions had already
21 hardened through the negotiation process, which prevented any flexibility to incorporate
22 suggestions made by the CLECs", Staff was willing to discuss modifications to the final
23 agreement if a compelling argument was presented by any party. However, no one followed up
24 with Director Johnson on any of the issues raised in the settlement meetings.

25 At the hearing, much was also made of the fact that Staff had only invited "active
26 CLECs" to participate in the settlement talks once it was determined that settlement with Qwest
27 was likely. Tr. pp.396-397. This issue is a non-issue in this case, for the following reason.
28 Even after Staff docketed the Settlement Agreement with the Commission, no other CLEC
Intervenors came forward, than those that were originally contacted with any comments or to
participate in the hearing on the Settlement Agreement. Arizona Dialtone was not an intervenor

1 in any of the underlying dockets until August 7, 2003, approximately a month before the hearing
2 on the Settlement Agreement.

3
4 **C. Modifications to the Agreement Were Made to Take Into Account
CLEC Comment**

5 Several modifications to the Agreement were made as a direct result of the input by the
6 CLECs. Staff believes that these modifications to the Settlement Agreement improved it.

7
8 For instance, modifications were made to Sections 3, 4 and 5 based upon the CLECs'
9 comments. Modifications were also made to Section 2 based upon comments from RUCO.
10 Modifications were made to Sections 8, 12 and 15 based upon CLEC comments. This
11 demonstrates that Staff wanted to hear from the CLECs and address their concerns to the extent
12 it could.

13 **VIII. CONCLUSION**

14 Staff believes the Settlement Agreement is in the Public Interest and should be adopted
15 by the Commission. Complex and often conflicting issues can be resolved in different ways.
16 While the Settlement Agreement is not everyone's perfect solution to the issues raised,
17 nonetheless, it is a reasonable resolution of the three Enforcement Dockets.

18
19 RESPECTFULLY SUBMITTED this 15th day of October, 2003.

20
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