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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 271 OF THE
TELECOMMUNICATIONS ACT OF
1996

DOCKET NO. T-00000A-97-0238

COMMENTS OF COMMISSION STAFF ON
QWEST'S COMMENTS ON STAFF'S FINAL REPORT
ON CHECKLIST ITEM 4

I. INTRODUCTION

The Arizona Corporation Commission ("ACC") Staff filed its Final Report on Qwest's compliance with Checklist Item 4 on February 20, 2002. Qwest filed Comments on Staff's Report on March 4, 2002. For many issues, Qwest did not take issue with the Staff's recommendations and agreed with the Staff's resolution of the issues. However, there are several issues on which Qwest disagrees with the Staff resolution or offers alternative language to resolve the Staff's concerns. Following are Staff's comments on Qwest's March 4, 2002 comments.

II. DISCUSSION

DISPUTED ISSUE 1: Whether fiber loops or OCn loops should be at Individual Case Basis ("ICB") or standard product with rates and intervals. Also, should Qwest revise its loop intervals set forth in Qwest Exhibit C? (AIL Loop-2(b)).

Qwest objected to Staff's resolution of both issues. Staff had first proposed additional language to be inserted into Exhibit I, Section 3.2 which added more specificity as to provisioning intervals for fiber loops and OCn loops. Qwest objected to Staff's proposed language because it claimed that Staff's proposed language could be broadly interpreted to

1 encompass dark fiber, subloops and transport as well. Qwest Comments at pp. 3-4. Qwest
2 offered alternative language to incorporate in Exhibit I, Section 3.2 which would be limited to
3 fiber and OCn loops. Qwest's proposed language addition reads as follows:

4 For fiber and OCn loops described in Section 9.2.2.3.1 of
5 this SGAT, Qwest shall provide CLEC information
6 regarding the location, availability, and performance of
7 fiber and Ocn loops within five (5) business days for a
8 records based answer or within seven (7) business days for
9 a field based answer, after receiving a request from the
10 CLEC. Within such time periods, Qwest shall send CLEC
11 written confirmation of the availability of the loop. The
12 Qwest representative authorized to commit to intervals,
13 shall meet with CLEC's representative within seven (7)
14 business days of receipt of the request from CLEC to
15 negotiate intervals. Qwest shall provide its proposed
16 provisioning intervals in all cases within 20 days.

17 Staff has no objection to adoption of Qwest's proposed language addition to Exhibit I,
18 Section 3.2 of the SGAT. Staff would agree to Qwest's alternative language in lieu of the
19 language proposed by Staff in its Final Report on Qwest's compliance with Checklist Item 4.

20 Second, Qwest also objected to Staff's resolution of the impasse on provisioning intervals
21 for DS-1 loops. Qwest stated that despite Staff's assertion that any concerns over intervals
22 should be addressed in the TAG, Staff nonetheless recommended that the Commission revise the
23 intervals for DS-1 loops. Qwest Comments at p. 5. While Staff agreed with Qwest that PIDs
24 have normally been addressed in the TAG first; the DS-1 loop intervals were discussed in both a
25 TAG meeting and a workshop. At the workshop, the issue as to the appropriate DS-1 loop
26 intervals went to impasse, which means it was a disputed issue and no agreement between the
27 parties had been reached so Staff was asked to make a recommendation to the Commission on its
28 resolution. While it had been agreed in the workshop, that these impasses would be carried
forward into other Qwest region workshops, and that if consensus was reached, it would be
imported back to Arizona; consensus was never reached in the other States and hence Staff
proposed its recommendation in its Final Report on Qwest's compliance with Checklist Item 4,
which it adheres to for purposes of these Comments. Staff believes that it is unreasonable for
Qwest to commit to install 1 DS-1 loop in the same amount of time it takes to install 24 DS-1

1 loops. Qwest itself admits in its Comments that it is installing DS-1 loops in less time – four to
2 eight days faster for CLECs than for Qwest retail. Qwest Comments at p. 5. Staff believes that
3 Qwest’s established provisioning intervals in Exhibit C to its SGAT should reflect this; and
4 therefore Staff proposed a graduated series of intervals depending on the number of DS-1 loops
5 Qwest would be installing.

6 **DISPUTED ISSUE NO. 6: Should Qwest’s Spectrum Management positions be**
7 **adopted? (AIL Loop 9a, 9b and 9c).**

8 Qwest noted that in paragraph 254 of its Final Report, Staff proposed SGAT language to
9 address the issue of remote deployment of DSL services. Comments at p. 22. Qwest further
10 noted that while Staff recommended certain of the Multi-State facilitator’s proposed language,
11 Staff inadvertently omitted a portion of a sentence which is underscored in Qwest’s Comments at
12 p. 22. Staff agrees that this was an inadvertent omission on its part and agrees to inclusion of the
13 underscored language.

14 Qwest also took issue with the last sentence of Staff’s proposed language which stated as
15 follows:

16 Notwithstanding, if Qwest must make changes to meet future NRIC and
17 FCC standards; any costs Qwest incurs to meet these standards shall be
borne solely by Qwest and shall not be passed on to the CLECs.

18 Qwest stated that it is premature to preclude Qwest from seeking any cost recovery under
19 Staff’s recommended language. Comments at p. 22. Qwest stated that neither Staff nor Qwest
20 can predict whether any FCC rules will permit carriers to seek or share costs for spectrum
21 requirements. Comments at p. 22. Qwest further stated that to the extent FCC rules either do not
22 prohibit incumbent LECs from seeking cost recovery or expressly permit cost recovery or cost
23 sharing, Qwest should be permitted to seek cost recovery before the Commission. Comments at
24 p. 22-23.

25 Staff agrees with Qwest’s Comments in this regard. Staff recommends that the last
26 sentence of its proposed language be changed to read as follows:
27
28

1 In the event Qwest believes it is entitled to cost recovery for future
2 NRIC or FCC standards relating to remote deployments, Qwest
3 may request such cost recovery in a proceeding in which Staff, the
4 parties and the Commission have an opportunity to evaluate Qwest
5 claims.

6 With the change noted above, Staff's recommended SGAT language would now read as
7 follows:

8 Where CLEC has deployed central-office based DSL services
9 serving a reasonably defined area, Qwest must, upon request of a
10 CLEC, take appropriate measures to mitigate the demonstrable
11 adverse effects on such service that arise from Qwest's use of
12 repeaters or remotely deployed DSL service in that area. It shall
13 be presumed that the costs of such mitigation will not be
14 chargeable to any CLEC or to any other customers. Qwest shall
15 have the right to rebut this presumption by demonstrating to the
16 Commission by a preponderance of the evidence that the
17 incremental costs of mitigation would be sufficient to cause a
18 substantial effect upon other customers (including but not limited
19 to CLECs securing UNEs) if charged to them. Upon such a
20 showing, the Commission may determine how to apportion
21 responsibility for those costs, including, but not limited to CLECs
22 taking services under this SGAT. In the event Qwest believes it is
23 entitled to cost recovery for future NRIC or FCC standards relating
24 to remote deployments, Qwest may request such cost recovery in a
25 proceeding in which Staff, the parties and the Commission have an
26 opportunity to evaluate Qwest claims.

27 **DISPUTED ISSUE NO 8: Complaints regarding Qwest policy on employees who**
28 **engage in anti-competitive behavior. (AIL Loop 11(d)).**

With respect to this issue, Staff recommended that Qwest include in its SGAT the
processes for resolution of such complaints. Qwest stated that it would be inappropriate and
unwieldy to attempt to dictate the process and Qwest policies for addressing allegations of "anti-
competitive" behavior by Qwest employees in the SGAT. Qwest Comments at p. 23. Qwest
further stated that it needs flexibility to adapt its employee practices and policies to address
different types of CLEC allegations. Qwest Comments at p. 23. Qwest also stated that it needs
to retain the ability to modify and improve its policies and practices. Qwest Comments at p. 23.

Qwest agreed to add language to address Staff's concern. Staff believes that the language
proposed by Qwest is appropriate with the following modification and would recommend its
adoption:

1 5.29.2 If any time CLEC believes that a Qwest employee has
2 engaged in unlawful behavior with respect to CLEC, CLEC
3 may report the incident to the Account Team in writing,
4 describing in detail all facts upon which CLEC's belief is
5 based. Qwest will investigate the allegations, and within
6 three (3) business days after Qwest has received written
7 notification from the CLEC of the allegations, inform
8 CLEC that the matter is being investigated. Qwest will
9 keep the CLEC informed throughout the investigation and
10 will advise **in writing** of the investigation outcome. Due to
11 confidentiality issues, Qwest may not be in a position to
12 disclose all of the findings to CLEC. However, Qwest will
13 provide nonconfidential findings.

14 **DISPUTED ISSUE NO. 2: Concerns regarding provisioning loops where Qwest
15 uses Integrated Digital Loop Carrier ("IDLC") (AIL Loop 4(b)).**

16 In its Final Report, Staff recommended that Qwest either demonstrate that it meets the
17 FCC's requirements contained in its *UNE Remand Order*¹ through the mediated access which it
18 provides, or that Qwest give the CLECs direct access to the LFACS database, if it cannot make
19 the required demonstration. Staff believes that under Federal law, Qwest is required to do no
20 less than what Staff has recommended. Qwest, however, stated that Staff "has transformed an
21 issue that focused on Qwest's provisioning of loops when the customer is served by IDLC into a
22 recommendation that Qwest re-perform the KPMG analysis of Qwest's loop qualification tools
23 or give AT&T direct access to Qwest's LFACS database" and that Staff "has taken this issue to
24 the extreme." Qwest Comments at p. 7.

25 Qwest went on to argue that to the extent Staff's Final Report rests on the notion that
26 providing access to LFACS information via an interface is unlawful or amounts to "filtering" the
27 loop information, Staff is incorrect. Qwest Comments at p. 10. Qwest further stated that the
28 FCC has never ordered direct access to the incumbents' back office systems; rather, it requires
access to the loop qualification information, which is provided via an interface to the data.
Comments at p. 11. Qwest also argued that it makes available to competitors, the same
information as Verizon makes available to competitors.

¹ *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, CC Docket No. 96-98, 15 FCC Rcd 3696 (Nov. 5, 1999) ("UNE Remand Order")*

1 Qwest also offered, in order to resolve this issue in Arizona, to implement a manual
2 process to permit CLECs to obtain loop make up information in the unlikely event the Raw Loop
3 Data tool failed to provide loop make up information for a particular address or TN or returned
4 inconsistent information. Qwest Comments at p. 17. Qwest stated that it would agree to return
5 such information within 72 hours. Qwest Comments at pp. 17-18. Given the strength of its
6 tools, Qwest believes that such manual loop make up requests will be extraordinarily infrequent.
7 Qwest Comments at p. 18.

8 Qwest is confused about Staff's position. Staff has never said that providing access to the
9 LFACs information through an interface is unlawful or amounts to filtering the loop information.
10 Staff's concern has always been to ensure that all loop qualification information from Qwest's
11 databases and backoffice systems is available to CLEC personnel to the same degree it is
12 available to Qwest personnel. Staff believes that the initial review of this requirement from the
13 *UNE Remand Order* was too narrow in that it focused on the information available to a CLEC
14 representative versus a Qwest retail representative. The language in the *UNE Remand Order* is
15 much broader than that and requires that CLECs have access to the loop qualification
16 information to the same degree that **any and all** Qwest personnel have access to it. Staff
17 believed that Qwest has not demonstrated, in Arizona² or through its KPMG report,³ that
18 equivalent access (in the broader context) was available to the extent required by the *UNE*
19 *Remand Order*. Nor had Qwest demonstrated to Staff's satisfaction that it makes the same or

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21 ² For instance, AT&T noted that in the Colorado Loops workshop, Qwest had conceded that at least some loop plant
22 information was in LEIS and LEAD, which are subsets of LFACs and that its engineers have access to this
23 information. AT&T October 3, 2001 Comments at p. 11. AT&T also noted that LFACS may reveal information
24 not available through the RLDT, especially with regard to loops not already connected to a switch. LFACS, on the
25 other hand, contains information for all facilities, even those not connected to a switch. See AT&T October 3,
26 2001 Comments at pps. 11-12. In addition, AT&T noted in an April 8, 2002 filing in Washington State, that as a
27 result of the bulk deload and MLT projects conducted by Qwest, Qwest's retail representatives are assured of
28 getting complete and accurate loop information on the loops that Qwest wants to serve. AT&T claimed that the
MLT information for these loops are loaded into LFACs and the RLDT, but there remain a significant number of
loops where such updated information has not been obtained. AT&T Washington Comments at p. 9. Qwest
employees have the ability to access LFACs, other databases, as well as review paper records and manual review
processes to provision service to its customers; and the CLECs do not have some of these options in Staff's
opinion.

³ Participants in the KPMG test also have concerns with its results. KPMG indicated that it was still supplementing
its test with additional documentation and interviews. See AT&T Washington Comments at pps. 12-13. Qwest has
not informed Staff of the results of KPMG's ongoing review.

1 more information available to CLECs than Verizon or other RBOCs. In fact, the CLECs dispute
2 Qwest's claims in this regard. See e.g. AT&T Washington Comments at p. 6 ("Clearly, the Raw
3 Loop Data tool fails in comparison to the comprehensive access to loop qualification information
4 that is provided by Verizon and Southwestern Bell.")

5 The FCC's requirements are clear and are set forth in the following excerpt from the
6 *BellSouth Kansas/Oklahoma 271 Order*:

7 ...In the *UNE Remand Order*, we required incumbent carriers to
8 provide competitors with access to all of the same detailed
9 information about the loop that is available to themselves, and in
10 the same time frame, so that a requesting carrier could make an
11 independent judgment at the pre-ordering stage about whether a
12 requested end user loop is capable of supporting the advanced
13 services equipment the requesting carrier intends to install. At a
14 minimum, SWBT must provide carriers with the same underlying
15 information that it has in any of its own databases or internal
16 records. We explained that the relevant inquiry is not whether
17 SWBT's retail arm has access to such underlying information but
18 whether such information exists anywhere in SWBT's back office
19 and can be accessed by any of SWBT's personnel. Moreover,
20 SWBT may not "filter or digest" the underlying information and
21 may not provide only information that is useful in the provision of
22 a particular type of xDSL that SWBT offers. SWBT must provide
23 loop qualification information based, for example, on an individual
24 address or zip code of the end users in a particular wire center,
25 NXX code or on any other basis that SWBT provides such
26 information to itself. Moreover, SWBT must also provide access
27 for competing carriers to the loop qualifying information that
28 SWBT can itself access manually or electronically.

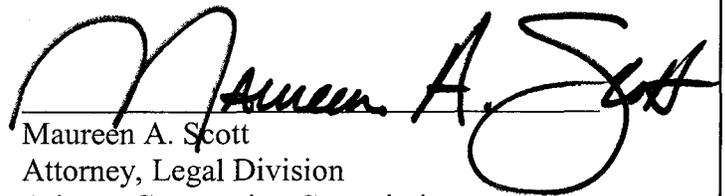
29 *BellSouth Kansas/Oklahoma 271 Order* at para. 121⁴.

30 Qwest has in response offered to do a manual process, an important option available to
31 CLECs in other RBOC regions, including Verizon and SWBT. This is in addition to the other
32 options now offered by Qwest. Qwest has also given Staff assurances that through its combined
33 mediated access arrangements and manual process, the CLECs will have access to all loop plant
34 and qualification information that any personnel at Qwest have access to, and in the same
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38 ⁴ *In the Matter of Joint Application by SBC Communications, Inc., Southwestern Bell Telephone Company, and
Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-
Region, InterLATA Services in Kansas and Oklahoma*, Memorandum Opinion and Order, CC Docket No. 00-217,
FCC 01-29, para. 121 (released January 22, 2001)("BellSouth Kansas/Oklahoma 271 Order").

1 manner and timeframe. As long as Qwest formalizes the details of its manual process in its
2 SGAT, and includes all options available to CLECs which are functionally equivalent to those
3 offered by Verizon and SWBT as Qwest claims, Staff believes that Qwest has met the necessary
4 requirements at this time. The options offered by Verizon and SWBT include access to actual
5 loop make-up information, access to theoretical or design loop make-up information, or the
6 ability to request a manual search of paper records to determine actual loop information in a
7 timely manner.⁵ In addition, the periodic audit recommended by Staff will provide an important
8 check in the future that Qwest continues to meet its obligations in this regard.

9 RESPECTFULLY submitted this 26th day of April, 2002.

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24 ⁵ AT&T noted in their Washington Comments that SWBT provides CLECs with direct access to LFACS, via a
25 graphical user interface ("GUP"). In contrast, Qwest predetermines what LFACS information CLECs will have
26 access to, identifies that information in LFACS and feeds it into the Raw Loop Data Tool. AT&T Washington
27 Comments at p. 4. SWBT does not predetermine what information from LFACS the CLECs will see. Id. AT&T
28 also noted that if actual loop make-up information is not available in LFACS, SWBT will also provide the CLEC
with theoretical, or design, loop makeup information. AT&T Washington Comments at p. 5. Specifically,
according to AT&T, SWBT will cause a query to be made into its LoopQual database for loop information based
on a standard loop design for the longest loop in that end user's distribution area. And, a carrier may also request
loop design information without having to first request an actual loop make-up query. Id. Carriers may also
request that SWBT perform a manual search of SWBT's engineering records. Id. Once SWBT engineers
complete the manual search, they will update the information in LFACS and the competing carrier can either
receive the results via e-mail or review the results in LFACS. Id. AT&T also listed the four ways Verizon
provides for competing carriers to obtain loop make-up information: 1) mechanized loop qualification based on
information in its LiveWire database; 2) access to loop make-up information in its Loop Facility Assignment and
Control System (LFACS) database, 3) manual loop qualification; and 4) engineering record requests. AT&T
Washington Comments at p. 5.

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