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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

**COMMENTS OF QWEST CORPORATION
ON COMMISSION STAFF'S REPORT
ON SECTION 272 REQUIREMENTS**

Qwest Corporation ("Qwest") respectfully submits these comments on the Commission Staff's Final Report on Qwest's Compliance with Section 272, dated April 18, 2002 ("Report").

As Qwest stated in its previous comments on the Staff's draft report,¹ Qwest believes that the Staff's conclusion that Qwest has met each of the foregoing separate affiliate requirements is well supported by the record, and consistent with the FCC's decisions governing Section 272. It was also the conclusion reached by the Multistate Facilitator, who concluded — in a report that no party has opposed — that "[t]he record demonstrates that Qwest has met . . . each of the separate affiliate requirements established by section 272 of the Telecommunications Act of 1996."² All of the commissions that have addressed Qwest's compliance with Section 272 — Iowa,³ Nebraska,⁴ New Mexico,⁵ Washington,⁶ Colorado,⁷ Montana,⁸ and North Dakota⁹ — have

¹ See Comments of Qwest Corporation on Commission Staff's Report on Section 272 Requirements, Nov. 26, 2001.

² Facilitator's Report on Group 5 Issues: General Terms and Conditions, Section 272 and Track A Report, filed Sept. 21, 2001, at 7.

³ See Conditional Statement Regarding 47 U.S.C. § 272 Compliance, *In Re: U S WEST Communications, Inc. n/k/a Qwest Corporation*, Docket Nos. INU-00-2, SPU-00-11 (Iowa Utils. Bd., Apr. 4, 2002) ("Iowa Order").

confirmed Qwest's compliance with Section 272, subject to the results of the independent testing recommended by the Multistate Facilitator. And all four of those orders that have specifically addressed the KPMG 272 examination (in Iowa, New Mexico, Washington and Colorado) have rejected AT&T's further challenges to it and determined that Qwest is in compliance with Section 272.¹⁰ No commission has concluded that Qwest does not comply with Section 272.¹¹

The only provision of the Report that Qwest challenges concerns Section 272(g). Qwest respectfully disagrees with the Staff's suggestion that "it would be appropriate for the ACC Staff to review and approve marketing scripts for compliance with Section 272(g)." Report at 49 ¶ 216.

Section 272(g) imposes only two limitations with respect to marketing: the 272 affiliate may not market the BOC's local exchange service unless the BOC permits the affiliate's competitors to do the same, and the BOC cannot market the affiliate's in-region interLATA

⁴ Section 272 Satisfied, *In the Matter of U S West Communications, Inc., Denver, Colorado, filing its notice of intention to file its Section 271(c) application with the FCC and request for the Commission to verify US West compliance with Section 271(c)*, Application No. C-1830 (Nebraska Pub. Serv. Comm'n, Sept. 19, 2001) at ¶ 23.

⁵ Order Regarding Section 272 Compliance, *In the Matter of Qwest Corporation's Section 271 Application and Motion for Alternative Procedure to Manage the Section 271 Process*, Utility Case No. 3269 (New Mexico Pub. Reg. Comm'n, Feb. 13, 2002) ("New Mexico Order").

⁶ Twenty Eighth Supplemental Order; Washington Commission Order Addressing Workshop Four Issues: Checklist Item No. 4; Emerging Services, General Terms and Conditions, Public Interest, Track A, and Section 272, *In the Matter of the Investigation Into U S WEST Communications, Inc.'s Compliance with Section 271 of the Telecommunications Act of 1996*, Docket No. UT-003022 and 003040, *Washington Utilities and Transportation Commission*, (Washington Utils. And Transp. Comm'n, March 13, 2002) ("Washington Order") (this order is subject to showings made by Qwest concerning the LCI-QCC merger and description of procedures for disclosing data on provisioning intervals after 271 approval).

⁷ Order on Staff Volume VII Regarding: Section 272, Public Interest, and Track A, *In the Matter of the Investigation into U S West Communication, Inc.'s Compliance with § 271(c) of the Telecommunications Act of 1996*, Docket No. 971-198T, Decision No. R02-318-I (Mar. 15, 2002) at ¶¶ B, E-10-E14 ("Colorado Order"). This is the order of the Chairman of the Colorado Commission in his role as the Hearing Commissioner.

⁸ Preliminary Report on Qwest's Compliance with Section 272 and Request for Comments on Findings, *In the Matter of the Investigation into Qwest Corporation's Compliance with Section 271 of the Telecommunications Act of 1996*, Docket No. D2000.5.70, (Montana Pub Serv. Comm'n Feb. 4, 2002) (this report will be finalized upon review of further comments).

⁹ Interim Consultative Report on Group 5 Issues, *U S West Communications Inc., Section 271 Compliance Investigation*, Case No. PU 314-97-193 (North Dakota Pub. Serv. Comm'n, Feb. 27, 2002) (this report to be finalized after consideration of KPMG evaluation).

¹⁰ See Iowa Order at 19-28; Colorado Order ¶ E-14; Washington Order ¶ 241; New Mexico Order ¶¶ 20-21.

requirements inconsistent with sections 271 and 272 and the [FCC's] rules under those provisions.”¹⁵

Moreover, imposing such a requirement on BOCs as a condition of 271 approval would be inconsistent with the goal of Section 271 to promote competition in long distance services. Once a BOC meets Section 271's competition requirements in the local market, only certain limitations with respect to cross-subsidization and discrimination apply to its affiliate's entry as a competitor in the long distance market. Requiring prior review and approval of marketing scripts would constrain QCC's ability to compete as a new entrant in that market, hampering competition and giving further advantage to entrenched long distance providers such as AT&T. The FCC's considered judgment is thus supported by compelling public policy concerns.

Therefore, Qwest challenges only the determination in the Report that Qwest must submit its marketing scripts for prior review and approval. Qwest supports the Report in all other respects.

Conclusion

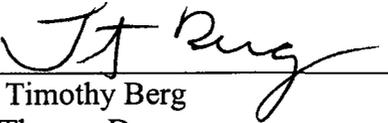
For the reasons stated above and in the Staff's Report, the Commission should adopt the Staff's conclusions that “Qwest meets the requirements of Section 272” (Report at 54-55), and should not require prior review and approval of Qwest's marketing scripts.

¹⁵ First Report and Order and Further Notice of Proposed Rulemaking, *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended*, 11 FCC Rcd 21905 (1996) ¶ 47.

DATED this 29th day of April, 2002.

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QWEST CORPORATION

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A handwritten signature in black ink, appearing to read 'R. Kolb', is written over a horizontal line.