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BEFORE THE ARIZONA CORPORATION COMMISSION **RECEIVED**

**WILLIAM A. MUNDELL** Arizona Corporation Commission  
**Chairman**  
**JIM IRVIN**  
**Commissioner**  
**MARC SPITZER**  
**Commissioner**

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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 QWEST'S AND  
AT&T'S COMMENTS ON STAFF'S FINAL  
REPORT ON QWEST'S COMPLIANCE WITH  
NIDS AND LINE SPLITTING REQUIREMENTS**

**I. Introduction**

Staff of the Arizona Corporation Commission ("ACC Staff") hereby files its Response to the Comments of AT&T Communications of the Mountain States, Inc. ("AT&T") and Qwest Corporation ("Qwest") on Staff's Final Report on Qwest's Compliance with Network Interface Devices ("NIDs") and Line Splitting requirements.

**II. DISCUSSION**

**A. QWEST'S COMMENTS**

Qwest takes issue with Staff's resolution of the following two disputed issues.

- NID DISPUTED ISSUE NO. 1: Whether CLECs are entitled to stand-alone access to the NID when Qwest owns the inside wire? (SGAT Section 9.5.1 and 9.5.2.1.1 - NID -1 (b))**

In its Final Report on Qwest's Compliance with NIDs and Line Splitting requirements, Staff had agreed with Qwest that Section 9.3 of the SGAT should apply where subloops are concerned. Staff was nonetheless concerned that Qwest not give itself an inordinate amount of time to

1 determine inside wire ownership, such that CLECs would be adversely affected in gaining access  
2 to the MTE NID. Qwest could use such delay to persuade the MTE owner not to use the CLEC's  
3 services. Thus, Staff had recommended that the time periods contained in SGAT Section 9.3.5.4.1  
4 be modified to allow Qwest five (5) days to make a determination on inside wire ownership, two (2)  
5 days when there has been a previous determination, and two (2) days for its determination if the  
6 CLEC presents Qwest with a written claim by an authorized representative of the MTE owner that  
7 such owner owns the facilities on the Customer side of the terminal.

8 Qwest argues that the FCC has allowed ILECs up to ten business days to determine  
9 ownership of intrabuilding cable and further that the Commission already approved the existing  
10 intervals of 10 - 2 - 5 in its Order on the Staff's Final Emerging Services Report. Qwest Comments  
11 at pp. 3-4. Qwest also states that it and AT&T reached consensus on this language in Washington  
12 State. Qwest Comments at p. 3.

13 While Staff believes that the agreed upon intervals may be too long, Staff will change its  
14 recommendation to be consistent with the Commission's Order in the Emerging Services Final  
15 Report which adopted an interval of up to ten (10) days for Qwest to make a determination on inside  
16 wire ownership, two (2) days when there has been a previous determination, and five (5) days if the  
17 CLEC presents Qwest with a written claim by an authorized representative of the MTE owner that  
18 such owner owns the facilities on the Customer side of the terminal. Staff believes, however, that  
19 it is important for Qwest to strive to determine facility ownership in less than ten (10) days when  
20 possible. Therefore, Staff would recommend that the following sentence be added to SGAT Section  
21 9.3.5.4.1:

22 9.3.5.4.1 CLEC shall notify its account manager at Qwest in writing,  
23 including via e-mail, of its intention to provide access to Customers  
24 that reside within a MTE. Upon receipt of such request, Qwest shall  
25 have up to ten (10) calendar Days to notify CLEC and the MTE  
26 owner whether Qwest believes it or the MTE owner owns the  
27 intrabuilding cable. In the event that there has been a previous  
28 determination of on-premises wiring ownership at the same MTE,  
Qwest shall provide such notification within two (2) business days.  
In the event that CLEC provides Qwest with a written claim by an  
authorized representative of the MTE owner that such owner owns  
the facilities on the Customer side of the terminal, the preceding ten  
(10) day period shall be reduced to five (5) calendar Days from

1 Qwest's receipt of such claim. Notwithstanding the above intervals,  
2 Qwest shall use its best efforts to respond to CLEC inquiries or  
3 requests for access on a more abbreviated basis when circumstances  
4 permit.

5 **2. NID DISPUTED ISSUE NO. 2: Whether CLECs may remove Qwest's**  
6 **wires from the protector field of the NID? (SGAT section 9.5.2.1 and**  
7 **9.5.2.5 – NID- 4)**

8 In response to the very same concerns expressed by Qwest on this issue in Staff's Proposed  
9 Findings of Fact and Conclusions of Law. Staff modified its recommendation so that a carrier could  
10 not remove another carrier's loop facilities from the protector side of that carrier's NID, if the NID  
11 is located on the inside of the building. Thus, Staff only recommended that a carrier be allowed to  
12 remove or disconnect and cap off another carrier's drop wire facilities if the NID is located on the  
13 outside of the building and only if a qualified technician did the capping off in accordance with  
14 standard industry practice. Staff believes that its proposed language addresses any concerns raised  
15 by Qwest and that Qwest has failed to raise any new concerns in response to Staff's Final Report.  
16 Staff recommends that the Hearing Division reject Qwest's arguments.

17 **B. AT&T's COMMENTS**

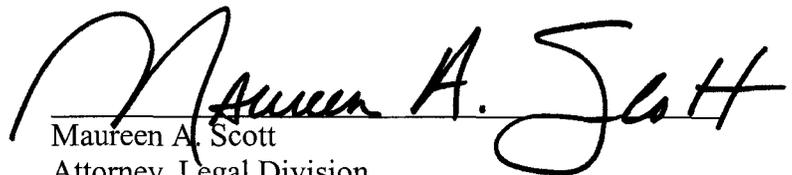
18 AT&T's Comments filed on February 20, 2002, raised a concern regarding Qwest's  
19 continued commitment to offer its retail DSL service on a stand-alone basis when a CLEC  
20 provides the voice service over UNE-P, in light of its recent arrangements with MSN. AT&T  
21 Comments at pp. 1-2.

22 AT&T states that the Staff Report addresses the issue of whether Qwest must offer its retail  
23 DSL service on a stand-alone basis when a CLEC provides the voice service over UNE-P. Qwest  
24 agreed to "enable a CLEC to provide Qwest DSL to an end-user customer via resale at 100% of the  
25 retail rate when service is provided by a CLEC to an end-user over UNE-P." AT&T Comments at  
26 pp. 3-4. Qwest agreed to this arrangement for both existing and new customers of Qwest DSL  
27 service. See AT&T Comments at pp. 1-2. AT&T went on to state that Qwest had recently entered  
28 into an agreement with the internet service provider MSN, to promote Qwest's high speed DSL  
internet service. Qwest is transferring all Qwest.net accounts to MSN, or another internet service  
provider if the customer objects to MSN. AT&T Comments at p. 2.

1 AT&T states that the arrangement with MSN creates considerable uncertainty. It raises the  
2 question whether Qwest considers Qwest or MSN to be the retail provider of the DSL service.  
3 AT&T Comments at p. 2. AT&T is concerned that Qwest will argue that it no longer has an  
4 obligation to provide retail DSL to UNE-P customers. AT&T Comments at p. 2. AT&T suggested  
5 that Staff seek information from Qwest regarding its business arrangement with MSN. AT&T  
6 questions whether Qwest has made a number of promises to the Staff and CLECs regarding the  
7 provision of line splitting and DSL and that those may have been "hollow" promises in light of this  
8 new arrangement with MSN. AT&T Comments at p. 2.

9 It is Staff's position that Qwest has made a commitment to enable a CLEC to provide Qwest  
10 DSL to an end-user customer via resale at 100% of the retail rate when service is provided by a  
11 CLEC to an end-user over UNE-P, within the context of this 271 proceeding and the parties and  
12 Staff have relied upon that commitment and agreement. Staff does not believe that Qwest can  
13 simply avoid its commitment and agreement because of subsequent arrangements it has made with  
14 MSN. If Qwest has contracted with MSN to provide DSL service, Qwest must still ensure that it (or  
15 its contractual partner, MSN,) will abide by the agreements reached with Staff and the parties to this  
16 proceeding and as ordered by the Commission.

17  
18 RESPECTFULLY SUBMITTED this 30<sup>th</sup> day of April, 2002.

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21 Maureen A. Scott  
22 Attorney, Legal Division  
23 Arizona Corporation Commission  
24 1200 West Washington Street  
25 Phoenix, Arizona 85007  
26 Telephone: (602) 542-6022  
27 Facsimile: (602) 542-4870  
28 e-mail: [maureenscott@cc.state.az.us](mailto:maureenscott@cc.state.az.us)

1 Original and **ten** copies of the foregoing  
2 were filed this 30<sup>th</sup> day of April, 2002, with:

3 Docket Control  
4 Arizona Corporation Commission  
5 1200 West Washington Street  
6 Phoenix, AZ 85007

7 Copies of the foregoing were mailed and/or  
8 hand-delivered this 30<sup>th</sup> day of April, 2002, to:

9 Charles Steese  
10 Andrew Crain  
11 QWEST Communications, Inc.  
12 1801 California Street, #5100  
13 Denver, Colorado 80202

14 Maureen Arnold  
15 QWEST Communications, Inc.  
16 3033 N. Third Street, Room 1010  
17 Phoenix, Arizona 85012

18 Michael M. Grant  
19 Gallagher and Kennedy  
20 2575 E. Camelback Road  
21 Phoenix, Arizona 85016-9225

22 Timothy Berg  
23 Fennemore Craig  
24 3003 N. Central Ave., Suite 2600  
25 Phoenix, Arizona 85016

26 Nigel Bates  
27 Electric Lightwave, Inc.  
28 4400 NE 77<sup>th</sup> Avenue  
Vancouver, Washington 98662

Brian Thomas, VP Reg. - West  
Time Warner Telecom, Inc.  
520 SW 6<sup>th</sup> Avenue, Suite 300  
Portland, Oregon 97204

Richard P. Kolb, VP-Reg. Affairs  
OnePoint Communications  
Two Conway Park  
150 Field Drive, Suite 300  
Lake Forest, Illinois 60045

Eric S. Heath  
Sprint Communications Co.  
100 Spear Street, Suite 930  
San Francisco, CA 94105

Thomas H. Campbell  
Lewis & Roca  
40 N. Central Avenue  
Phoenix, Arizona 85007

Andrew O. Isar  
TRI  
4312 92<sup>nd</sup> Avenue, N.W.  
Gig Harbor, Washington 98335

Michael W. Patten  
Roshka Heyman & DeWulf  
One Arizona Center  
400 East Van Buren, Suite 800  
Phoenix, Arizona 85004

Charles Kallenbach  
American Communications Services, Inc.  
131 National Business Parkway  
Annapolis Junction, Maryland 20701

Thomas F. Dixon  
MCI Telecommunications Corp.  
707 17th Street, #3900  
Denver, Colorado 80202

1 Kevin Chapman  
2 Director-Regulatory Relations  
3 SBC Telecom, Inc.  
4 300 Convent Street, Rm. 13-Q-40  
5 San Antonio, TX 78205

6 Richard S. Wolters  
7 AT&T & TCG  
8 1875 Lawrence Street, Room 1575  
9 Denver, Colorado 80202

10 Joyce Hundley  
11 United States Department of Justice  
12 Antitrust Division  
13 1401 H Street NW, Suite 8000  
14 Washington, DC 20530

15 Joan Burke  
16 Osborn Maledon  
17 2929 N. Central Avenue, 21st Floor  
18 P.O. Box 36379  
19 Phoenix, Arizona 85067-6379

20 Scott S. Wakefield, Chief Counsel  
21 RUCO  
22 2828 N. Central Avenue, Suite 1200  
23 Phoenix, Arizona 85004

24 Rod Aguilar  
25 AT&T  
26 795 Folsom St., #2104  
27 San Francisco, CA 94107-1243

28 Daniel Waggoner  
Davis Wright Tremaine  
2600 Century Square  
1501 Fourth Avenue  
Seattle, WA 98101-1688

Raymond S. Heyman  
Roshka Heyman & DeWulf  
One Arizona Center  
400 East Van Buren, Suite 800  
Phoenix, Arizona 85004

Diane Bacon, Legislative Director  
Communications Workers of America  
5818 North 7<sup>th</sup> Street, Suite 206  
Phoenix, Arizona 85014-5811

Gena Doyscher  
Global Crossing Local Services, Inc.  
1221 Nicollet Mall  
Minneapolis, MN 55403-2420

Karen L. Clauson  
Eschelon Telecom, Inc.  
730 Second Avenue South, Suite 1200  
Minneapolis, MN 55402

Mark P. Trincherro  
Davis, Wright Tremaine  
1300 SW Fifth Avenue, Suite 2300  
Portland, OR 97201

Traci Grundon  
Davis, Wright & Tremaine LLP  
1300 S.W. Fifth Avenue  
Portland, OR 97201

Bradley Carroll, Esq.  
Cox Arizona Telcom, L.L.C.  
20401 North 29 Avenue  
Phoenix, AZ 85027

Mark N. Rogers  
Excell Agent Services, L.L.C.  
2175 W. 14<sup>th</sup> Street  
Tempe, AZ 85281

Barbara P. Shever  
LEC Relations Mgr.-Industry Policy  
Z-Tel Communications, Inc.  
601 S. Harbour Island Blvd., Suite 220  
Tampa, FL 33602

Jonathan E. Canis  
Michael B. Hazzard  
Kelly Drye & Warren L.L.P.  
1200 19<sup>th</sup> Street, NW, Fifth Floor  
Washington, D.C. 20036

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25  
26  
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28

Ms. Andrea P. Harris  
Sr. Manager, Reg.  
Allegiance Telecom, Inc.  
2101 Webster, Suite 1580  
Oakland, California 94612

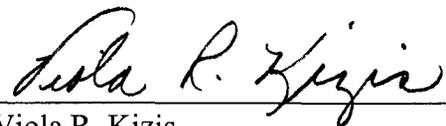
Dennis D. Ahlers, Sr. Attorney  
Eschelon Telecom, Inc.  
730 Second Ave. South, Ste. 1200  
Minneapolis, MN 55402

Garry Appel, Esq.  
TESS Communications, Inc.  
1917 Market Street  
Denver, CO 80202

Todd C. Wiley Esq. for  
COVAD Communications Co.  
Gallagher and Kennedy  
2575 East Camelback Road  
Phoenix, Arizona 85016-9225

K. Megan Doberneck, Esq. for  
COVAD Communications Co.  
7901 Lowry Blvd  
Denver, CO 80230

Steven J. Duffy  
Ridge & Isaacson P.C.  
3101 N. Central Ave., Suite 1090  
Phoenix, AZ 85012-2638

  
\_\_\_\_\_  
Viola R. Kizis  
Secretary to Maureen A. Scott