

EXCEPTION



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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

**QWEST'S EXCEPTIONS TO THE ADMINISTRATIVE LAW JUDGE'S
RECOMMENDATIONS REGARDING GENERAL TERMS AND
CONDITIONS, BFR, AND FORECASTING**

Qwest Corporation ("Qwest") hereby submits its exceptions to the Administrative Law Judge's recommendations regarding General Terms and Conditions, BFR, and Forecasting ("ALJ's Recommendations").¹

INTRODUCTION

After considering the Arizona Corporation Commission Staff's proposed findings of facts and conclusions of law, Administrative Law Judge Rodda proposes resolutions to fifteen disputed issues associated with the general terms and conditions provisions of Qwest's Statement of Generally Available Terms ("SGAT") that the parties were not able to resolve during the Workshop on General Terms and Conditions, BFR and Forecasting. Qwest appreciates the time

¹ Administrative Law Judge Rodda's Recommendations Regarding General Terms and Conditions, BFR, and Forecasting, *In the Matter of U.S. West Communications, Inc.'s Compliance With Section 271 of the Telecommunications Act of 1996*, ACC Docket No. T-00000A-97-0238 (June 5, 2002) ("ALJ's Recommendations").

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and attention the ALJ has devoted to reviewing the comments and reports submitted by Staff and the parties in this proceeding. Qwest agrees with all but one of the recommendations set forth in the ALJ's Recommendations. In two instances, the ALJ recommends that Qwest develop new language for the SGAT. Qwest does not dispute these two recommendations and has developed new SGAT language according to the ALJ's instruction. Accordingly, Qwest requests that the Commission endorse Qwest's new language, which is detailed below. With respect to the one remaining disputed issue, Qwest respectfully requests that the Commission modify or reject the ALJ's recommendations for the reasons articulated below.

EXCEPTIONS

I. DISPUTED ISSUE NO. 1: Should the Rates, Terms, and Conditions for New Products Be Substantially the Same as the Rates, Terms, and Conditions for Comparable Products and Services that Are Contained in the SGAT? (G-5, SGAT Section 1.7 and AT&T Proposed Section 1.7.2).

Like Staff, the ALJ rejects the Section 1.7.2 proposed by AT&T finding that it is unnecessary and would lengthen the process by which CLECs purchase new products and services from Qwest. The ALJ, however, recommends that Qwest add language to the SGAT "to indicate that it must file all changes to its SGAT, including new rates, terms and conditions, with the Commission for approval and that until approved, the rates are interim and subject to a true-up."² The ALJ specifically notes that Qwest's existing "true-up" language in Section 1.7.1.2 applies to instances where CLECs dispute Qwest's rates, terms and conditions for new product and services. When CLECs agree with Qwest's proposed rates, terms and conditions, there is no true-up if the Commission approves a different rate.³

The ALJ's recommendation to add new language should be rejected because it is unnecessary. Qwest rates, terms and conditions for new products and services are subject to

² ALJ's Recommendations para. 25.

³ ALJ's Recommendations para. 25.

Commission review, approval, and modification. The Commission can order a "true-up" when, having considered all the facts, the circumstances warrant. Indeed, the Commission, not the SGAT, is in the best position to determine the appropriateness of a "true-up" because it has comprehensive procedures to consider and set rates. Through its cost docket, the Commission will determine the appropriate rates for Qwest's new products and services and should have discretion to determine whether a rate should be "true-up." The ALJ's proposal to include additional "true-up" language in the SGAT would infringe upon this discretion of the Commission because it would cause the SGAT to supplant the role of the Commission in determining when a "true-up" is appropriate.

The ALJ's recommendation should also be rejected because none of the parties dispute Section 1.7.1.1 and no other commission has imposed the same "true-up" for Section 1.7.1.1. Although the Commission is not required to adopt consensus language of the parties, Section 1.7.1.1 has not been disputed among the parties and no party has suggested that the language the ALJ proposes is necessary or appropriate. Furthermore, every other state commission to consider Qwest's language for Section 1.7.1.1 has not found a "true-up" to be necessary or appropriate.

Finally, the ALJ's recommendation should be rejected because imposing a "true-up" when the parties agree on the rates, terms and conditions of new products and services is contrary to the overall structure and purpose of Section 1.7.1. Section 1.7.1.1 was designed to govern those situations where the parties agree on Qwest's rates, terms and conditions for new products and services. Because the parties agree, there is no need for a "true-up" as a "true-up" is neither contemplated nor expected. If the parties desire to negotiate a different rate they can avail themselves of Section 1.7.1.2 which includes a "true-up."

In sum, the SGAT already appropriately addresses in consensus language the issue of interim rates and "true-up" preserving the Commission's discretion to set rates in its cost docket

and determine whether a "true-up" is appropriate. Accordingly, Qwest respectfully requests that the ALJ's recommendation be rejected.

QWEST'S PROPOSED LANGUAGE

II. DISPUTED ISSUE NUMBER 6: Should Qwest's Tariffs or Changes In Regulations Automatically Amend the SGAT?

The ALJ agrees with Qwest's language in Section 2.1 and notes that Qwest's SGAT "along with the CLECs' rights to participate in tariff proceeding protects CLECs from Qwest making unilateral changes in terms of the agreement."⁴ The ALJ, however, recommends that Qwest provide notice of its tariff filings to CLECs included in the CMP email distribution list. While Qwest disagrees that the recommended modification is necessary or appropriate, Qwest will incorporate conforming language to resolve the issue. Specifically, Qwest will modify Section 2.1 as follows:

This Agreement includes this Agreement and all Exhibits appended hereto, each of which is hereby incorporated by reference in this Agreement and made a part hereof. All references to Sections and Exhibits shall be deemed to be references to Sections of, and Exhibits to, this Agreement unless the context shall otherwise require. The headings and numbering of Sections and Exhibits used in this Agreement are for convenience only and will not be construed to define or limit any of the terms in this Agreement or affect the meaning and interpretation of this Agreement. Unless the context shall otherwise require, any reference to any statute, regulation, rule, Tariff, technical reference, technical publication, or any publication of Telecommunications industry administrative or technical standards, shall be deemed to be a reference to the most recent version or edition (including any amendments, supplements, addenda, or successors) of that statute, regulation, rule, Tariff, technical reference, technical publication, or any publication of Telecommunications industry administrative or technical standards that is in effect. Provided however, that nothing in this Section 2.1 shall be deemed or considered to limit or amend the provisions of Section 2.2. In the event a change in a law, rule, regulation or interpretation thereof would materially change this Agreement, the terms of Section 2.2 shall prevail over the terms of this Section 2.1. In the case of any material change, any reference in this Agreement to such law, rule, regulation or interpretation thereof will be to such law, rule, regulation

⁴ ALJ's Recommendation para. 60.

or interpretation thereof in effect immediately prior to such change until the processes set forth in Section 2.2 are implemented. The existing configuration of either Party's network may not be in compliance with the latest release of technical references, technical publications, or publications of Telecommunications industry administrative or technical standards. Qwest will provide a notice to those CLECs included on the CMP email distribution list of all Tariff filings on the date filed, which contains a description of the filing including the section of the Tariff being amended or newly included, and a brief description of the subject matter of the tariff as well as the effective date.

III. DISPUTED ISSUE NO. 10: Should AT&T's Proposed Restrictions on Qwest's Sale of Exchanges in the Assignment Clause Be Adopted?

Like Staff, the ALJ rejects AT&T's proposed language regarding the sale of Qwest's exchanges. The ALJ, however, finds that the interconnection agreement "should continue in effect unless the CLEC and prospective purchaser are able to negotiate a new agreement of their own and the Commission has approved that agreement."⁵ The ALJ recommends that Qwest draft language for CLEC comment that specifically indicates that the interconnection agreement will remain in effect until a successor agreement is approved by the Commission. Qwest respectfully disagrees with the ALJ's findings and believes that the Multistate Facilitator's language, under which the prospective purchaser is a successor to the interconnection agreement for 90 days, is reasonable and appropriate. To resolve the issue, however, Qwest will make the changes suggested by the ALJ and, by this filing, proposes for CLEC comment⁶ the following revisions to Section 5.12.2:

~~In the event that Qwest transfers to any unaffiliated party exchanges including End User Customers that CLEC serves in whole or in part through facilities or services provided by Qwest under this Agreement, the Transferee shall be deemed a successor to Qwest's responsibilities hereunder for a period of ninety (90) Days from notice to CLEC of such transfer or until such later time as the Commission may direct pursuant to the Commission's then applicable statutory authority to impose such responsibilities either as a condition of the transfer or under such~~

⁵ ALJ's Recommendations para. 86.

⁶ ALJ's Recommendations para. 86.

other state statutory authority as may give it such power. In the event of such a proposed transfer, Qwest shall use its best efforts to facilitate discussions between CLEC and the Transferee with respect to Transferee's assumption of Qwest's obligations pursuant to the terms of this Agreement. In the event that Qwest transfers to any unaffiliated party exchanges including End User Customers that CLEC serves in whole or in part through facilities or services provided by Qwest under this Agreement, the Transferee shall be deemed a successor to Qwest's obligations and responsibilities relating to the exchanges acquired by Transferee hereunder until such time as (1) CLEC and Transferee negotiate a new interconnection agreement that, upon approval by the Commission, supercedes and replaces this Agreement, or (2) the Agreement expires on its own terms. CLEC agrees to work expeditiously and in good faith to negotiate a new interconnection agreement with Transferee. Until a new interconnection agreement between CLEC and Transferee becomes effective, CLEC agrees to accept, without condition, the assignment to Transferee of Qwest's obligations and responsibilities under this Agreement relating to the exchanges acquired by Transferee. Nothing in this Agreement shall be construed to limit or abridge the authority of the Commission, under its then applicable statutory authority, to impose or withdraw any obligations or responsibilities on the Transferee that the Commission deems appropriate as a condition of the transfer.

This change addresses CLECs concerns and satisfies the ALJ's recommendation. Accordingly, Qwest requests that the Commission approve Qwest's language for 5.12.2.

CONCLUSION

Qwest accepts most of the ALJ's findings and will incorporate them in the Arizona SGAT. With respect to the one finding with which Qwest disagrees, Qwest respectfully requests the Commission adopt Qwest's proposed resolution.

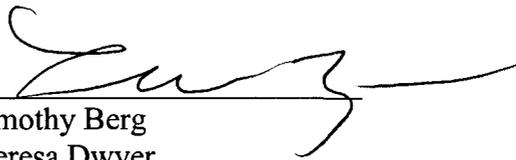
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RESPECTFULLY SUBMITTED this 14th day of June, 2002.,

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