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Chairman
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Commissioner

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 AT&T'S RESPONSE TO STAFF'S REQUEST FOR COMMENTS ON THE EFFECT OF UNFILED AGREEMENTS ON SECTION 271 PROCESS

AT&T Communications of the Mountain States, Inc. and TCG Phoenix ("TCG") hereby file their response to the Arizona Corporation Commission Staff's Request for Comments on the effect of the unfiled agreements on the section 271 process.

I. INTRODUCTION

Staff requests comments on whether the provisions in several unfiled agreements between Qwest Corporation ("Qwest") and competitive local exchange carriers ("CLECs") that prohibit the CLECs from participating in the section 271 proceeding adversely affected the integrity of the record. AT&T believes the inquiry should also ask whether unfiled agreements, without provisions restricting participation, affected the integrity of the section 271 process. AT&T believes the answer to both questions is in the affirmative.

Essentially, Qwest actions had the following impacts: 1) the Commission was lead to believe that only AT&T and the long distance carriers had objections to Qwest's application, and the long distance carriers' motive was simply to keep Qwest out of the long distance market; 2) Qwest's suggestion that small CLECs doing business had no complaints, as evidence by their lack of participation in the section 271 proceeding, was inaccurate; and, by keeping the agreements secret, no evidence was available to contradict Qwest's assertions; 3) by not filing the agreements, the nature and extent of the problems being encountered by CLECs were kept out of the record and public eye; 4) the record was not fully developed, as evidence by Eschelon Telecom, Inc.'s decision to pull out of the UNE-P workshops, leaving earlier problems raised by Eschelon unresolved; 5) favorable treatment provided to certain CLECs may have affected individual CLEC performance for the better, resulting in an inaccurate picture of actual CLEC performance data and affecting overall conclusions in operations support system ("OSS") test because of the reliance on commercial data by the Test Administrator to make findings of parity; and 6) the data reconciliation audit conducted by The Liberty Consulting Group may have been less extensive because of the lack of full CLEC participation.

II. COMMENTS

A. AT&T AND THE LONG DISTANCE CARRIERS WERE NOT THE ONLY CARRIERS OBJECTING TO QWEST'S APPLICATION.

Qwest has maintained that AT&T and other long distance carriers simply want to keep Qwest out of the long distance market and have no intention of entering the local market. Furthermore, Qwest has argued that the CLECs actually in the local market are not raising any complaints or that their complaints have been resolved. Qwest first

assertion is false, as AT&T is in the local market providing local business service using UNE-P and its own facilities. To the best of AT&T's knowledge, WorldCom is also in the local market in Arizona providing business service.

As to the second point, it appears that CLECs have not been objecting because Qwest silenced its critics.[1] A review of the initial participants in the UNE-P workshops is instructive. According to Staff's Final Interim Report on Qwest's Compliance with Checklist Item: No. 2 - Access to Unbundled Network Elements (UNEs), dated December 24, 2001, AT&T, WorldCom, Sprint, Electric Lightwave, Inc., e-spire Communications, Inc., Eschelon Telecom of Arizona, Allegiance Telecommunications and Z-Tel Communications, Inc. appeared at the first workshops. Reviewing the list of agreements in Staff's Memorandum dated June 7, 2002, in Docket No. RT-00000F-02-0271, which, according to Staff must be filed with the Commission for approval, one sees the names of Eschelon, Electric Lightwave and Allegiance.[2] At the follow-up UNE-P workshops on November 15-17, 2000, only AT&T and WorldCom appeared.[3]

AT&T does not suggest that CLECs should be prohibited from settling problems with Qwest. What AT&T is suggesting is that by entering into agreements that should have been filed for approval and were not, the Commission was left in the dark as to the extent of the problems. Nor could the Commission determine if the problems were, in

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[1] Eschelon Telecom, Inc.'s ("Eschelon") letter to Commissioner Marc Spitzer dated June 24, 2002, and the accompanying exhibits confirm this and many of AT&T's other assertions contained herein.

[2] AT&T suggests that the Commission review the list of confidential agreements in Docket No. RT-00000F-02-0271 for a complete list of CLECs entering into unfiled agreements with Qwest.

[3] e-spire attended the November 15, 2000, workshop and briefly discussed an impasse issue regarding conversion of special access circuits to enhanced extended links (EELs) and inquired about the workshop schedule. TR 782,790-791 (Nov. 15, 2000). e-spire did not attend the workshops on November 16-17, 2000. Generally, after January 1, 2001, only AT&T, WorldCom, and occasionally Cox, participated in the section 271 proceedings. The other CLECs that appeared in earlier workshops simply stopped coming to the workshops.

fact, fixed. There were approximately 100 agreements that were not filed; Staff only recommends that 25 be filed for approval. Staff's conclusion regarding what agreements must be filed may be correct, but that still leaves approximately 75 agreements that address problems without the Commission having any knowledge of the contents of the agreements, the nature of the problem and whether the problems were resolved. Obviously, any claims by Qwest that AT&T and the other long distance carriers were the only ones complaining is not accurate.

Finally, there is no evidence that the agreements resolved the CLECs complaints. Eschelon and Qwest entered into a Settlement Agreement on March 1, 2002, that indicates that Eschelon entered into 8 agreements between November 15, 2000, and July 31, 2001, on assorted issues. The Settlement Agreement indicates that Qwest and Eschelon are still negotiating to resolve issues. Furthermore, Eschelon's June 24, 2002, letter to Commissioner Spitzer confirms problems remain unresolved.

B. THE RECORD WAS NOT FULLY DEVELOPED ON ISSUES RAISED BY ESCHELON DURING FIRST UNE-P WORKSHOPS.

During the initial workshops on UNE-P, Eschelon was very vocal in identifying problems it was having ordering and provisioning UNE-P for its customers. Eschelon identified a significant number of problems, as evidenced by Eschelon's September 21, 2000 comments and the transcripts of the initial UNE-P workshops. The second round of UNE-P workshops commenced November 15, 2000. Eschelon did not attend. Therefore,

there was no closure on the issues raised by Eschelon, nor is there any evidence from Eschelon that the problems raised by Eschelon were resolved.[4]

It is interesting to note that the Eschelon agreement dated November 15, 2000, indicates that Eschelon was having problems with getting accurate usage data to allow it to bill switched access to its UNE-P customers. This problem obviously was a continuing problem because Qwest and Eschelon entered into another agreement on July 3, 2001, increasing the per line credit on UNE-P accounts because Eschelon was still having problems obtaining switched access usage data.[5] In fact, Eschelon was having an audit conducted on the switched access problem, and to prevent the results from becoming public, Qwest, on October 31, 2001, proposed that Eschelon turn over all reports, work papers and other documents related to the audit.[6] The information would have been highly relevant in the section 271 proceedings.

In the OSS test, the Pseudo-CLEC did not receive its first set of access daily usage files ("ADUF") until August 2001. The Test Administrator did not test Qwest's provision of ADUF until January 2002, based on the findings of KPMG in the Regional Oversight Committee test that Qwest did not provide accurate ADUF. Had Eschelon been a section 271 participant, the ADUF issue may have been raised in workshops and adequately addressed by the Test Administrator during the Functionality Test (December 2000 – June 2001), instead of after the Functionality Test was complete.[7] AT&T

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[4] One cannot conclude from the silence of the other CLECs that the Eschelon's problems were resolved. Only Eschelon can answer the question, and it recently indicated in the June 24, 2002, letter to Commissioner Spitzer that problems remain unresolved.

[5] *See* Affidavit of Lynne Powers attached to Eschelon's June 24, 2002, letter to Commissioner Spitzer, ¶ 16 Ms. Powers notes that only recently has the number of reported minutes increased.

[6] Eschelon letter at 5.

[7] The record in the section 271 proceeding does not address the losses CLECs incurred because of Qwest's inadequate provision of ADUF from the date of the Act until Qwest allegedly fixed the problem in March 2002.

maintains ADUF testing was inadequate, in part because ADUF was not rigorously tested during the Functionality Test.[8]

C. PREFERENTIAL CLEC TREATMENT MAY HAVE IMPACTED PERFORMANCE DATA AND OSS TEST FINDINGS AND CONCLUSIONS.

Qwest entered into approximately 100 agreements with carriers that were not filed with the Commission for approval. Qwest provided some CLECs preferential treatment, as evidenced by the public unfiled agreements.[9] The preferential treatment raises questions regarding the reliability of the performance data results for the individual CLECs and the effect on the aggregate CLEC results. Were the performance data results a true reflection of Qwest's OSS? Would the results have been worse had Qwest not been focusing its resources on specific CLECs to comply with the terms of specific CLEC agreements? Does performance data for the Pseudo-CLEC more accurately reflect Qwest's OSS performance? This is a real concern because the Test Administrator relied on commercial data to make findings favorable to Qwest, even when the Pseudo-CLEC data derived during the test was indeterminate or showed disparity.[10] In the Draft Final Report, the Test Administrator relied on the commercial CLEC data in 52 instances to make findings of parity and relied on the Pseudo-CLEC data only 37 times.[11] If the CLEC data are suspect, so are the Test Administrator's findings and conclusions based on

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[8] *See* AT&T's Comments on OSS Test Reports and Staff's Supplemental Reports on Checklist Item 2 (OSS), dated May 16, 2002, at 63-69.
[9] AT&T also recommends that the Commission review the terms of the confidential agreements.
[10] The examples of findings of parity based on indeterminate CLEC data are too many to name. Examples of findings of parity based on CLEC results where Pseudo-CLEC results showed disparity are MR-9C (UNE-P), PO-9 (UNE-P), OP-3A (residential), OP-3C (residential) and OP-4C (business).
[11] AT&T's Comments on Draft Final Report, dated January 18, 2002, at 74-7 7.

CLEC commercial data, especially in those instances where Pseudo-CLEC data conflicts with commercial CLEC data.

Had CLECs participated or had CLEC negotiations and agreements been made public, additional evidence may have been available during the Relationship Management Test. The Test Administrator may have received additional responses to the questionnaires sent out and more interviews may have been conducted during the Relationship Management Test. Thirteen CLECs are using EDI and only AT&T was interviewed by the Test Administrator. The Relationship Management Test was designed to "examine the process associated with the business operations of Qwest and the CLEC community.[12] The success of the Relationship Management Test was dependent, in large part in CLEC involvement.

D. THE LIBERTY CONSULTING AUDIT

The Liberty Consulting Group ("Liberty") conducted a data reconciliation of Qwest's performance measures as a result of concerns expressed by CLECs regarding the accuracy of performance results reported by Qwest when compared to results reflected by CLEC data.[13] As a part of the data reconciliation, Liberty requested copies of the CLEC records and data. Only 3 CLECs participated - - AT&T, WorldCom and Covad. The observations and exceptions raised by Liberty were generally limited to the issues raised and data provided by the CLECs.[14] Had there been broader participation by the CLECs,

[12] Cap Gemini Telecommunications 271 Test Standards, version 2.10, dated September 6, 2001, ¶ 6.1.
[13] The Liberty Report was filed by Qwest in this proceeding on April 26, 2002.
[14] Liberty assumed Qwest's data was accurate. This req uired the CLECs to provide overwhelming evidence to Liberty to prove inaccuracies were the result of Qwest processes.

Liberty may have raised more than thirteen observations and one exception, which were based only on the issues raised and data provided by AT&T, WorldCom and Covad.

III CONCLUSION

Qwest will no doubt respond that many of the issues raised by AT&T are speculative. AT&T acknowledges that hindsight must now be applied by the Commission. But hindsight is necessary because of Qwest's approach to addressing CLECs concerns eliminated the involvement of the Commission as contemplated by the Act. Qwest's approach was implemented without anyone's knowledge during the workshop process and during critical third-party testing of Qwest's OSS that relied on CLEC involvement to come to appropriate conclusions.

AT&T believes the Commission has expressed serious concerns over the unfiled agreements and is attempting to adequately address the impacts of the unfiled agreements may have had on the section 271 proceeding. AT&T believes that data requests, questionnaires, and interviews may ameliorate some of the problems raised by the unfiled agreements. However, the Commissioner must ultimately weigh the intangible effects of the unfiled during its public interest deliberations.

Dated this 26th day of June 2002.

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CERTIFICATE OF SERVICE

I hereby certify that the original and 10 copies of AT&T's Response to Staff's Request for Comments on the Effect of Unfiled Agreements on Section 271 Process, regarding Docket No. T-00000A-97-0238, were hand delivered this 26th day of June, 2002, to:

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