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Arizona Corporation Commission
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JUN 27 2002

Chairman William A. Mundell
ARIZONA CORPORATION COMMISSION
1200 West Washington
Phoenix, AZ 85007

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RE: Docket No. T-00000A-97-0238 [Section 271]

Dear Chairman Mundell:

The Communications Workers of America Arizona State Council (hereinafter the "Union") urges the Arizona Corporation Commission (hereinafter the "Commission") to recommend the Federal Communications Commission (hereinafter the "FCC") granting the Section 271 application of Qwest Corporation, Inc. (hereinafter "Qwest") for the provision of in-region interLATA services.

With the Commission's approval of the Qwest Performance Assurance Plan for Arizona (hereinafter the PAP) and the Commission's landmark consumer protection procedural order on slamming and cramming, Docket NO. RT-00000j-99-0034 (RULES TO ADDRESS SLAMMING AND OTHER DECEPTIVE PRACTICES), the Union feels the Commission has created the competitive and consumer environmental safeguards that are necessary to protect both the consumer as well as the competitive marketplace.

The Union supports the "STAFF'S PROPOSED REPORT ON QWEST'S COMPLIANCE WITH - PUBLIC INTEREST AND TRACK A" filed on May 2, 2002. The Arizona Corporation Commission Staff (hereinafter the "Staff") outlined in Section D (VERIFICATION OF COMPLIANCE)¹ "The FCC Orders granting §271 relief have outlined a three step analysis for the Public Interest requirement:

- Determination that the local markets are open to competition.
- Identification of any unusual circumstances in the local exchanges and long distance markets that would make the BOC's entry into the long distance market contrary to the Public Interest.
- Assurance of future compliance by the BOC.

¹ "STAFF'S PROPOSED REPORT ON QWEST'S COMPLIANCE WITH - PUBLIC INTEREST AND TRACK A", Section D - VERIFICATION OF COMPLIANCE, page 92, item 378.

The staff in the same section item 379 reviewed the current market penetration share of the Competitive Local Exchange Carriers (hereinafter the CLECs) and determined that the Arizona local service market is open to competition.

The Commission approval of wholesale prices for unbundled loops that Qwest can charge CLECs will further open the market to competition (Docket NO. T00000A00-0194 Phase II A (QWEST'S COMPLIANCE WITH CERTAIN WHOLESAL PRICING REQUIREMENTS FOR UNBUNDLED NETWORK ELEMENTS AND RESALE DISCOUNTS)).

The second step of the FCC analysis to grant §271 relief is probably the most vexing and complicated item to determine - "Identification of any unusual circumstances in the local exchanges and long distance markets that would make the BOC's entry into the long distance market contrary to the Public Interest." The staff has stated they are "unaware of any unusual circumstances in the local exchange or long distance that would make the BOCs entry into the long distance market contrary to the Public Interest."² The staff did identify three issues that the Commission should consider in granting §271 relief to Qwest, relative to Public Interest:

- "The Attorney General filed comments recommending against a finding that §271 relief for Qwest would be in the Public Interest. As stated earlier, the first complaint has been resolved: the second complaint is still pending; and must be considered as only allegations.
- AT&T filed a motion for an order requiring Qwest to supplement the record by filing with the Commission all interconnection agreements adopted by negotiation or arbitration, which had not previously been filed with the ACC. AT&T stated that failure to file is violation of the Federal Act. AT&T's action was based on a complaint filed by the Minnesota Department of Commerce with the Minnesota Public Utilities Commission. As Staff mentioned earlier, the Commission has not heard this complaint, so should be considered allegations only at this time. In the meantime, Staff requested that the issue be considered in a separate proceeding.
- The attorney for Touch America provided Staff with copies of two Complaints filed with the FCC against Qwest, concerning Qwest's alleged failure to adhere to terms of agreements between Qwest and Touch America. As stated earlier, Staff believes that these allegations, which have not been heard by the FCC, are important enough to warrant Commission attention. However, Staff repeats that they are allegations only and decision by the FCC has yet to be rendered."

The Union agrees with the Staff that the complaints filed by the Attorney General are allegations and should be pursued through the appropriate legal channels. The Commission's approval of Qwest's application of §271 should not be contingent on the final outcome of the Attorney General's case.

² "STAFF'S PROPOSED REPORT ON QWEST'S COMPLIANCE WITH - PUBLIC INTEREST AND TRACK A", Section D - VERIFICATION OF COMPLAINTS, page 93, item 380.

The Attorney General should pursue her complaint against Qwest on consumer fraud in the Superior Court of Arizona in Pima County. The court should render a decision based on the facts of the case. It would be in the "public interest", if Qwest would accept the Attorney General's public request of trying to resolve this case before it goes to trial.

Commissioner Spitzer in the §271 Public Comment Hearing held in Phoenix on May 9, 2002 correctly characterized the companies in the telecommunications industry as "Gray Hats" because several have either faced or are currently facing complaints at the FCC or at different levels of state government.

We agree that it is a difficult situation for the Commission to determine whether a company is a "white hat" or "gray hat" and how that factors into the public interest for §271 approval in the state of Arizona. Another difficult factor that the Commission must consider is Qwest's multi-faceted position on the appropriate jurisdiction of Arizona's different branches of government and which branch has jurisdiction on Qwest's business ethics.

The Commission's landmark consumer protection procedural order on slamming and cramming, Docket NO. RT-00000j-99-0034 (RULES TO ADDRESS SLAMMING AND OTHER DECEPTIVE PRACTICES), has clarified the appropriate jurisdiction in regards to the issues the Attorney General has filed in Pima County Superior Court. This one procedural order has created an equal playing field that all telecommunication companies must play by in a competitive arena, not just Qwest. Furthermore, the procedural order has affixed fines for violations.

The Commission's approval of the PAP has established several "safety valves" to protect the public interest. The sections "14.0 - Reporting" and "15.0 - Audit/Investigations of Performance Results" (DOCKET NO. T-00000A-97- 0238)³ will allow the Commission to monitor and correct "questionable" behavior of Qwest after the approval of the application of §271 by Qwest.

Furthermore, the Commission has the Constitutional authority to administer the ultimate penalty by revoking Qwest's Certification of Convenience Necessity (hereinafter CCN), which would disallow Qwest's ability to operate as a business in the state of Arizona, if Qwest is not acting in the public interest in a competitive environment.

The Staff's second issue that the Commission should consider in granting § 271 relief to Qwest, relative to Public Interest, is a concern shared by the Union because it implies willful deception by Qwest. The allegation that Qwest entered interconnection agreements adopted by negotiation or arbitration, before and after the US WEST/Qwest merger, which in effect "tainted" the §271 application approval process in Arizona, is a serious allegation. The question before the Commission is, if in fact the allegations are true and what is the remedy? Are fines the appropriate method of rectifying the situation and should this impede the final approval of Qwest's application of §271 approval in Arizona?

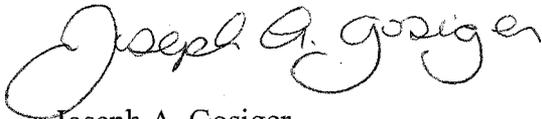
³ ("IN THE MATTER OF US WEST COMMUNICATIONS, INC. 'S COMPLIANCE WITH §271 OF THE TELECOMMUNICATIONS ACT OF 1996, Qwest Corporation's Notice of Errata to its Performance Assurance Plan – revised June 12, 2002, pages 15 – 17)

The Union believes, while these allegations are troubling, they should not impede the approval of Qwest's application of §271 in Arizona. The mechanisms of monitoring and corrective remedies that were established by the Commission in the approval of the PAP should correct any and all inappropriate actions by Qwest moving forward. In addition, the Commission has the ability to investigate. These serious allegations in separate docket unencumbered by the complexities of a §271 approval process and render the appropriate penalties. This should be done, without impeding the approval of Qwest's application of §271.

The Union commends the Commission, Staff and all the participants in the long and exhausting three-year process on the review of Qwest's application for §271 approval in Arizona. The Commission has again shown the wisdom to protect the public interest of the Arizona Telecommunications Customer with the approval of several essential components that will insure a fair and competitive telecommunication industry in Arizona. In addition, the Commission approved one key element that will allow the Commission to remedy issues that happen after the approval of Qwest's application of §271. The provision that "Qwest acknowledges that the Commission reserves the right to modify the PAP at any time it deems necessary upon Commission Order after proper notice and hearing⁴" is an innovative manner to correct forward-looking issues.

The Union supports the approval of §271 for Qwest Communications. The time has come to allow Qwest to compete in the entire marketplace. The consumers and the workers as well as the telecommunications industry will share the benefits.

Sincerely,



Joseph A. Gosiger
President
Communications Workers of America
Local 7019

cc: Commissioner Marc Spitzer
Commissioner James M. Irvin

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⁴ ("IN THE MATTER OF US WEST COMMUNICATIONS, INC.'S COMPLIANCE WITH §271 OF THE TELECOMMUNICATIONS ACT OF 1996, Qwest Corporation's Notice of Errata to its Performance Assurance Plan – revised June 12, 2002, page 17)

**Original and ten (10) copies of the foregoing
filed this 27th day of June, 2002 with:**

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**COPY of the foregoing hand-delivered this
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