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AZ CORP COMMISSION
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IN THE MATTER OF U S WEST)	DOCKET NO. T-00000A-97-0238
COMMUNICATIONS, INC.'S)	
COMPLIANCE WITH § 271 OF THE)	AT&T'S EXCEPTIONS TO THE
TELECOMMUNICATIONS ACT OF 1996)	ALJ'S RECOMMENDED OPINION
)	AND ORDER ON SECTION 272

AT&T Communications of the Mountain States, Inc. and TCG Phoenix (collectively "AT&T") hereby file their exceptions to the Administrative Law Judge's ("ALJ") Recommended Opinion and Order on Qwest Corporation's ("Qwest") Compliance with section 272 of the Telecommunications Action of 1996.

This issue requires an assessment, or "predictive judgment," of whether Qwest will comply with section 272 of the Act after Qwest has been granted section 271 relief. To make the assessment, one must look at past and present behavior.¹ Qwest's credibility, or lack thereof, is paramount in making this assessment.

Based on Qwest's history of non-compliance with section 272 since the enactment of the Act,² AT&T believes that any representations by Qwest that it will comply with section 272 after it obtains section 271 relief are not credible.

Arizona Corporation Commission

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¹ Ameritech Michigan Order, ¶ 347.

² A Bell operating company must comply with the Act since the date of its enactment. *Id.*, ¶ 371.

AT&T raised a number of issues in its testimony.³ These issues are summarized and discussed in AT&T's brief and reply brief. Essentially, Staff and the ALJ have taken Qwest's word it will comply with section 272 in the future. Staff disregards evidence of non-compliance as isolated instances or events.⁴ The events were anything but isolated.

Qwest's compliance with Generally Accepted Accounting Principles ("GAAP") is a good example. AT&T provided substantial evidence of non-compliance.⁵ Qwest argues its non-compliance was a result of 'hiccups,' "one-time delays," "catch-up billing," "mistakes," and a result of a "transition" to a new section 272 affiliate after the merger.⁶ It further argued that it had put controls in place. However, as a result of an audit required by the multistate workshops, Qwest was required to implement even more controls.⁷ Staff concluded that "AT&T acknowledged it has identified no untimely accruals following overlay of section 272 controls on QCC. While AT&T did identify several instances where expenses were not properly accrued, those instances appeared isolated and were subsequently corrected by Qwest."⁸

The problem with Staff's analysis, which is relied on by the ALJ, is that AT&T is not obligated to continue auditing Qwest's books forever. At some point in the process AT&T had to discontinue its review. Staff has essentially shifted the burden of proof to AT&T to continue auditing Qwest and provide continuing examples of non-compliance. Furthermore, as the KPMG audit demonstrated, even after Qwest claimed its house was in order, more controls were necessary. AT&T also demonstrated that Qwest lacked

³ Affidavit of Cory W. Sklvzak, Section 272, dated May 17, 2001.

⁴ Recommended Opinion and Order, ¶ 38. Staff's Final Report on Qwest's Compliance with Section 272, dated April 18, 2002, ¶¶ 136-137.

⁵ AT&T Brief 5-7; AT&T Reply Brief at 7-10.

⁶ AT&T Reply Brief at 1. *See, generally*, AT&T's Comments on Staff's Final Report on Qwest's Compliance with Section 272, dated December 5, 2001.

⁷ *See* AT&T's Comments on Staff's Final Request on Qwest's Compliance with Section 272, at 3.

⁸ Staff Report, ¶ 137.

internal controls and that its records were inadequate to conduct a comprehensive audit of compliance.⁹

Some of the questions AT&T raised are questions of fact. Staff's Report and the ALJ's Recommended Opinion and Order come down on the side of Qwest on these issues. However, a lot has transpired since Staff's Report was released in April. The Commission is reviewing unfiled agreements with competitive local exchange carriers. The Staff concluded that some of the agreements should have been filed for Commission approval and that some terms were not in the public interest. The Securities and Exchange Commission is reviewing Qwest's accounting practices. The Arizona Attorney General has filed a consumer fraud complaint against Qwest. All of these matters raise issues regarding Qwest's credibility.

AT&T asks the Commissioners to review the issues raised by AT&T, the repeated failures of Qwest to comply with section 272 since the enactment of the Act, and Qwest's repeated representations and promises of future compliance. AT&T believes the Commissioners will come to the conclusion that Qwest's claims of section 272 compliance are simply not credible, and that it should conclude that Qwest has not demonstrated it is in compliance with section 272 of the Act.

⁹ AT&T's Brief at 10-12.

Dated this 8th day of July , 2002.

AT&T Communications of the
Mountain States, Inc. and TCG
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A handwritten signature in cursive script that reads "Richard S. Wolters" with a circled "AT&T" logo to the right.

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CERTIFICATE OF SERVICE

I hereby certify that the original and 10 copies of **AT&T's Exceptions to the ALJ's Recommended Opinion and Order on Section 272**, Docket No. T-00000A-97-0238, were sent by overnight delivery on July 8, 2002 to:

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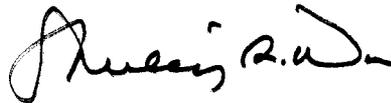
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