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BEFORE THE ARIZONA CORPORATION COMMISSION RECEIVED

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Arizona Corporation Commission

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IN THE MATTER OF QWEST )  
CORPORATION'S COMPLIANCE )  
WITH SECTION 271 OF THE )  
TELECOMMUNICATIONS )  
ACT OF 1996 )

Docket No. T-00000A-97-0238

**REPLY OF QWEST CORPORATION TO  
STAFF RESPONSE TO AT&T MOTION TO REOPEN AND SUPPLEMENT  
THE RECORD AND REQUEST FOR ORAL ARGUMENT**

Qwest Corporation ("Qwest") respectfully files this reply to the Staff's response to AT&T's recent motion to reopen and supplement the record with respect to Qwest's compliance with section 272. Qwest also hereby requests oral argument on that motion.

**Introduction and Summary**

As Qwest has noted in its opposition to AT&T's motion,<sup>1</sup> AT&T has filed substantially identical motions in all fourteen states in Qwest's region in what is clearly a last-ditch effort to delay the entry of a competitor into its core long-distance market. The Staff's response to AT&T's motion does not address the consequences of such a delay for Arizona consumers. More importantly, Staff's response entirely fails to acknowledge that the narrow section 272 issue that triggered the refiling of Qwest's federal section 271 applications does not vary from state to state, or that the FCC is already in the midst of

deciding this same issue finally and for *all* states on an expedited comment schedule (and without asking for any additional state fact-finding proceedings).

As Qwest has already demonstrated in response to AT&T's motion, there is nothing in the federal Telecommunications Act or any FCC rule or order that requires the unnecessary and inefficient course of action now proposed by AT&T throughout Qwest's region. As noted below, all six of the state commissions to have ruled on AT&T's motion have denied it. Moreover, the FCC has now indicated that it will imminently decide whether Qwest's new interLATA affiliate complies with section 272 as part of its consideration of Qwest's refiled federal applications, without awaiting any further state proceedings. In doing so, the FCC will be providing for exactly the same opportunity for comment suggested in the Staff's response, and the FCC's answer in those proceedings should be the same as it would for Arizona.

In these circumstances, as Qwest has noted in its opposition to AT&T's motion, the prudent course of action would be for the Commission to issue *no* findings or recommendations at all on Qwest's section 272 compliance, and to simply leave that one subject for the FCC's imminent decision following its review of the comments in those federal proceedings. There is no reason to delay the Commission's work and inefficiently use its resources by opening a parallel investigation into the very same matters the FCC is actively considering, especially when nothing about those matters is specific to Arizona.

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<sup>1</sup> Opposition of Qwest Corporation to AT&T's Motion to Reopen and Supplement the Record (Oct. 7, 2002) ("Qwest Opp.").

### Argument

Qwest has summarized in its response to AT&T's motion the background of the "very narrow"<sup>2</sup> section 272(b)(2) issue that triggered the refiling of Qwest's federal section 271 applications, and we will not repeat that summary here. Because of a question about the applicability of the accounting standards of that provision of the Act to *past* transactions by Qwest's previously designated section 272 affiliate with *unaffiliated third parties*, Qwest has created a new section 272 affiliate -- Qwest LD Corp. ("QLDC") -- that has no such past transactions, that will maintain its books, records and accounts in the manner prescribed by the FCC, and that will comply with all of the other restrictions established for Qwest's previous section 272 affiliate. This simple substitution of affiliates is AT&T's sole excuse for now reopening the section 272 record, and disregarding over a year of proceedings on this issue in which both the Staff and the ALJ have concluded -- as have all eleven state commissions to have addressed the matter -- that Qwest has established its willingness and ability to comply with appropriate section 272 controls.

Staff agrees with AT&T's proposal to the extent it would require Qwest to "update the record" as to "how QLDC will comply with 272 requirements." Staff proposes a two-week comment period on such a Qwest filing, then a four-day period for Qwest to reply, to be followed by a supplemental staff report. Staff Response at 2-3. As noted above, in light of Qwest's compelling prior section 272 showing no other state has accepted this invitation by AT&T, and the FCC has provided for an essentially identical (though slightly more extended) opportunity for comment for consideration of exactly the

same issue. It has thus provided for the very kind of updated record that the Staff has recommended.

The FCC has also indicated that it is not waiting for additional state proceedings to decide whether Qwest's new affiliate complies with section 272. In these circumstances, as the Washington Utilities and Transportation Commission noted in rejecting AT&T's identical motion in that state,

. . . reopening the proceeding would be a waste of administrative resources, if all fourteen states in Qwest's region—or even just our state—were to consider an issue that will soon be directly before the FCC.<sup>3</sup>

The commissions of Colorado, Montana, New Mexico, North Dakota, and Wyoming have also denied AT&T's motion.<sup>4</sup> As the New Mexico commission has noted, "it would be a waste of [the Commission's] administrative resources and patently inefficient for it to conduct an isolated review of an indisputably region-wide issue that can and will be

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<sup>2</sup> See Statement of FCC Chairman Michael Powell on Withdrawal of Qwest's Multistate 271 Applications, at 1 (released Sept. 10, 2002).

<sup>3</sup> 44th Supplemental Order; Denying AT&T's Motion to Reopen the Proceeding and Supplement the Record, Washington Utilities and Transportation Commission, Docket Nos. UT-003022, UT-003040 (Sept. 26, 2002) ¶ 1 ("Washington Order").

<sup>4</sup> See Notice of Commission Action, In the Matter of the Investigation Into Qwest Corporation's Compliance with Section 271 of the Telecommunications Act of 1996 (Montana Pub Serv. Comm'n Oct. 10, 2002); Final Order Regarding Compliance with Outstanding Section 271 Requirements: SGAT Compliance, Track A, and Public Interest, *In the Matter of Qwest Corporation's Section 271 Application and Motion for Alternative Procedure to Manage the Section 271 Process*, Utility Case No. 3269 (New Mexico Pub. Reg. Comm'n Oct. 8, 2002) ("New Mexico Order"), at ¶ 199. Order on AT&T's Motion to Reopen, U S WEST Communications, Inc. Section 271 Compliance Investigation (Oct. 10, 2002)(The North Dakota Commission agreed that consultation with the state commissions does not extend to section 272 under the Act. It has determined to entertain comments on Qwest's FCC application prior to October 15, 2002, the date it will file its recommendation with the FCC.) The decisions from Colorado (October 9, 2002) and Wyoming (October 10, 2002) are oral rulings from those commissions that have yet to be memorialized in a written order.

addressed at the federal level.”<sup>5</sup> The Staff’s response does not explain why such a duplicative round of comments makes any more sense in Arizona than it does in Colorado, Montana, New Mexico, North Dakota, Washington, or Wyoming. And as Qwest has noted in response to AT&T’s motion, there is no requirement in the Act or FCC precedent that this Commission undertake such a redundant exercise, particularly with respect to a matter unrelated to competition issues in local Arizona markets.

Staff suggests that it needs a second chance to review the section 272 controls that it previously approved because (1) that examination took place before QCC determined that it would have to restate its revenues, bringing its compliance with GAAP into question, and (2) Qwest may use QLDC as its affiliate instead of QCC, depending on whether the restatement of QCC’s revenues is complete by the time this Commission finishes its consideration of Qwest’s section 271 application.<sup>6</sup> Neither reason justifies the unnecessary and inefficient course of action AT&T and Staff are proposing. As Staff correctly acknowledges,<sup>7</sup> Qwest would not be using QCC as the section 272 affiliate unless and until it resolves the questions related to QCC’s accounting of past, third-party transactions. Thus, these accounting issues are irrelevant no matter which course of action Qwest pursues, either because they will have been resolved or because Qwest will be using an affiliate other than QCC. With respect to the latter course, even AT&T

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<sup>5</sup> New Mexico Order ¶ 199.

<sup>6</sup> Staff Response at 2.

<sup>7</sup> Staff Response at 2 (acknowledging that Qwest “intends to use QLDC, the new affiliate, until such time as QCC is determined to be GAAP compliant”).

concedes that “[c]reating a new subsidiary may resolve the section 272 affiliate’s GAAP problems.”<sup>8</sup>

Nor does the possibility that Qwest may be substituting QLDC for QCC present any reason to reopen this record.<sup>9</sup> Qwest is already in the process of demonstrating to the FCC that section 272 accounting controls are in place and that QLDC is in compliance with all requirements of section 272, including section 272(b)(2). The FCC will decide the question of QLDC’s compliance with section 272 imminently, and there is no reason that its answer for the nine application states would be different than its answer for Arizona.. As both the Washington and New Mexico commissions have noted, racing to duplicate this inquiry would be a “waste of administrative resources.” This Commission will not lose its role in these matters in the future by deferring to the FCC now; this Commission’s role in the biennial section 272 audits gives it extra assurances of the section 272 affiliate’s continued compliance going forward.<sup>10</sup>

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<sup>8</sup> AT&T Motion at 10-11.

<sup>9</sup> Of course, QLDC could not begin intrastate service until it obtains the requisite authorization from this Commission to do so. That, however, is not the subject of this 271 docket.

<sup>10</sup> See *Bell Atlantic New York Order* ¶ 412; *SBC-Texas Order* ¶ 406; Memorandum Opinion and Order, *Joint Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Kansas and Oklahoma*, 16 FCC Rcd 6237 ¶ 260 (2001), modified, *Sprint Communications Co. v. FCC*, 274 F.3d 549 (D.C. Cir. 2001).

CONCLUSION

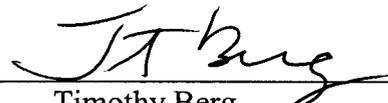
For the foregoing reasons and those set forth in Qwest's opposition to AT&T's motion to reopen and supplement the record, Qwest respectfully asks the Commission to deny AT&T's motion. Qwest also requests oral argument on that motion.

Dated this 11th day of October 2002.

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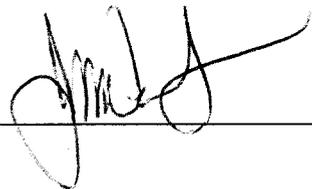
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