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BEFORE THE ARIZONA CORPORATION COMMISSION

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IN THE MATTER OF US WEST  
COMMUNICATIONS, INC.'S COMPLIANCE  
WITH SECTION 271 OF THE  
TELECOMMUNICATIONS ACT OF 1996.

Docket No. T-00000A-97-0238

**COMMENTS ON STAFF'S SUPPLEMENTAL REPORT AND RECOMMENDATION**

In response to Staff's Supplemental Report and Recommendation, RUCO continues to recommend that the Commission not consider the approval of Qwest's 271 application until the 252(e) proceeding has been concluded. RUCO repeats and reaffirms all the arguments it has made in the 252 docket previously. In addition, Staff by its statements in its Supplemental Report points out the futility in proceeding with 271 prior to concluding the 252 docket. Staff notes that "Since the record has not closed in the public interest phase of this case, parties could file their comment on the 252(e) issue now: and on whether, given the nature of the allegations, the Commission should find that Qwest's Section 271 application is not in the public interest." Supplemental Staff Report and Recommendation, p. 4. In other words, Staff is suggesting that the Commission could make an adverse public interest finding based on unproven allegations. Staff's position is inconsistent with its previous public interest arguments. In it's Final Report on Public Interest, Staff responded to the Attorney General's argument that 271 approval is not in the public interest because of the consumer protection arguments raised in her pending complaint filed against Qwest. Staff noted, "Therefore, the complaint must currently be viewed as unproven allegations. A Court of competent jurisdiction

1 has made no final determinations as to the merits of these allegations. As such, Staff cannot  
2 conclude that this request is inconsistent with the public interest.”<sup>1</sup> Final Report On Qwest’s  
3 Compliance with Public Interest and Track A, May 1, 2002, p. 73. Yet Staff is suggesting that  
4 the parties including Staff can draw conclusions with regard to the unproven 252 allegations  
5 that are inconsistent with the public interest.

6 Staff’s argument that the parties as well as the Commission could draw conclusions  
7 based on unproven allegations raises due process concerns. Although RUCO stands by the  
8 allegations it has made in its Report of August 29, 2002, RUCO hesitates to make a public  
9 interest recommendation based on the allegations. At the very least, RUCO would prefer to  
10 conclude its investigation prior to making any recommendations. Moreover, RUCO believes  
11 that a recommendation based on unproven allegations would be passing judgment on Qwest  
12 before it has an opportunity to go to trial. RUCO recognizes that what has been alleged in the  
13 252 docket are simply allegations at this point, and the Commission can give it the weight it  
14 deems appropriate. However, since the allegations, if true, so directly impact the public  
15 interest, the Commission would be negligent not to consider them if in fact the Commission  
16 determines that what has been alleged in fact has taken place.<sup>2</sup>

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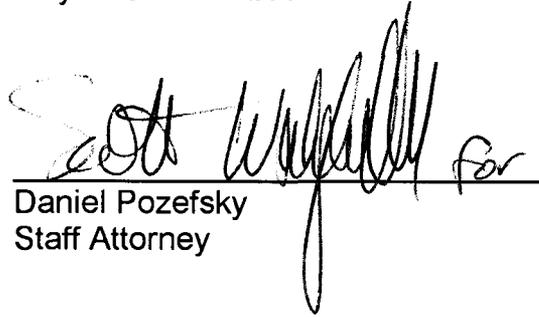
22 <sup>1</sup> Staff goes on to note that the allegations raised by the AG are important enough to warrant consideration and be  
23 given their appropriate weight, but that “...the AG complaints are currently only allegations.” Final Report On  
Qwest’s Compliance with Public Interest and Track A, May 1, 2002, p. 73.

24 <sup>2</sup> At least one Commission, Minnesota, has a decision by an administrative law judge who has determined that  
Qwest violated section 252 of the Act on multiple instances by not filing with the Commission the same  
Agreements that are the subject of Arizona’s 252 proceeding.

1 Staff suggests that the 271 proceeding does not need to be held in abeyance pending  
2 the outcome of the 252(e) enforcement proceeding. Supplemental Staff Report and  
3 Recommendation, p. 4. Staff anticipates that the Commission will craft remedies in the 252  
4 proceeding commensurate with the level of past violations found, and that the Commission  
5 could conclude that Qwest's 271 application is not in the public interest prior concluding the  
6 252 docket. Supplemental Staff Report and Recommendation, p. 20. Staff recognizes the  
7 importance of the enforcement proceedings and the need for the Commission to serve the  
8 public interest but de-emphasizes the public interest implication in the context of 271. The  
9 Commission's consideration of the effect of Qwest's discriminatory conduct on the public  
10 interest should be heightened, not de-emphasized. What is being alleged in the 252 docket  
11 goes to the heart of the 271 docket-the development of a competitive environment. That is,  
12 whether Qwest engaged in discriminatory conduct, and if so, what can be done to prevent  
13 similar conduct in the future. It does not make sense to reward Qwest with 271 approval by  
14 sanctioning the very conduct that the Act was designed to prevent. Of equal importance, is the  
15 need to not rush to judgment on 271 at the expense of jeopardizing a competitive environment.  
16 The interests of the ratepayers and the public interest are of paramount concern. Before  
17 entertaining the 271 application, any inference of prior discriminatory conduct needs to be  
18 dispelled or safeguards must be put into place to assure this conduct does not happen again.  
19 Only then can the Commission have confidence that its recommendation may result in  
20 competition in Arizona. Any delay in the Commission's 271 deliberations is solely the fault of  
21 Qwest; it was Qwest that engaged in the conduct.

1 RUCO believes the section 271 and section 252 dockets should be consolidated for  
2 purpose of the hearing, so that the hearing can have a broad scope and all appropriate  
3 remedies can be considered. RUCO recommends that under no circumstances should the  
4 public interest portion of the 271 application proceed until all the 252 issues are resolved.

5  
6 RESPECTFULLY SUBMITTED this 15th day of October 2002.

7  
8  for  
9 Daniel Pozefsky  
10 Staff Attorney

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