



Communications Workers Local 7019

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Arizona Corporation Commission
DOCKETED

March 3, 2003

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ARIZONA CORPORATION COMMISSION
Chairman Mark Spitzer
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AZ CORP COMMISSION
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RE: Docket No. T-00000A-97-0238 [Section 271]

Dear Chairman Spitzer:

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

In a letter dated June 26, 2002, the Union stated "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."¹

Furthermore, the Telecommunications Act of 1996 (hereinafter the Act) has provisions that after the approval of a Bell Operating Company's (Qwest) reentry into the local long distance market there is a review process to protect the public interest to insure a competitive market place.

"Section 271 Compliance Review Program

The Enforcement Bureau has a Section 271 Compliance Review Program. As Bell Operating Companies ("BOCs") receive authority to provide long distance service within their regions, the staff of the newly formed Section 271 Compliance Review Team will monitor on a structured and systematic basis the companies' compliance with the market opening conditions of Section 271 of the Telecommunications Act of 1996. This Program augments the Enforcement

¹ See attached dated June 26, 2002, addressed to Chairman Mundell.

Bureau's existing Section 271 oversight and enhances the Bureau's ability to identify and act upon non-compliant conduct in a timely and appropriate manner. Attorneys, auditors, and other professionals in the Enforcement Bureau's Investigations and Hearings Division ("IHD") staff the Compliance Review Team. It will implement the Compliance Review Program for each newly filed Section 271 application and will continue to monitor the BOCs' ongoing performance in those states where the Commission has already granted Section 271 authority. The Team oversight responsibilities are divided according to BOC region, with a dedicated group maintaining responsibility for each region.

Following Commission approval of a Section 271 application, the Team scrutinizes BOC performance data and other pertinent information to determine whether such documentation indicates that a BOC is continuing to meet its Section 271 obligations. This process includes regular compliance reviews six and 12 months after approval, with specific focus on any particular concerns raised by the Commission in the order granting a BOC Section 271 authority.

The Team members also serve as a point of contact for state commissions, competitive carriers, and other interested persons who may wish to report informally any perceived instances of noncompliance with Section 271. Finally, if the Team determines a BOC may not be in compliance, it will initiate an investigation and, if warranted, take or recommend appropriate enforcement action."²

The Commission and the FCC have created several "safety nets" to protect the public interest of Arizona consumers moving forward, which would allow Qwest reentry into the Arizona local long distance market, if the Commission deems the Arizona telecommunications market competitive.

The Union has deep concerns about the prolonged and exhausting § 271 approval process in Arizona. The §271 approval process in Arizona is now entering into its fourth year. Of the other 13 states served by Qwest, 12 have been approved and 1 is nearing approval. All 13 will have gone through the process in a two-year period.

The continuing delays could irretrievably damage the current telecommunications network backbone in Arizona - Qwest. Since the Union wrote its letter in June of last year, Qwest has had a 69,477 wire line reduction in Arizona, with a total of 557,799 wire line loss since the § 271 approval process started four years ago in Arizona.

² FCC Homepage, EB-Section 271 Enforcement, <http://www.fcc.gov/eb/LoTelComp/271.html>, (February 22, 2003).

Table One - 2002 Qwest -Arizona Access Lines

Month	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Access Lines	2,529,099	2,514,827	2,500,401	2,485,888	2,476,314	2,469,534	2,459,622
Gain/(Loss) per month		(14,272)	(14,426)	(14,513)	(9,574)	(6,780)	(9,912)

Table Two - Qwest - Arizona Access Lines (Five-Year Period 1998-2002)

Year	1998	1999	2000	2001	2002
Access Lines	2,702,344	2,791,995	3,017,421	2,832,484	2,459,622
Gain/(Loss) per year		89,651	225,426	(184,937)	(372,862)

The reduction of Qwest wire lines (19% reduction since 2000) diminishes revenue streams at a time when Arizona is still experiencing a housing boom. A continuing housing boom causes Qwest to have additional expenses to place cable and other capital items. There is a reduction in the revenue stream due to the decline in the number of access lines being installed. Qwest continues to be required to install the cable and other capital items as the incumbent local exchange carrier. The equation of the diminished revenue stream and the increased capital expense is not in the public interest because it is not a healthy economic environment for any company: especially one that is Arizona's communications backbone.

An interesting point is that Qwest has fewer wire lines today (2,459,622- end of 2002) than at the beginning of the §271 approval process in Arizona (2,791,995-2001).

Table Three - Arizona Housing Starts (2001)

<u>Number of Dwelling Units</u>		<u>Average Value per Dwelling Unit (\$)</u>	
Units	Percent Change From Previous Year	Value	Percent Change From Previous Year
51,839	6%	138,200	6%

Source: U.S. Bureau of Census and Real Estate Center at Texas A&M University³

³ Real Estate Center, Arizona Single-Family Building Permits, <http://recenter.tamu.edu/data/bps/sfs04a.htm> (February 22, 2003).

The continuous reduction of Qwest wire lines in Arizona has had a ripple affect on the Qwest workforce. The affect of the downward trend of wire lines has caused a reduction of work volumes at Qwest, which in turn causes a reduction in the Qwest workforce. Since late 2001, the Qwest workforce has faced workforce reductions of over 1500 workers statewide, which includes outside technicians and technical inside support groups.

Furthermore, another trickle down effect is a reduction of state income taxes and an increase in workers' unemployment insurance expenditures. Furthermore, tax revenues that are generated by wire lines is diminished - Federal, State, County, City and 911 excise tax, Federal and state universal service fund, and local cable usage taxes.

In Arizona, the §271 approval process is in its final stages because Qwest has completed the long and exhausting 14-point checklist required by the Act. The completion of the 14-point checklist has shown the Arizona telecommunications market served by Qwest is competitive.

Granted, Qwest has caused some of the delays by their actions, but there have been delays by the extensions requested and granted to the Staff. The Union clearly appreciates and understands the complex and difficult task the Staff must accomplish in the §271 approval process. In addition, the Union recognizes the Staff's increased workloads covered by the Commission - electric, water and other areas mandated by the Arizona Constitution - at a time of budget reductions.

The Union does have a concern in the most recent extension requested by Staff and was granted by the Commission - **252(e) Unfiled Agreements**.

- Original hearing date set for 1/29/03
- 12/20 Staff requested a 2 week extension to file testimony—new hearing date 3/3/03
- 2/6 Staff requested a 2 week extension to file testimony—new proposed hearing date 3/17/03

In addition, Staff has not issued the final report to the Commission on General Terms and Conditions of §271 approval in Arizona, which is the final step in the § 271-approval process.

Although, the Union has concerns about the delays by the Staff: the "Report on the July 30-31 Workshop (Report One – Operations Support Systems Related Issue)" (hereinafter Report One) filed on February 25, 2003, the Union commends the Staff for their thorough and complete report.

The Union supports the Staff's Report One -

"VII. Verification of Compliance

224. The Staff's recommendations as to the resolution of all impasse issues as described above, Staff believes that all outstanding issues raised in the Supplemental Workshops in Arizona have now been resolved. Qwest should be required to provide evidence that it has implemented Staff's recommendations. This evidence and the effectiveness of the recommendations will be reviewed at the first six months PAP review.

225. Staff deems the OSS Test portion of Qwest's Section 271 initiative to be complete. In Staff's opinion, with the above resolutions of the issues presented, all of the objectives of implementing a comprehensive independent Third Party administered OSS Test have been fulfilled."

II. CONCLUSIONS OF LAW

1. Qwest is a public service corporation within the meaning of Article XV of the Arizona Constitution and A.R.S. Sections 40-281 and 40-282 and the Arizona Corporation Commission has jurisdiction over Qwest.

2. Qwest is a Bell Operating Company as defined in 47 U.S.C. Section 153(a)(35)(B) and subject to the prohibitions and permissions contained in 47 U.S.C. Section 271 that expressly pertain to Bell Operating Companies.

3. Qwest has sufficiently demonstrated before this Commission that it satisfies all requirements, relative to OSS Testing, and results thereof, specified by the FCC for Section 272 applicants in CC Docket No. T-00000A-97-0238."⁴

The Union concurs with Staff that the Commission has designed an effective compliance process with the approval of the PAP. The PAP six-month review process and the Commission's ability to alter items that either deter competition and/or are not in the public interest is the "safety net" designed by the Commission, which protects the Arizona consumer moving forward and the Commission should be applauded for their foresight.

In conclusion, the question before the Commission *is it in the public interest of Arizona that Qwest be granted the ability to compete on an equal footing with other telecommunications companies in a telecommunications market already deemed competitive?*

⁴ "Staff's Report on the July 30-31 Workshop (Report One – Operations Support Systems Related Issue), VII. Verification of Compliance, page 49, items 224 and 225, and II. Conclusions of Law, page 49, items 1-3.

The Union believes it is in the public interest to grant Qwest §271 approval in Arizona and allow the FCC to review Qwest's application to reenter the Arizona local long distant market.

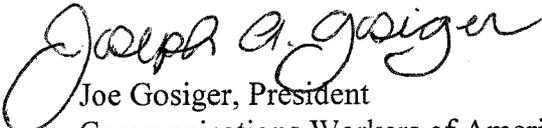
The Arizona telecommunications customer, residential and business, is being denied a basic right the Act was intended to grant the telecommunications customer - *choice in a competitive marketplace.*

Today, a corporation in Arizona has to split their telecommunications services if they want Qwest as their local telecommunications provider, which can be complicated if they have other operations in states served by Qwest (excluding Minnesota). It becomes a hodge-podge of different rules and services that Qwest can offer because of their inability to offer local long-distance in Arizona. The Act was supposed to reduce the hodge-podge of rules that caused artificial barriers to consumer choice in a competitive marketplace.

Although, the Arizona telecommunications market is considered competitive, a Corporation can transport a long distance call into Arizona through Qwest lines, but the same Corporation can not initiate a long distance call from Arizona, which denies the business community the right to choose in a free competitive market place. That same business customer is unable to transmit calls between Phoenix and Tucson. This especially is a problem with data transmission within the state, forcing companies, hospitals and educational institutions to use other telecommunications companies. Therefore denying the business customer a choice and Qwest the ability to compete in that lucrative market. Furthermore, the Arizona residential telecommunications consumer is restricted on their choices in a competitive market place.

The Union is urging the Commission to expedite the approval process of §271, to enable Arizona consumers to reap the benefits of a clear choice in their telecommunications needs and to allow the workers of Qwest to serve their customers in a competitive marketplace. Allowing Qwest to provide their products and services fairly in the marketplace that will benefit the consumers, the employees and the economy of Arizona.

Respectfully submitted,


Joe Gosiger, President
Communications Workers of America, Local 7019

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attachment

cc: Commissioner Jim Irvin
Commissioner Mike Gleason
Commissioner William Mundell
Commissioner Jeff Hatch-Miller



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June 26, 2002

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

Dear Commissioner 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:

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

- 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.

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

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

approval of Qwest's application of §271 should not be contingent on the final outcome of the Attorney General's case.

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

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)

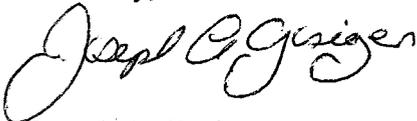
the appropriate method of rectifying the situation and should this impede the final approval of Qwest's application of §271 approval in Arizona?

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
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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)

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