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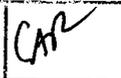
ARIZONA CORPORATION
COMMISSION

Complainant.

v.

QWEST CORPORATION

Respondent.

DOCKETED BY 

DOCKET NO. T-01051B-02-0871

REPLY TESTIMONY

OF

JOHN F. FINNEGAN

ON BEHALF OF

AT&T COMMUNICATIONS OF THE MOUNTAIN STATES, INC.,

June 3, 2003

1 Q. ARE YOU THE SAME JOHN F. FINNEGAN THAT SUBMITTED
2 DIRECT TESTIMONY IN THIS PROCEEDING?

3 A. Yes, I am.

4 Q. WHAT IS THE PURPOSE OF YOUR REPLY TESTIMONY?

5 A. The purpose of my testimony is to respond to the Rebuttal Testimony of Qwest
6 Witness William R. Easton.

7 Q. BY WHAT STANDARD SHOULD QWEST BE HELD TO FOR THE
8 TIME IT TAKES TO IMPLEMENT WHOLESALE PRICE CHANGES?

9 A. Qwest should be held to a standard of parity with the time it takes to implement
10 retail price changes.

11 Q. ON WHAT BASIS DO YOU COME TO THAT CONCLUSION?

12 A. I came to that conclusion based upon the requirements of the Telecommunications
13 Act of 1996 and the FCC's rules and decisions implementing those requirements.
14 The FCC concluded that:

15 ...if competing carriers are unable to perform the functions
16 of pre-ordering, ordering, provisioning, maintenance and
17 repair, and *billing* for network elements and resale services
18 *in substantially the same time and manner that an*
19 *incumbent can for itself*, competing carriers will be
20 severely disadvantaged, if not precluded altogether, from
21 fairly competing. Thus providing nondiscriminatory access
22 to these support systems functions, which would include
23 access to the information such systems contain, is vital to
24 creating opportunities for meaningful competition.¹
25 (emphasis added)

26 Fundamentally, Qwest should make changes in its wholesale rates in substantially
27 the same time and manner as it does for its retail rate changes.

¹ *In the Matter of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, and *Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, CC Docket 95-185, First Report and Order, FCC 96-325 (rel. Aug. 8, 1996), ¶ 518 ("First Report and Order").

1 Q. IS QWEST MEETING THAT REQUIREMENT?

2 A. No, it is not. Qwest admitted in this proceeding that it “is usually able to
3 implement retail [changes in] rates in one billing cycle.”² In contrast, it took
4 Qwest over five bill cycles to complete its Arizona changes to the wholesale
5 rates.³

6 Q. WHAT IS YOUR REACTION TO MR. EASTON’S STATEMENT THAT
7 “SIGNIFICANT DIFFERENCES EXIST BETWEEN THE WHOLESALE
8 AND RETAIL BILLING PROCESSES?”⁴

9 A. My reaction is that if there are “significant differences” between the wholesale
10 and retail billing processes it is the result of Qwest’s choices in how it designed
11 the wholesale billing processes. Qwest was in sole control of the process to
12 produce wholesale bills for CLECs. If, as Mr. Easton states, “[t]he [wholesale
13 rate change] process is complex,” it is because Qwest designed it that way.⁵

14 Q. DO YOU BELIEVE THAT MR. EASTON’S CONCLUSION THAT “THE
15 TIMES TO IMPLEMENT ARIZONA [WHOLESALE RATE CHANGES]
16 ARE COMPARABLE TO THOSE EXPERIENCED IN OTHER STATES”⁶
17 IS COMPELLING?

18 A. No, I do not. My understanding is that Qwest uses essentially the same processes
19 to change rates in its entire fourteen-state region. With one process, it is hardly
20 surprising that the process produces similar results across the fourteen states.
21 However, that process to implement required rate changes is complex,
22 cumbersome and slow. What I find more compelling is Mr. Rowell’s testimony
23 that “RBOCs other than Qwest usually implement wholesale rates in much shorter

² Qwest’s Answer to Commission’s Complaint and Order to Show Cause, Docket No. T-01051B-02-0871, December 23, 2002, p. 6. A billing cycle is generally a calendar month.

³ Rebuttal Testimony of William R. Easton, May 15, 2002, p. 11.

⁴ *Id.*, p. 20.

⁵ *Id.*, p. 9.

⁶ *Id.*, p. 12.

1 periods of time than six months. ...the California PUC ordered Pacific Bell to
2 complete the necessary billing program changes within 60 days of the order” and
3 “the New York Commission required Verizon to have its rates in effect within
4 thirty days of the order.”⁷ This shows that the process to change wholesale rates
5 need not be as complex, cumbersome and slow as the process that Qwest chose to
6 design.

7 **Q. DOES THE FCC RECOGNIZE THE HARM THAT COULD BE CAUSED**
8 **BY A DELAY IN IMPLEMENTING REQUIRED WHOLESALE RATE**
9 **REDUCTIONS?**

10 **A.** Yes, it does. Delays in the implementation of wholesale rate changes are a form
11 of inaccurate wholesale bills. The FCC recognized that even with eventual bill
12 corrections, inaccurate wholesale bills can impede a CLEC’s ability to compete.
13 Specifically, the FCC found:

14 Inaccurate or untimely wholesale bills can impede a
15 competitive LEC’s ability to compete in many ways. First,
16 a competitive LEC must spend additional monetary and
17 personnel resources reconciling bills and pursuing bill
18 corrections. Second, a competitive LEC must show
19 improper overcharges as current debts on its balance sheet
20 until the charges are resolved, which can jeopardize its
21 ability to attract investment capital. Third, competitive
22 LECs must operate with a diminished capacity to monitor,
23 predict and adjust expenses and prices in response to
24 competition. Fourth, competitive LECs may lose revenue
25 because they generally cannot, as a practical matter, back-
26 bill end users in response to an untimely wholesale bill
27 from an incumbent LEC.⁸

⁷ Direct Testimony of Matthew Rowell, April 17, 2003, p. 8.

⁸ *In the Matter of Application of Verizon Pennsylvania Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks Inc., and Verizon Select Services Inc. for Authorization To Provide In-Region, InterLATA Services in Pennsylvania*, CC Docket No. 01-138, Memorandum Opinion and Order, FCC 01-269 (rel. Sept. 19, 2001), ¶23 (footnotes omitted).

1 Given that the FCC has recognized the competitive impediments that
2 inaccurate wholesale bills create, I would have to disagree with Mr.
3 Easton's statement that "the CLECs were not harmed by Qwest's
4 actions."⁹

5 **Q. MR. EASTON STATED THAT YOU "INSINUATE[D] THAT QWEST IS**
6 **OFFERING DISCRIMINATORY PRICING BETWEEN CLECS."¹⁰ DID**
7 **YOU MAKE THAT INSINUATION?**

8 **A.** No, I did not. I simply pointed out that CLEC-specific rate tables allowed Qwest
9 to charge different CLECs different rates for the exact same items. I also pointed
10 out that the ability to charge different CLECs different rates for the exact same
11 items permitted Qwest to offer discriminatory prices between CLECs.
12 However, in direct response to Mr. Easton, there is evidence that Qwest did offer
13 discriminatory pricing between CLECs. In Arizona, Qwest is under investigation
14 for failing to file certain agreements for Commission approval. Staff witness
15 Kalleberg described the secret agreements between Qwest and Eschelon and
16 Qwest and McLeod as "unique and discriminatory" because, among other
17 reasons, Eschelon and McLeod received "discounted pricing on UNE-E [and
18 UNE-M], [and] discounts on all other services" and "other CLECs [] could not
19 view and possibly opt-in to the agreements between the parties since they were
20 not publicly filed."¹¹

⁹ Rebuttal Testimony of William Easton, May 15, 2003, p. 1.

¹⁰ *Id.*, p. 20.

¹¹ Before the Arizona Corporation Commission, *In the Matter of Qwest Corporation's Compliance with Section 252(e) of the Telecommunications Act of 1996*, Docket No. RT-00000F-02-0271, Direct Testimony of Marta Kalleberg, (Feb. 21, 2003), pp. 18, 22 and 38.

1 The Minnesota PUC also found that Qwest provided certain CLECs with
2 discriminatory pricing. In an order fining Qwest for failing to file interconnection
3 agreements the Minnesota PUC stated:

4 The ALJ found and the record shows that in each of the
5 twelve interconnection agreements cited by the
6 Department, Qwest provided terms, conditions, or rates to
7 certain CLECs that were better than the terms, rates and
8 conditions that it made available to the other CLECs and, in
9 fact, kept those better terms, conditions, and rates a secret
10 from the other CLECs. In so doing, *Qwest unquestionably*
11 *treated those select CLECs better than the other CLECs,*
12 *thereby discriminating against them in violation of the cited*
13 *provisions of Section 251.*¹²

14 The Minnesota PSC explicitly found that Qwest provided discriminatory pricing.

15 The Arizona Commission may or may not make the same finding. The facts
16 speak for themselves. However, the point I was trying to make is that Qwest
17 structured its process in a manner that permitted CLEC-specific rate tables *by*
18 *design* and, as a result, the process permitted Qwest to discriminate.

19 **Q. DOES THAT CONCLUDE YOUR TESTIMONY?**

20 **A.** Yes, it does.

¹² Before the Minnesota Public Utilities Commission, *In the Matter of the Complaint of the Minnesota Department of Commerce Against Qwest Corporation Regarding Unfiled Agreements*, Docket No. P-421/C-02-197, Order Assessing Penalties, (Feb. 28, 2002), pp. 3- 4 (emphasis added).

CERTIFICATE OF SERVICE
(T-01051B-02-0871)

I certify that the original and 13 copies of the Reply Testimony of John F. Finnegan on behalf of AT&T Communications of the Mountain States, Inc.'s were sent by overnight delivery on June 2, 2003:

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