

standards. Qwest also will provide the ACC with monthly reports of aggregate CLEC performance under the QPAP. The QPAP also provides for CLEC-initiated audits. *Id.* ¶¶ 26-27.

Like the SBC-Texas plan and the plans that were endorsed by the Commission in the *Qwest 271 Orders*, the QPAP provides for two categories of payments that are triggered if the QPAP's standards are not met. Tier 1 applies at the individual CLEC level and provides for compensatory payments to CLECs in the nature of liquidated damages based upon monthly performance reports. These payments are self-executing, that is, they are made to each CLEC each month whenever the pertinent standard is not met (for parity measurements by any amount that is statistically significant), *regardless of whether the CLEC has suffered any damages resulting from the missed measurement*. Tier 2 payments provide additional financial incentive payments. *Id.* ¶¶ 17-18.

The Commission has required that plans place sufficient BOC local revenues at risk to ensure that the applicant's commitment to meeting the performance criteria contained in the plan is acceptable. Prior plans have varied in their design in this respect. But the Commission has held that, where a plan annually places at risk at least 36% of the applicant's net return as calculated from ARMIS data, 70/ it provides a meaningful and significant incentive to refrain from anticompetitive behavior. 71/ In Arizona, the QPAP initially places \$114 million at risk annually - an amount representing approximately 44 percent of Qwest's 1999 Arizona net return based on ARMIS data. Williams Decl. ¶ 8. After the first year, the Arizona QPAP

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70/ ARMIS data "represents total operating revenue [from local service] less operating expenses and operating taxes" and is provided to the FCC on an annual basis. The Commission has found that a calculation of "net return" based upon these data was a "reasonable approximation of total profits derived from local exchange service." *New York 271 Order* at 4168 ¶ 436; *Texas 271 Order* at 18561-62 ¶ 424.

71/ See *Qwest 9-State Order* ¶ 455 & n.1655; *Qwest 3-State Order* ¶ 121 & n.430; *Qwest Minnesota Order* ¶ 71 & n.263.

provides for recalculation of the cap annually on the basis of the most recent publicly available ARMIS data. *Id.*

We note also that the QPAP will not be the only safeguard against backsliding. The most significant assurance of future compliance beyond the QPAP is the Commission's enforcement authority under Section 271(d)(6). *See* 47 U.S.C. § 271(d)(6). *See also, e.g., Qwest 9-State Order* ¶ 443. Thus, there is more than adequate assurance that the local market in Arizona will remain open.

**C. There Are No “Unusual Circumstances” That Would Make Long Distance Entry Contrary to the Public Interest.**

**1. Qwest Has Satisfied the Requirements of the Competitive Checklist and Local Exchange Competition is Thriving in Arizona.**

The Commission has explained that it “may review the local and long distance markets to ensure that there are not unusual circumstances that would make entry contrary to the public interest.” *Texas 271 Order*, 15 FCC Rcd at 18558 ¶ 417. Significantly, however, the Commission has repeatedly held that “compliance with the competitive checklist is, itself, a strong indicator that long distance entry is consistent with the public interest.” *New York 271 Order* ¶ 422; *see also Kansas/Oklahoma 271 Order* ¶ 268. Thus, the Commission has “disagree[d] with commenters who assert that we must, under our public interest standard, consider a variety of other factors as evidence that the local market is not yet truly open to competition, despite checklist compliance.” *New Jersey 27 Order* ¶ 168 & n.516. The record here establishes that no “unusual” circumstances exist in Arizona.

First, the local market in Arizona is open and local competition is thriving. And, as reflected in the experience of the post-relief BOCs in other states, Qwest's entry into the long distance market in Arizona will further promote local competition. Second, mechanisms are in

place to ensure that the local market will remain open. As discussed above, Qwest has proposed strict performance standards and a comprehensive performance assurance plan that is consistent with the criteria established by this Commission in prior Section 271 orders, including each of the *Qwest 271 Orders*.

Meanwhile, and as discussed above, TELRIC rates for unbundled network elements are in place in Arizona. There is no basis under the “public interest” test of Section 271(d)(3)(C) for imposing an independent requirement that the BOC provide still lower rates in order to afford CLECs even greater incentives to enter the market by means of the UNE platform. We note that, in previous Section 271 proceedings, some CLECs have sought to raise a “price squeeze” argument, relying on the D.C. Circuit’s opinion in *Sprint Communications Co., L.P. v. FCC*, 274 F.3d 549 (D.C. Cir. 2002). *Accord, WorldCom, Inc. v. FCC*, No. 01-1198 (D.C. Cir. Oct. 22, 2002) (“virtually identical” issue remanded in light of *Sprint*). Indeed, precisely such arguments have been raised in the earlier Qwest application proceedings. Here, however, any such argument would be completely without foundation. <sup>72/</sup> See Thompson Pricing Decl. ¶¶ 50-56; *Qwest 9-State Order* ¶¶ 404-439 (analyzing and rejecting price squeeze claims).

**2. Qwest Has Followed the Same Processes With Respect to CLEC Agreements in Arizona That the Commission Has Approved in Prior Section 271 Proceedings.**

Qwest is fully committed to continuing Section 252 compliance in all states, including Arizona. Qwest has followed the same corrective processes here that it has in the

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<sup>72/</sup> The only party to raise this contention before the Arizona Commission was AT&T, and AT&T merely compared the UNE-P rate to the 1FR rate in Arizona without, as the FCC requires, considering other relevant sources of revenue. Although MCI/WorldCom adverted to the price squeeze issue before the Arizona Commission, it did not provide *any* pricing data or analysis. See Thompson Pricing Decl., ¶ 55 & n.87.

thirteen states where the Commission already has granted Section 271 authority. Just as in those states, any past compliance issues in Arizona provide no basis for delaying grant of this application. They in no way counterbalance the enormous efforts Qwest has made to satisfy the competitive checklist. Nor do they justify denying consumers the benefits that will flow from increased long distance competition.

The Arizona Commission has been investigating issues regarding past agreements since the Spring of 2002. <sup>73/</sup> These efforts culminated when, on July 25, 2003, Qwest and the Arizona Staff filed with the Arizona Commission a settlement agreement resolving all issues related to the “unfiled agreements” matter. The ACC has assigned the proceeding to an ALJ, who has set a procedural schedule to consider approval of the settlement agreement. The issues in Arizona, and the settlement agreement itself, relate to the scope of penalties and credits to CLECs for alleged *past* violations. The settlement agreement also contains provisions to assure future compliance with Section 252. Qwest remains hopeful that the Arizona Commission will approve the settlement; but in any event, the payment of credits and contributions to the state under the proposed settlement are backwards-looking enforcement matters and are not grounds for withholding Section 271 authority going forward. For Section 271 purposes, Qwest’s present actions are relevant - not the consequences it may face for past mistakes.

Here the record is strong and clear. As in other states, Qwest has filed all contracts with CLECs in Arizona that even arguably contain currently effective provisions creating obligations with respect to Section 251(b) or (c) matters. The FCC has found that such

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<sup>73/</sup> In April 2002 the ACC initiated a proceeding to investigate Qwest’s compliance with the requirements of Section 252 of the Act regarding the filing of certain CLEC agreements. Thereafter, in November 2002, the ACC opened a Section 271 Subdocket to consider separate but related allegations that Qwest had interfered with the Section 271 process by entering into agreements with certain CLECs pursuant to which those CLECs refrained from opposing Qwest’s Section 271 application before the ACC.

actions are sufficient under Section 271. Specifically, in the Qwest 9-State proceeding, AT&T argued that Qwest should be denied interLATA authority based on its previous failure to file certain contracts with CLECs pursuant to Section 252. The Commission rejected this position, finding that “concerns about any potential ongoing checklist violation (or discrimination) are met by Qwest’s submission of agreements to the commissions of the application states pursuant to section 252 and by each state acting on Qwest’s submissions of those agreements.” *Qwest 9-State Order* ¶ 453. <sup>74/</sup> The Commission found that residual issues arising from any past violations are properly framed in an enforcement proceeding, and not a Section 271 docket. *Id.* The Commission reached the same result in the context of the subsequent Qwest Section 271 dockets. *Qwest 3-State Order* ¶ 124; *Qwest Minnesota Order* ¶ 73.

The FCC can appropriately make the same finding here. First, as the Commission recognized in the *Qwest 271 Orders*, as of May 2002 Qwest adopted policies under which all new contracts creating ongoing obligations with respect to Sections 251(b) or (c) are filed with state commissions for approval under Section 252. Qwest also created a senior-level committee to enforce compliance with this policy. *Qwest 9-State Order* ¶ 456. These policies applied across all states in the Qwest region. Subsequently, on October 4, 2002, the Commission issued a Declaratory Ruling regarding the scope of the Section 252 filing requirement that was consistent with Qwest’s self-defined and implemented policy standard. <sup>75/</sup>

Second, Qwest has handled its previously unfiled agreements in Arizona the same way that it has in the thirteen states that the Commission already has approved. Specifically, in

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<sup>74/</sup> The Commission also rejected all of AT&T’s related allegations regarding unfiled agreement issues. *Qwest 9-State Order* ¶¶ 473-486.

<sup>75/</sup> *Petition for Declaratory Ruling on the Scope of the Duty to File and Obtain Prior Approval of Negotiated Contractual Arrangements Under Section 252(a)(1)*, 17 FCC Rcd 19337 (Oct. 4, 2002).

September 2002 and May 2003, Qwest made formal submissions to the Arizona Commission of any older previously unfiled agreements insofar as those contracts contain provisions imposing ongoing obligations relating to Section 251(b) or (c) that have not been terminated or superseded by agreement, commission order, or otherwise. All of these older agreements have been approved by the Arizona Commission by operation of law. And all of the Section 251 services contained in these approved agreements are available to any requesting CLEC pursuant to Section 252(i).

Qwest has applied the Section 252 standard broadly to avoid any potential disputes as to the completeness of its filings. For example, the agreements filed by Qwest in May 2003 are all boilerplate contracts used by CLECs in the ordinary course to order ancillary interconnection services. Under these contracts, CLECs subscribe to various standard product offerings that are and have been generally available to all CLECs under the same terms and conditions in the Arizona SGAT. Qwest also made each of these form contracts available to all CLECs in mid-February 2002 by posting them in blank on its website. While these agreements are order form contracts exempt from Section 252, we have no objection to filing them; they simply reflect the same terms that are and have been available to all CLECs. We have made such filings to eliminate any potential controversy. <sup>76/</sup>

In short, the Commission here can make the same finding that it did in the *Qwest 271 Orders* with respect to the “unfiled agreements” issue. Neither the pendency of the Arizona

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<sup>76/</sup> See *id.* ¶¶ 9, 13 (Section 252 does not require filing of “forms completed by carriers to obtain service pursuant to terms and conditions set forth in an interconnection agreement,” or contracts where terms are made available to all CLECs on a web site). Qwest filed the form contracts in May, and the ninety-day period for ACC review under Section 252(e)(4) expired on August 23 or 24, 2003.

investigation nor the ACC's current consideration of the settlement agreement provides any basis for delay in consideration and grant of this application.

### CONCLUSION

The local exchange market in Arizona is demonstrably open to competition. Qwest has satisfied its statutory checklist obligations and otherwise complied with the requirements of the 1996 Act, and it will continue to do so in the future. Its entry into the interLATA market in Arizona will fulfill the promise of competition for all the residents of the state. Accordingly, Qwest's Application should be granted.

Respectfully submitted,

**QWEST COMMUNICATIONS  
INTERNATIONAL INC.**

By:  \_\_\_\_\_

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September 4, 2003

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of )  
)  
**Qwest Communications** ) **WC Docket No.** \_\_\_\_\_  
**International Inc.** )  
)  
Application for Authority to Provide )  
In-Region, InterLATA Services in Arizona )

**ATTACHMENT 1  
REQUIRED STATEMENTS**

Pursuant to the Commission’s March 23, 2001 Public Notice, “Updated Filing Requirements for Bell Operating Company Applications Under Section 271 of the Communications Act,” DA 01-734, Qwest states as follows:

- (a) pages i-iii of this Brief contain a table of contents;
- (b) pages 1-4 of this Brief contain a concise summary of the substantive arguments presented;
- (c) pages 5-9 of this Brief contain a statement identifying how Qwest meets the requirements of section 271(c)(1); the table of contents of Appendix L identifies all of the interconnection agreements that Qwest has entered into pursuant to negotiations and/or arbitrations under Section 252; and Attachment 3 to this Brief describes the status of federal court challenges to the agreements pursuant to Section 252(e)(6);
- (d) pages 4-5 of this Brief contain a statement summarizing the status and findings of the Arizona Corporation Commission’s proceedings examining Qwest’s compliance with Section 271;
- (e) this Brief contains the legal and factual arguments outlining how the three requirements of section 271(d)(3) have been met, and is supported as necessary with selected excerpts from the supporting documentation (with appropriate citations): pages 9-87 address the requirements of section 271(d)(3)(A); pages 104-114 address the requirements of section 271(d)(3)(B); and pages 114-124 address the requirements of section 271(d)(3)(C);

- (f) Attachment 5 (separately bound) contains a list of all appendices (including declarations) and the location of and subjects covered by each of those appendices;
- (g) inquiries relating to access (subject to the terms of any applicable protective order) to any confidential information submitted by Qwest in this consolidated application should be addressed to:

C. Jeffrey Tibbels  
Hogan & Hartson L.L.P.  
Columbia Square  
555-13th Street NW  
Washington, D.C. 20004  
202-637-6968  
cjtibbels@hhlaw.com

- (h) an Anti-Drug Abuse Act certification as required by 47 C.F.R. § 1.2002 is included as Attachment 2 hereto; and
- (i) a certification signed by an officer or duly authorized employee certifying that all information supplied in this application is true and accurate to the best of his or her information and belief is included as Attachment 2 hereto.

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of )  
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**Qwest Communications** ) **WC Docket No. \_\_\_\_\_**  
**International Inc.** )  
 )  
Application for Authority to Provide )  
In-Region, InterLATA Services in Arizona )

**ATTACHMENT 2**

**Before the  
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Washington, DC 20554**

In the Matter of )  
)  
**Qwest Communications** ) **WC Docket No. \_\_\_\_\_**  
**International Inc.** )  
)  
Application for Authority to Provide )  
In-Region, InterLATA Services in Arizona )

**DECLARATION AND VERIFICATION OF R. STEVEN DAVIS**

1. I am Senior Vice President, Deputy General Counsel and Assistant Secretary of Qwest Communications International Inc. ("QCII"). I am authorized to make this Declaration on behalf of QCII and its subsidiaries, Qwest Corporation, Qwest LD Corp. and Qwest Communications Corporation (collectively, and together with QCII, "Qwest"), that are parties to the captioned Application.

2. I have reviewed the foregoing Application for Authority to Provide In-Region, InterLATA Services in Arizona and the materials filed in support thereof.

3. The information contained in the Application has been provided by persons with knowledge thereof. All information supplied in the Application is true and accurate to the best of my knowledge, information and belief formed after reasonable inquiry.

4. I declare under penalty of perjury that the foregoing is true and correct.

Executed on September 2, 2003.

  
R. Steven Davis

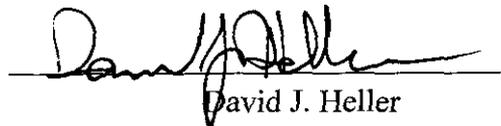
**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of )  
 )  
**Qwest Communications** ) **WC Docket No. \_\_\_\_\_**  
**International Inc.** )  
 )  
Application for Authority to Provide )  
In-Region, InterLATA Services in Arizona )

**ANTI-DRUG ABUSE ACT OF 1988 CERTIFICATION OF  
QWEST COMMUNICATIONS INTERNATIONAL, INC.**

1. I am Vice President – Risk Management of Qwest Services Corporation (“QSC”).  
I am authorized to make this Declaration on behalf of Qwest Communications International Inc. (“QCII”) and its subsidiaries, Qwest Corporation, Qwest LD Corp. and Qwest Communications Corporation (collectively, and together with QCII and QSC, “Qwest”), that are parties to the captioned Application.
2. I hereby certify that Qwest is not subject to a denial of federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. § 862.
3. I declare under penalty of perjury that the forgoing is true and correct.

Executed on August 18, 2003.

  
\_\_\_\_\_  
David J. Heller

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

In the Matter of )  
 )  
**Qwest Communications** ) **WC Docket No. \_\_\_\_\_**  
**International Inc.** )  
 )  
Application for Authority to Provide )  
In-Region, InterLATA Services in Arizona )

**ATTACHMENT 3**

**FEDERAL COURT CHALLENGES UNDER 47 U.S.C. § 252(E)(6)**

The following case represents the only ongoing litigation under 47 U.S.C. § 252(e)(6) that relates to interconnection agreements approved by the Arizona Corporation Commission (“ACC” or “Arizona Commission”):

*Qwest Corporation v. Arizona Corporation Commission et. al.*, CIV 02-1626-PHX-SRB (D. Ariz). This action is in the nature of an appeal from an Arizona Commission order resulting from an arbitration conducted by the ACC pursuant to the 1996 Act. In a 1998 order, the ACC adopted a recurring cost model as the basis for pricing Qwest’s network elements, the key inputs to be used with that model, and a methodology for determining non-recurring costs. *Opinion and Order, In the Matter of the Petition of American Communications Services, Inc. and American Communications Services of Pima County, Inc. for Arbitration with U S WEST Communications, Inc. of Interconnection Rates, Terms, and Conditions Pursuant to 47 U.S.C. § 252(b) of the Telecommunications Act of 1996, et al.*, Docket Nos. U-3021-96-448 et al. (consolidated), Decision No. 60635 (Jan. 30, 1998) (“1998 Generic Pricing Order”).

A number of parties challenged various aspects of the *1998 Generic Pricing Order* in the federal district court pursuant to Section 252(e)(6) of the Act, where it was consolidated with challenges to several other individual arbitration orders. The court entered a decision affirming many of the Arizona Commission's pricing determinations and remanded other issues to the ACC for further proceedings. *See U S WEST Communications, Inc. v. Jennings*, 46 F.Supp.2d 1004 (D. Ariz. 1999); *affirmed in part, reversed in part, and remanded in U S WEST Communications, Inc. v. Jennings*, 46 F.3d 950 (9th Cir. 2002).

On August 21, 2000, the Arizona Commission opened Phase II of its new rate proceeding to consider these remanded issues. The ACC thereafter decided that, in the same Phase II proceeding, it would revisit all network element rates set in the *1998 Generic Pricing Order. Procedural Order, Investigation into Qwest Corp.'s Compliance with Certain Wholesale Pricing Requirements for Unbundled Network Elements and Resale Discounts*, Docket No. T-00000A-00-0194 (Ariz. Corp. Comm'n December 15, 2000); *Procedural Order, Investigation into Qwest Corp.'s Compliance with Certain Wholesale Pricing Requirements for Unbundled Network Elements and Resale Discounts*, Docket No. T-00000A-00-0194 (Ariz. Corp. Comm'n February 16, 2001). The matter was referred to two administrative law judges ("ALJs"), who presided over an evidentiary hearing involving Qwest, ACC Staff, and several CLECs.

On November 8, 2001, the ALJs issued a Recommended Opinion and Order. *Phase II Recommended Opinion and Order, Investigation into Qwest Corporation's Compliance with Certain Wholesale Pricing Requirements for Unbundled Network Elements and Resale Discounts*, Docket No. T-00000A-00-0194, (L. Farmer and D. Nodes, ALJs, Nov. 8, 2001). On March 8, 2002, the ALJs issued a proposed Supplemental Discussion and Findings to address issues that had been left unresolved in their principal recommendation. *Phase II Supplemental*

*Recommended Opinion and Order, Investigation into Qwest Corporation's Compliance with Certain Wholesale Pricing Requirements for Unbundled Network Elements and Resale Discounts*, Docket No. T-00000A-00-0194, (L. Farmer and D. Nodes, ALJs, Mar. 8, 2002).

On June 12, 2002, the Arizona Commission issued the Phase II Order, which adopted the ALJs' proposals with limited modifications. The instant case is an appeal of that Order. Briefing was completed on March 28, 2003. On July 25, 2003, however, the ACC Staff and Qwest entered into a Settlement Agreement relating to this appeal, among other matters. The Settlement Agreement is subject to review and adoption by the Arizona Commission. Under the terms of the Settlement Agreement, Qwest will voluntarily move to dismiss this appeal within 30 days of the ACC's decision adopting the Settlement Agreement. A hearing regarding the proposed Settlement Agreement has been scheduled for the week of September 16, 2003.