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ARIZONA CORPORATION COMMISSION

September 24, 2003

VIA ELECTRONIC MAIL

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: Evaluation of The Arizona Corporation Commission – Qwest Section 271 Application
WC Docket No. 03-194

Dear Ms. Dortch:

Attached are the original and four (4) copies of The Arizona Corporation Commission's Consultative Report on Qwest Corporation's Application for Section 271 approval. This Report was filed electronically with the FCC on September 24, 2003.

Thank you for your cooperation with this matter. Please contact me at (602) 542-6022 if you have any questions concerning this filing.

Sincerely,

Maureen Scott
Attorney

MAS:vk
Attachment

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of

Application of QWEST Arizona, Inc.,	)	
et al., for Authorization Under Section 271	)	
of the Communications Act to Provide	)	WC Docket No. 03-194
In-Region, InterLATA Service in the	)	
State of Arizona :	)	

EVALUATION OF THE
ARIZONA CORPORATION COMMISSION

Marc Spitzer, Chairman
William A. Mundell, Commissioner
Jeff Hatch-Miller, Commissioner
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SEPTEMBER 24, 2003

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I. Introduction and Executive Summary

1. The Arizona Corporation Commission ("ACC") is pleased to provide the Federal Communications Commission ("FCC" or "Commission") with this Consultative Report on Qwest's compliance with Section 271 of the Federal Act. The record submitted by Qwest on September 4, 2003, reflects the culmination of a 4 year proceeding designed to ensure that Qwest meets the requirements of Section 271 and that the local markets it serves are level and open to competition. The workshop process was utilized extensively in Arizona to ensure a rigorous, collaborative and fair evaluation of Qwest's Section 271 compliance. The ACC bifurcated Operational Support System ("OSS') related Checklist Elements from non-OSS related Elements in its evaluation.

2. For the OSS Test, the ACC enlisted an independent Third Party Test Administrator ("Cap Gemini Ernest and Young") and a Test Transaction Generator ("Hewlett-Packard") to ensure that Qwest provided competitors with nondiscriminatory access to its OSS. The ACC Staff adopted the "Openness Report" to address early concerns raised by the CLECs regarding the conduct of the Third-Party Test. The Openness Report provided for a very open, collaborative Third-Party Testing process and for maximum blindness to ensure the overall integrity of the test. Maximum input into the test was provided through the participation and oversight of the Test Advisory Group ("TAG"). Every report produced by the ACC's Test Administrator and Test Transaction Generator was also subject to the workshop process where input was received by interested parties on the findings and conclusions reached.

3. As to the evaluation of Qwest's other Checklist compliance, the ACC also utilized an unprecedented collaborative, participative workshop process characterized by extensive discovery and evidentiary hearings and workshops. The process adopted by the ACC, required the Staff to first file detailed comprehensive factual reports based upon extensive workshops held during this four-year proceeding which addressed Qwest's compliance with all of the Section 271 requirements. Disputed checklist issues were submitted to the Hearing Division, with a recommendation for resolving the dispute. Undisputed Checklist items were submitted directly to the Commission for consideration at an Open Meeting. The process provided for maximum input by the parties at every stage of the case. Parties were also allowed to bring in issues, some of which subsequently arose in the Colorado workshops or in the other Qwest workshops, for resolution in Arizona. The parties were able to utilize their substantial work on the non-OSS checklist items (Checklist Items 3, 7, 8, 9, 10, 12 and 13) developed in the Arizona workshop process throughout the ROC region in other Qwest collaborative workshops.

4. As part of the collaborative OSS testing process, the parties worked together to develop a comprehensive set of Performance Indicator Definitions ("PIDs"). These PIDs, with some modification, also formed the basis for the Regional Oversight Committee's ("ROC's") Performance Measurement Evaluation and OSS testing process. In addition, the parties spent considerable time developing a Master Test Plan and a Test Standards Document to govern all aspects of the Third-Party Test. A unique feature of the Arizona OSS test consisted of what was known as the "Retail Parity Test" which compared the CLEC's ability to process Pre-Order Inquiries, LSRs and Repair Requests to the Qwest retail equivalent utilization of the systems.

5. At the request of the Staff and its consultants, Qwest also implemented a comprehensive redesign of its Change Management Process ("CMP"). In addition,

Qwest developed a Stand Alone Test Environment ("SATE") for use by CLECs in conjunction with the introduction of major releases by Qwest.

6. Issues were carefully tracked in both the Checklist workshop process and the Third-Party OSS Test through Issues Logs. While disputed issues were many in number at the beginning of each workshop, the parties were oftentimes able to successfully reach compromise such that the Commission had to ultimately resolve only a handful of disputed issues in its Orders.

7. The intervenors in the Qwest Section 271 proceeding numbered approximately 46. At least seventeen carriers, including AT&T, Qwest, Sprint, WorldCom, Electric Lightwave ("ELI"), Nextlink, Cox, e-spire Communications ("e-spire"), Rhythms, GST Telecom, Inc, ALLTEL, Allegiance, Z-Tel, Eschelon, XO Communications, SBC and Covad actively participated at various times in the workshops addressing Qwest's Checklist compliance. Nine carriers actively participated on the Arizona Test Advisory Group ("TAG") which oversaw the Third-Party Test in Arizona. AT&T, WorldCom and Covad provided facilities and/or expertise during the OSS Test in the following areas: provisioning, trouble reporting and DSL.

8. The entire record of the ACC's proceedings has been provided to the Federal Communications Commission ("FCC or Commission") by Qwest in its application filed on September 4, 2003 in Docket No. CC 03-194.

9. Other proceedings and/or reviews during this same time period which are important to the FCC's consideration of Qwest's application include a generic docket designed to re-examine Qwest's wholesale pricing. The ACC and the parties, through the 271 workshop process, also undertook a comprehensive review and rewrite of Qwest's Statement of Generally Available Terms and Conditions ("SGAT") for the offering of wholesale services in Arizona.

10. The Commission also commenced three Enforcement Dockets in 2002 examining: 1) whether Qwest intentionally violated Section 252(e) by not filing certain agreements with the Commission for approval under the Act; 2) whether the secret agreements tainted the record of the Section 271 proceeding, and 3) whether Qwest's delay in implementing wholesale rate changes was unreasonable. The Enforcement Dockets are a part of a proposed Global Settlement between Staff and Qwest which was recently the subject of an evidentiary hearing at the ACC. The ACC will consider whether the Global Settlement is in the public interest later this year.

11. In early 2002, the Section 271 proceeding was held in abeyance to determine whether Qwest's actions in entering into unfiled agreements with several CLECs which had the effect of limiting their participation in the Section 271 proceeding, tainted the record in the proceeding. Once it was determined that several CLECs believed that they had been precluded from raising issues with the ACC, the Commission held a supplemental workshop for these CLECs in July, 2002, to allow them to put their issues into the record for resolution. All of the issues arising from the July, 2002, workshop have since been resolved by the Commission.

12. After a lengthy review of Qwest's operations in Arizona the ACC has concluded that Qwest has satisfied all of the 14 Checklist Items prescribed in 47 U.S.C. § 271(c)(2)(B). Additionally, the ACC has concluded that Qwest satisfies the requirements of Track A requirements set forth in 47 U.S.C. § 271(c)(1)(A) and 47 U.S.C. § 271 (d)(3)(C), and that its Application is in the Public Interest. Furthermore, Qwest has an

approved set of General Terms and Conditions for use in its business relationships with other carriers.

13. The ACC believes that during the last four years, Qwest systems, processes, and performance measurements have undergone one of the most comprehensive reviews to-date. As a result, the ACC has witnessed an almost complete transformation of Qwest's systems and processes from one that was not conducive to local competition to one that the ACC believes will foster local competition. In addition, Performance Measurements have been put in place and validated to insure the ability of CLECs and the ACC to track Qwest performance on a going forward basis. Since completion of this process, at least one major competitor, AT&T Communications of the Mountain States, Inc., has decided to enter the local residential market in Arizona and compete with Qwest. MCI WorldCom also entered the Arizona residential market approximately 1 year ago. Both of these companies, along with several other CLECs, have been providing service to business customers in Arizona for some time. In addition, Cox Communications has been providing service to residential customers in Qwest's Arizona service territory for several years.

14. The ACC believes the success of this process was due in large part to the parties themselves. The parties contributed extensive time, resources and expertise to the process over the last four years. The dedication and willingness of these participants to work in a cooperative and collaborative fashion on the many issues that arose in the course of this 4 year proceeding resulted in an extremely rigorous test, resolution of many disputed issues through compromise, and meaningful and effective changes to Qwest's systems and processes.

15. With regard to future compliance, the ACC also held workshops on the development of a Performance Assurance Plan ("PAP") to ensure Qwest's future compliance with the Checklist Items and to prevent backsliding. The Arizona PAP was adopted by the Commission in Decision No. 64888 on June 5, 2002, and will take effect once Qwest receives Section 271 approval from the FCC.

16. The PAP will be the subject of review every six months to provide interested parties an opportunity to review and comment on any proposed changes. The ACC will also conduct an audit of the PAP one year following implementation. A second audit will be conducted 18 months after the first audit is completed.

17. Finally, Arizona will participate in the ROC Long Term PID collaborative where modifications to the PIDs will be considered on an ongoing basis.

18. In summary, over the four-year period that the ACC has examined Qwest's compliance, the ACC has conducted an exhaustive series of Workshops, OSS Tests, Hearings and Open Meetings to address issues related to OSS performance, Checklist Item compliance, separate affiliate requirements, Public Interest and Track A matters, wholesale pricing and the PAP. In each instance, the ACC has sought to ensure that all affected parties were afforded the opportunity to present their views before the Commission before any conclusions were reached on questions of compliance.

II. Applicable Law

19. The Federal Telecommunications Act of 1996 ("1996 Act") provides the opportunity for a Bell Operating Company ("BOC") to engage in providing in-region interLATA and interstate telecommunications services when the company can demonstrate that it is in compliance with specific provisions embodied in 47 U.S.C. § 271. Section 271 directs the FCC to make certain findings before granting approval to any BOC applicant. Specifically, the FCC must find that: 1) an Applicant has fully implemented the competitive checklist contained in Section 271(c)(2)(B), 2) the requested authority to engage in the interLATA market will be carried out in accordance with other requirements set forth in Section 272, and 3) the Applicant's request to enter the interLATA market is consistent with the public interest, convenience and necessity. To ensure all interested parties full and fair consideration of any such request the applicant must make state-specific evidentiary showings and support such showings with relevant performance data for that State.

20. The Act states that the FCC should consult with the applicable State commission for an assessment of the applicant's compliance with the requirements of 47 USC 271 and 272. The purpose of this evaluation is to provide the FCC with the findings and conclusions of the ACC to assist in the analysis and determination of the Qwest's compliance with the Act's requirements for provision of long distance service in the State of Arizona. 47 USC 271(d). Section 271 requires the FCC to act on the application of Qwest Arizona, Inc. to offer in-region, interLATA telecommunications services within 90 days.

III. Procedural History

21. Pursuant to 47 U.S.C. § 271(d)(2)(B) State commissions (such as the ACC) have the responsibility to provide the FCC its opinion of whether the Applicant has met the fourteen point competitive Checklist prescribed in 47 U.S.C. § 271 (c)(2)(B). In its rules and regulations the FCC has directed State commissions to fully develop a factual record related to an Applicant's compliance with the requirements of Section 271 and the current State of local competition. Furthermore, the FCC has encouraged State commissions to resolve factual disputes whenever possible before an Applicant seeks approval from the FCC of any request for Section 271 authority.

22. On May 27, 1997 this Commission issued Decision No. 60218 establishing an administrative process and procedural framework for use by Qwest to submit any information associated with a Section 271 application. This action by the Commission in Decision No. 60218 comports with roles and responsibilities conferred upon it by Section 271(d)(2)(B) of the Telecommunications Act.

23. On February 8, 1999 Qwest served notice on the ACC of its intent to seek in-region, interLATA authority afforded by 47 U.S.C. § 271. The ACC docketed the request as T-00000A-97-0238 In the Matter of U.S. West Communications, Inc.'s Compliance with Section 271 of the Telecommunications Act of 1996. On February 16, 1999, AT&T Communications of the Mountain States, Inc. ("AT&T"), GST Telecom, Inc. ("GST"), Sprint Communications Company, L.P. ("Sprint"), Electric Lightwave, Inc. ("ELI"), MCI WorldCom, Inc., on behalf of its regulated subsidiaries ("MCIW"), and e-spire Communications, Inc. ("e-spire") filed with this Commission a Motion to Reject Qwest's Applications and Response to Qwest's Motion.

24. On March 2, 1999, Qwest's February 8, 1999 Application was determined by this Commission to be insufficient and not in compliance with Decision No. 60218. The February 8, 1999 Application was placed in abeyance pending supplementation with Qwest's Direct Testimony ordered pursuant to Decision No. 60218 and a June 16, 1998 Procedural Order. On March 25, 1999, Qwest filed its supplementation with this Commission. The ACC immediately referred the matter for further consideration and established a procedural framework that provided the flexibility to fully and fairly examine the request made of it by Qwest.

25. By Procedural Order dated October 1, 1999, the Commission bifurcated OSS related Checklist Elements from non-OSS related Elements. The Procedural Order categorized Checklist Items 3, 7, 8, 9, 10, 12 and 13 as being non-OSS related.

26. In its December 8, 1999 Procedural Order, the Commission instituted a collaborative workshop process to evaluate the non-OSS Checklist Items. On February 17, 2000, the first Workshop on Checklist Item No. 13 took place the Commission's Offices in Phoenix. The final Workshop on Qwest's SGAT's General Terms and Conditions took place on June 13-15, 2001.

27. Throughout the course of the evaluation, simultaneous workshops and TAG meetings were held on the Arizona OSS Test. The Final Test Report of the Third Party Test Administrator was filed on March 30, 2002. The Workshop on the Final OSS Test Report concluded on April 17-18, 2002.

28. A Supplemental Workshop was held in July, 2002, to address issues raised by parties which had been precluded from raising those issues earlier in the process because of provisions in unfiled agreements with Qwest.

29. The Commission's final vote on whether Qwest's Section 271 application in Arizona was in the public interest took place at an Open Meeting on September 18, 2003.

IV. Section 271(c)(1)(A) – Track A Requirements

30. 47 U.S.C. § 271(c)(1)(A) requires an Applicant seeking in-region, interLATA authority to demonstrate that it: 1) has one or more binding agreements with CLECs that have been approved under Section 252 of the Act, 2) provides access and interconnection to one or more non-affiliated competitive local exchange carriers, 3) competitive providers collectively offer telephone exchange service to residential and business subscribers, and 4) competitive providers offer telephone exchange service to business or residential customers either exclusively over their own facilities or predominantly over their own facilities in combination with elements leased from the applicant. For purposes of the examination conducted by the ACC it was presumed that "own" facilities included those physical network facilities deployed by competitive local exchange carriers and those made available to competitive local exchange carriers as unbundled network elements ("UNEs") leased from an incumbent local exchange carrier.

31. Based upon the record developed by the ACC, the ACC found that as of September 19, 2003 Qwest complied with Track A requirements set forth in 47 U.S.C. § 271(c)(1)(A). Specifically, the ACC determined from CLEC submissions in this proceeding that, as of December 31, 2002, CLECs controlled 12% of the total switched access lines in Arizona. Furthermore, eighteen CLECs actively serve business customers and six serve residential customers. Of the eighteen serving business customers, twelve

use their own facilities at least in part to provide service. An examination by ACC Staff of the relative penetration rates in other states strongly suggested that competitive presence in Arizona was comparable to, or better than, that evident elsewhere in the region and the nation. The ACC found nothing in the evidence submitted in this portion of the proceeding to suggest that Qwest is not in full compliance with the requirements for Track A.

V. Section 271(c)(2)(B) – Competitive Checklist

A. Checklist Item No. 1 – Interconnection and Collocation

32. Checklist Item No. 1 requires an Applicant for Section 271 authorization to offer interconnection and collocation in accordance with the requirements of 47 U.S.C. § 251(c)(2), 251(c)(6) and 252(d)(1). Issues related to Qwest's compliance with this particular Checklist Item were addressed by the ACC on March 5, 2002 in Decision No. 64600 wherein the ACC adopted the Final Report of Staff dated October 12, 2001. In its Decision the ACC found that Qwest complied with Checklist Item No. 1 subject to Qwest passing the relevant performance measurements in the Third-party OSS Test.

33 The ACC also undertook a comprehensive examination of Sections 7 and 8 of Qwest's SGAT which contains proposed terms and conditions relating to interconnection and collocation. As part of its review, Staff also ensured the Arizona SGAT demonstrated consistency with the most recent consensus reached by Qwest in other in-region states. Where any inconsistencies were identified, the Arizona SGAT was updated to incorporate any agreed upon terms and conditions found elsewhere.

34. The parties were able to resolve many disputed issues by compromise through the Workshop process. There were approximately 15 interconnection and 8 collocation impasse issues that the parties could not agree upon and that were ultimately resolved by the Commission. Additional issues were raised in the Supplemental Workshop held in July, 2002, by Eschelon which the Commission also resolved.

35. The Commission also conducted a comprehensive and thorough review of Qwest's wholesale pricing, including the rates for interconnection and collocation, and adopted rates that were TELRIC compliant in Decision 64922. Portions of that Decision are currently the subject of an appeal which is pending before the Arizona Federal District Court.

36. With Qwest's implementation of these impasse resolutions, and Qwest's satisfactorily meeting relevant PIDs pertaining to the provision of collocation and interconnection trunks to competing carriers, the Commission believes that Qwest meets Checklist Item 1 requirements.

B. Checklist Item No. 2 – Unbundled Network Elements (UNEs)

37. Checklist Item No. 2 requires an Applicant to demonstrate that it provides nondiscriminatory access to network elements in accordance with requirements set forth in 47 U.S.C. § 271 (c)(3) and 47 U.S.C. § 271 (d)(1). The ACC examined whether Qwest is providing nondiscriminatory access to unbundled network elements in a series of Workshops conducted on October 10-13, 2000, April 9-13, 2001 and November 10, 2001.

38. With regard to access to unbundled network elements in general, ACC Staff filed proposed findings of fact and conclusions of law on October 10, 2001 and,

following comments filed by the parties, submitted a Final Interim Report on December 24, 2001. The parties were able to resolve many disputes among themselves during the workshop process. Approximately 11 impasse issues remained for resolution by the Commission. In Decision No. 64630, it was stated that "The Commission cannot make a final determination on Qwest's compliance with Checklist Item No. 2, until the Commission confirms that Qwest has passed relevant performance measurements in the third-party OSS test, has an effective and workable Change Management Process in place, and has implemented an effective Stand-Alone Test Environment.

39. For purposes of the OSS investigation the ACC entered into an arrangement with independent testing firm, Cap Gemini Ernst & Young – ("CGE&Y") as Test Administrator and Hewlett Packard – ("HP") was Test Transaction Generator (called the "Pseudo-CLEC") to develop and execute a comprehensive examination of Qwest's OSS. In so doing, the ACC conducted its review separate from the collective endeavor performed by regulatory agencies in the other thirteen Qwest states. The ACC, however, also reviewed the results of ROC test as they issued. The ACC's final decision was based upon Staff and its consultants testing reports, workshop transcripts and exhibits, minutes of the TAG meetings, testimony, discovery and comments, submitted by the parties. The ACC's findings and conclusions did not rely upon the regional OSS test. However, ACC believes that both tests benefited by being able to review the results of each other's efforts and by being able to utilize work achieved by virtually the same collaborative group of carriers between tests.

40. In September 1999, a series of Workshops were held to review the proposed Master Test Plan ("MTP") (and its subsidiary document the Test Standards Document ("TSD") which had been prepared by CGE&Y) with Staff, consultants, Qwest, CLECs and all other interested parties participating, until agreement was reached on the content of the final version agreed upon in April 2001.

41. The Workshop process initially provided a forum for parties to collaborate on the MTP. Continuing this process, workshops were then scheduled to develop PIDs and Measurements which would be applied to the testing process. In addition to the workshops, a Test Advisory Group was established. This group included all key CLECs, Qwest, CGE&Y, ACC Staff and its consultant. This group met twice a month since the initial phase of the MTP until April 10, 2003. Following this, it met monthly through July 2003, at which time scheduled meetings were deemed no longer necessary. A tribute to the success of the Arizona OSS Test is the commitment to active participation and resolution in order to achieve optimum performance standards. Since November 1999, the TAG, chaired by the Test Administrator, maintained a member list and published agendas and minutes to all interested parties noting the issues, disputes and resolutions. The TAG comprised the principal governance body for the Section 271 OSS Test.

42. The five major components of the Arizona OSS test included:

a. A Functionality Test, which basically exercises the operational support systems of the Qwest infrastructure with regard to how they interact with a CLEC.

b. A Retail Parity Evaluation: which compared the wholesale and retail function and was designed to see whether a CLEC representative using all of Qwest's OSSs can provide a level of service and experience to their customers that is substantially the same in time and manner as that that Qwest uses. This was

accomplished by issuing similar orders, executed simultaneously in both retail and wholesale locations, timed and observed by the Third Party Tester, and the results compared by each side.

c. A. Relationship Management Evaluation, which was an in-depth analysis of how Qwest conducts business with the CLEC community in all regards.

d. A Capacity and Scalability Test where the Test Administrator stress tested Qwest's systems to see if they could handle projected loads and where were susceptible to overload.

e. An in-depth Performance Measurement Evaluation to be sure that the metrics that were being reported were both timely and accurate.

43. The Performance Measurement Evaluation considered three months of historical data in most cases to ensure that Qwest was accurately reporting under the PIDs. The Performance Measurement Evaluation was performed by CGE&Y. Later on in the testing process, Liberty Consulting conducted a data reconciliation of the Qwest reported data to the CLEC data for Arizona.

44. Through the Functionality, Retail Parity, Capacity and Performance Measurement Evaluations, the ACC examined whether Qwest provided nondiscriminatory access to its five major OSS functions to CLECs: 1) pre-ordering, 2) ordering, 3) provisioning, 4) maintenance and repair, and 5) billing.

45. Qwest's pre-ordering functionalities were found to be satisfactory by CGE&Y in its Final Test Report dated March 30, 2002. Pre-ordering includes gathering and verifying the information necessary to place a new service order. The Test Administrator and Test Transaction Generator also found that competing carriers can successfully build and use application to application interfaces that perform pre-ordering functions. Preordering functionality is provided through Qwest's two electronic interfaces: Interconnect Mediated Access-Electronic Data Interexchange ("EDI") and Interconnect Mediated Access – Graphical User Interface ("IMA-GUI"). Using these interfaces, competitors can gain access to the following pre-ordering information: address validation, customer service records, service availability, facility availability, loop qualification, raw loop data, connecting facility assignment, meet point query and access to directory listings. It is also significant that competitors are actually using Qwest's application to application interfaces to successfully complete pre-order transactions. Metric PO-1 measures the time it takes Qwest to respond to various requests for pre-order information depending on the interface and function.

46. CGE&Y also found that Qwest's EDI interface allows competing carriers to integrate pre-ordering information into Qwest's ordering interface, as well as into the carriers' back office systems. The Commission enlisted HP to examine the ability to parse information successfully.

47. Qwest's ordering functionalities were also found to be satisfactory by CGE&Y in its test. That is, Qwest provides competing carriers with nondiscriminatory access to its OSS functions necessary for placing wholesale and resale orders. The test included Qwest's ability to return timely status notices such as firm order confirmations, rejects, jeopardies, and service order completion notices, to process manually handled orders accurately, and to scale its system based upon differing capacity levels. The test initially revealed significant problems with several of these notices, however, retesting

indicated that Qwest eventually resolved the problems identified. In addition, a host of PIDs has been developed to track Qwest's ongoing performance in these areas.

48. CGE&Y also found that Qwest provides nondiscriminatory access to its billing functions. The Commission has historically looked at two factors to determine the BOC's performance. First, does the BOC provide complete, accurate and timely reports on the service usage of competing carriers' customers. Second, does the BOC provide complete, accurate and timely wholesale bills in a manner that gives competing carriers a meaningful opportunity to compete. Qwest provides access to the same billing systems that its retail operations use. CGE&Y found that Qwest satisfactorily met relevant benchmarks for timeliness, accuracy, and completeness in providing usage information and for wholesale bills.

49. With respect to provisioning, CGE&Y found that based upon Qwest commercial data and its test results, that Qwest's wholesale performance is satisfactory. Relevant PIDs include in part: OP-3 (Installation Commitments Met), OP-4 (Installation Interval), OP-5 (New Service Installation Quality), OP-6A (Delayed Days for Non-Facility Reasons), OP-6B (Delayed Days for Facility Reasons, and OP-5 (New Service Installation Quality.

50. Finally, with respect to maintenance and repair, CGE&Y found that Qwest has deployed the necessary interfaces, systems and personnel to enable requesting carriers to access the same maintenance and repair functions that Qwest provides itself. Further Qwest's competitors have access to the same information as Qwest's retail representatives and the same access to maintenance and repair functionality as Qwest's retail operations.

51. Throughout the course of the Functionality and Retail Parity Tests, many improvements were made to Qwest's systems. This was consistent across the course of the more than two and a half years the tests were conducted. Throughout these tests, literally hundreds of changes were made, all for the better, by Qwest to help address the issues and deficiencies identified by virtue of the execution of these tests. Qwest made systemic changes to improve its response times where found to be in disparity.

52. Staff's Final Reports on the Arizona OSS test were issued on May 1 and 8, 2002, and formally considered by the ACC on August 21, 2003. The extensive amount of testing, re-testing and remediation required by the ACC for the Arizona OSS test has, in the opinion of this agency, proven beneficial to the interests of prospective competitors and the general public. The performance demonstrated by Qwest at the conclusion of the tests is such that the ACC has concluded that Qwest's OSS meets the performance standards envisioned by the Act. In addition the Performance Measurements have been evaluated and found to be timely and accurate.

53. An additional workshop was held July 30 and 31, 2002 to allow parties to Qwest's Arizona Section 271 proceeding, who were precluded from actively participating in the process through interconnection agreements with Qwest, and who asserted that there were unresolved issues resulting from their non-participation, an opportunity to have the issues addressed and resolved. Some of the issues raised were OSS related including allegations that Qwest was not reporting its performance under OP-5 accurately.

54. For example, in the July 30 and 31, 2002 workshop, Eschelon spent considerable time on the issue that customer affecting problems, as reported by Qwest in the OP-5 (New Service Quality) PID, did not adequately report customer affecting problems that they were experiencing. Staff requested that CGE&Y conduct a reconciliation between Eschelon reported data and Qwest reported data for the Measurement of Installation quality (OP-5). The data reconciliation uncovered inherent differences between the information captured by a CLEC and the performance data captured by Qwest, that prevents the CLEC from recalculating the OP-5 PID from its own data.

55. Specifically, trouble situations experienced by a CLEC relating to a new installation are not captured as trouble tickets readily available for inclusion into Qwest's OP-5 calculation. These situations included outages on the day of installation. Staff concluded that OP-5, after planned implementation of Qwest systems changes, along with the inclusion of trouble reports for outages on the dates of installation, would be a more representative measurement of New Service Installation Quality. This resolution would provide an adequate measure so that Eschelon's concerns can be dealt with satisfactorily. This was turned over to Long Term PID Administration ("LTPA") for design of a PID that satisfied ACC's decision. The new PID design, incorporating Staff's decision, was finalized and approved by LTPA on August 6, 2003.

56. CGE&Y also undertook an evaluation of Qwest's Change Management Process, a review deemed necessary by the FCC in prior 271 Orders. Qwest's initial Change Management Process was found to have numerous deficiencies and was adjudged to be inadequate. In response Qwest subsequently undertook a Change Management Redesign effort in which it completely revamped its Change Management Process. Qwest undertook this effort with significant input from the CLECs themselves so that the new process reflected their views and input as well. Overall, Qwest's CMP provides competitive carriers with substantial opportunities to address Qwest proposed changes and to initiate their own changes. The Qwest CMP also contains dispute resolution provisions.

57. Qwest initially did not have a Stand-Alone Test Environment for CLECs to test new releases in a non-production environment. Qwest relied upon its Interoperability test environment for competing carriers testing an EDI interface. In response to concerns expressed to Qwest by CGE&Y, Staff and its consultants, Qwest implemented a SATE which was the subject of a transaction based test conducted by HP, as part of the Arizona test. HP found that Qwest's Stand Alone Test Environment provides competing carries with a sufficient testing environment to successfully adapt to changes in Qwest's OSS.

58. Finally, Qwest's rates for unbundled network elements and resale services recently underwent a comprehensive review in Arizona and new TELRIC based rates were approved by the ACC in Decision No. 64922 on June 12, 2003. The average unbundled loop rate in Arizona decreased from $21.98 per month to $ 12.12 per month.

C. Checklist Item No. 3 – Poles, Ducts, Conduits, and Rights-of-Way

59. Checklist Item No. 3 requires an Applicant to provide nondiscriminatory access to poles, ducts, conduits, rights-of-way owned or controlled by it at just and reasonable rates and in accordance with the requirements of 47 U.S.C. 271(c)(2)(B)(iii). Consistent with its responsibilities in this matter, the ACC examined Qwest's compliance with the Act's requirements in a series of Workshops during the month of March 2000.

In these workshops interested parties had opportunities to review Qwest's policies and practices and were invited to propose appropriate changes to Qwest's SGAT. A number of such changes were proposed and recommended by the Arizona Staff for adoption by Qwest. The parties were able to resolve many issues through the collaborative workshop process. After the workshop concluded, only 5 issues remained at impasse between the parties which were subsequently resolved by the Commission.

60. On March 9, 2001 in Decision No. 63419 and reaffirmed in Decision No. 64300 on December 20, 2001, the ACC approved Checklist Item No. 3 - Poles, Ducts, Conduits and Rights-of-Way with the recommended modifications. By its March 9, 2001 and December 20, 2001 Decisions the ACC found Qwest to be in full compliance with the requirements of Checklist Item No. 3.

D. Checklist Item No. 4 – Unbundled Local Loops

61. Checklist Item No. 4 requires an Applicant to provide local loop transmission from the central office to the customer's premise, unbundled from local switching or other services as specifically prescribed by 47 U.S.C. § 251(c)(3) and 47 U.S.C. § 271(c)(2)(B)(iv). The ACC conducted:1) a series of workshops on March 5, 2001, May 19, 2001 and May 21, 2002, 2) a review of Qwest's SGAT, and, 3) a set of performance tests associated with the Arizona OSS review. As part of its OSS review, CGE&Y examined Qwest's performance for all loop types including voice grade loops, xDSL-capable loops, and high capacity loops and Qwest's processes for line sharing and line splitting.

62. ACC Staff issued an Interim Report on February 19, 2002 wherein it found that Qwest had not fully demonstrated compliance with the requirements of Checklist Item No. 4. Qwest subsequently supplemented the record with additional evidence material to a finding of compliance with Checklist Item 4. On May 21, 2002, ACC Staff issued a Supplemental Report on Qwest's Compliance with Checklist Item No. 4 wherein Staff found performance results indicated -- with minimal exceptions -- Qwest provided parity service for unbundled loops. The Staff Reports also addressed 11 impasse issues on which the parties could not come to agreement.

63. In the Supplemental Report, Staff found that measurements demonstrated Qwest was providing CLECs access to unbundled loops on a nondiscriminatory basis as required by the Act. Based upon the additional evidence provided by Qwest, Staff recommended that the Commission find Qwest in compliance with Checklist Item No. 4, with regard to OSS Test Results/Commercial Data results. On May 21, 2002 in Decision No. 64836 the ACC approved Checklist Item No. 4 – Unbundled Local Loops. By its Decision the ACC found Qwest to be in full compliance with the requirements of Checklist Item No. 4.

64. A separate set of workshops was held to examine CLEC access to advanced service requirements which was the result of the FCC's Third Interconnection Order and Fourth Notice of Proposed Rulemaking 1 and the Line Sharing Order 2. The Line Sharing Order added a requirement for line sharing and the Third Interconnection Order

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[1] *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, FCC 99-238, CC Docket No. 96-98 (Rel. November 5, 1999)("*UNE Remand Order*").

[2] *In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of theTelecommunications Act of 1996*, FCC 99-355, CC Docket Nos. 98-147 and 96-98 (Rel. December 9, 1999)("*Line Sharing Order*").

added requirements for subloop unbundling, access to dark fiber and access to unbundled packet switching. The Staff sought to develop an evidentiary record that could be used by the ACC in determining compliance on these subjects. ACC Staff conducted a set of Workshops with interested parties on September 6-8, 2000, and January 29, 2001 to address Line Sharing, SubLoop, Dark Fiber and Packet Switching. An additional Workshop was conducted by ACC Staff to address specific issues raised by CLECs regarding Line Splitting and Network Interface Devices ("NIDs") on March 5, 2001, and May 14, 2001. On February 12, 2002, ACC Staff issued its Final Report on Line Sharing and NIDs finding that Qwest has met the requirements of 47 U.S.C. § 271 as they pertain to wholesale emerging service offerings. On June 5, 2002 members of the ACC gave consideration to the ACC Staff report and found (in Decision No. 64880) Qwest to be compliant with its obligations under the Act.

65. Pricing issues related to all loop types were resolved in Phase II of the Commission's generic pricing case, Docket No. T00000A-00-0194. The Commission issued Decision No. 64922 on June 12, 2002.

E. Checklist Item No. 5 – Unbundled Local Transport

66. Checklist Item No. 5 requires an Applicant to provide local transport from the trunk side of a wireline local exchange carrier switch unbundled from switching or other services as specifically prescribed by 47 U.S.C. 251(c)(3) and § 271(c)(2)(B)(ii). The ACC conducted 1) a set of workshops on October 10-13, 2000 and April 9-13, 2001, 2) a review of relevant provisions of Qwest's SGAT and 3) a set of performance measurements associated with the Arizona OSS review. ACC Staff issued its Final Report on September 28, 2001, wherein parties were unable to agree on a number of issues that were referred to the ACC for resolution under terms of the ACC's impasse process.

67. On September 28, 2001, ACC Staff issued a Final Report on Compliance with Checklist Item No. 5 wherein Staff resolved 4 impasse issues related to Qwest's provisioning of unbundled local transport and recommended that Qwest be found to comply with Checklist Item No. 5. In that Report, Staff suggested that the record supported a finding of compliance subject to Qwest modifying its SGAT language to be consistent with the resolution of the impasse issues. On November 20, 2001 in Decision No. 64216 the ACC approved Checklist Item No. 5 – Unbundled Local Transport. By its Decision the ACC found Qwest to be in full compliance with the requirements of 47 U.S.C. § 271(c)(2)(B)(ii) and 47 U.S.C. § 251(c)(3).

68. Pricing issues related to transport were addressed in Phase II of the Commission's generic wholesale pricing docket, T00000A-00-0194. The Commission entered Decision No. 64922 on June 12, 2002.

F. Checklist Item No. 6 – Unbundled Local Switching

69. Checklist Item No. 6 requires an Applicant to demonstrate that it provides local switching unbundled from transport, local loop transmission or other services. In order to determine Qwest's compliance, the ACC conducted a series of workshops on October 10-13, 2000 and April 9-13, 2001, 2) a review of the relevant provisions of Qwest's SGAT and 3) a set of performance tests associated with the Arizona OSS review. ACC Staff issued its Final Report on October 1, 2001, wherein parties were unable to agree on four issues that were referred to the ACC for resolution under terms of the ACC's impasse process. On October 1, 2001 ACC Staff issued a Final Report on

Qwest's Compliance with Checklist Item No. 6 wherein Staff resolved 4 impasse issues related to Qwest's provisioning of unbundled local switching and recommended that Qwest be found to comply with Checklist Item No. 6.

70. On November 20, 2001 in Decision No. 64214 the ACC approved Checklist Item No. 6 – Unbundled Local Switching. By its Decision the ACC found Qwest to be in full compliance with the requirements of 47 U.S.C. § 271(c)(2)(B)(ii) and 47 U.S.C. § 251(c)(3).

71. Pricing issues relating to switching were resolved by the Commission in Phase IIA of the generic wholesale pricing proceeding, Docket No. T00000A-00-194.

G. Checklist Item No. 7 – 911, E911, Directory Assistance, Operator Services

72. Checklist Item No. 7 requires an Applicant to provide nondiscriminatory access to 911 and E911 services as well as directory assistance ("DA") and operator call completion services ("OS"). The ACC Staff and parties undertook an extensive review of Qwest's compliance with relevant Checklist requirements, and reviewed the relevant provisions of Qwest's Arizona SGAT. Staff also reviewed language in the Arizona SGAT that reflected the most recent consensus in other Qwest-served states, and which was imported to Arizona. The parties were able to successfully resolve all issues at the workshops held on this matter.

73. ACC Staff found that Qwest was providing 911/E911 service to competitors on a nondiscriminatory basis. The exceptions, based on relatively small volume, were not considered material by the Independent Third Party Test Administrator or the ACC Staff. On the basis of the test results, ACC Staff found Directory Assistance and Operator Services answer performance to be in parity. Qwest is providing access to 911/E911 services and is providing access to Directory Assistance and Operator Services to CLECs. On February 16, 2001 in Decision No. 63385 and December 20, 2001 in Decision No. 64301 the ACC approved Checklist Item No. 7 – 911, E911, Directory Assistance and Operator Calls to be in parity with Qwest's own retail operations and compliant with 47 U.S.C. § 271(c)(2)(B)(vii).

74. AT&T filed a motion on 2/12/2002 to reopen and supplement the record on Checklist Item 7 (911) because of problems with updating 911 records because of the "locked" database. To rectify this problem, Qwest agreed to adopt the proposed National Standard for dealing with the locked 911 database. This agreement was filed on March 11, 2002 in Qwest's Verified Surreply to AT&T's Reply on its Motion to Reopen and Supplement the Record on Checklist Item 7 (911).

H. Checklist Item No. 8 – White Pages

75. Checklist Item No. 8 requires an Applicant to provide white pages directory listings for customers of other carriers' local telephone exchange service. The ACC Staff conducted a workshop with interested parties on January 11, 2000 to examine Qwest's compliance with the requirements of Checklist Item 8. Additionally, ACC Staff independently investigated Qwest white page directories and found substantial numbers of CLEC customers represented in the publications.

76. Based upon the testimony, comments and exhibits submitted, it is the opinion of the ACC that Qwest has demonstrated that it makes available to CLECs

nondiscriminatory access to directory listings. In this proceeding, Qwest demonstrated that it provides: (1) nondiscriminatory appearance and integration of white page listings to customers of competitive local exchange carriers; and (2) white page listings for competitor's customers with the same accuracy and reliability that it provides its own customers. Qwest demonstrated that the listings it provides to its competitors' customers are identical to, and fully integrated with, the Applicant's own customer listings. The parties were able to successfully resolve all of the issues in dispute through the Workshop process. On the basis of the record, the ACC found Qwest to be compliant with the FCC's requirement to provide CLECs with white page listings that are nondiscriminatory in appearance and fully integrated with its own listings. On March 6, 2000 in Decision No. 62344 the ACC approved Checklist Item No. 8 – White Pages and deemed it to be compliant with 47 U.S.C. § 271(c)(2)(B)(viii).

77. Qwest recently sold its DEX directory operations to the Carlyle Group. As part of that proceeding, Qwest and the buyer have committed to the ACC and CLECs that their obligations with regard to Sections 251, 252 and 271the Federal Act will continue to be met.

I. Checklist Item No. 9 - Numbering Administration

78. Checklist Item No. 9 requires an Applicant to provide nondiscriminatory access to telephone numbers for assignment to other carriers' local telephone exchange service customers until the date by which telecommunication number administration, guidelines, plans and/or rules are established. The Checklist Item mandates compliance by Qwest with prescribed numbering guidelines, plans and rules. The ACC Staff conducted a workshop with interested parties on January 11, 2000, and reviewed the policies and practices proposed by Qwest for use by CLECs in Arizona to ensure they comport with the prescribed requirements of 47 U.S.C. § 271(c)(2)(B)(ix). Several issues were raised by interested parties regarding Location Routing Number ("LRN") policies, number porting procedures and NXX code assignment practices. The parties were able to resolve all disputed issues through the Workshop process.

79. Based upon the testimony, comment and exhibits submitted, ACC Staff concluded that Qwest had demonstrated compliance with the requirements set forth in Checklist Item No. 9. Specifically, evidence showed that Qwest provided nondiscriminatory access to telephone numbers for assignment to competing carriers' telephone exchange services customers until the date by which telecommunications numbering administration guidelines, plan, or rules were established. On February 16, 2001 in Decision No. 63384 the ACC approved Checklist Item No. 9 – Numbering Administration and deemed Qwest to be compliant with 47 U.S.C. § 271(c)(2)(B)(ix).

J. Checklist Item No. 10 – Databases and Associated Signaling

80. Checklist Item No. 10 requires that an Applicant provide nondiscriminatory access to databases and associated signaling necessary for call routing and completion in accordance with in the provisions of 47 U.S.C. § 271(c)(2)(B)(x). Workshops were held to examine Qwest's compliance with Checklist Item No. 10 during which an extensive review of the relevant provisions of the Arizona SGAT was also undertaken. The Workshops with interested parties were held on January 25, 2000 and March 7, 2000. At the conclusion of the March 7, 2000 Workshop ACC Staff determined that all outstanding issues between the parties were resolved. On February 16, 2001, ACC Staff submitted its Final Report for deliberation and decision.

81. A Special Open Meeting was held on December 20, 2001. During the meeting, Staff and Qwest were questioned as to the extent of the record relative to legal arguments raised by MCI on the availability of CNAM. Commissioner Spitzer stated, "...I would make a substitute motion that this item, Checklist Item 10, be returned for fuller analysis of the facts and a fuller factual record on the database transfer." Tr. At 34, December 20, 2001. The motion to remand was unanimously passed.

82. As a result of the Commission's remand of Checklist Item 10 concerning the provisioning of the CNAM data base on a "bulk" basis by Qwest to CLECs, Staff held a workshop on January 10, 2002. After review of information provided in the Workshop and MCI Worldcom's March 12, 2002, comments on Staff's Second Supplemental Report on Checklist Item 10, Staff found in its report dated March 22, 2002 that there was no new information submitted that justified requiring Qwest to provide access to its CNAM database on a bulk basis.

83. In its Decision Nos. 63384 (February 16, 2001) and 64837 (May 21, 2002), the ACC found that Qwest provided nondiscriminatory access to its signaling network and call-related databases through the terms of its proposed SGAT as well as the terms of Commission-approved interconnection agreements. By its Decisions the ACC approved Checklist Item No. 10 – Databases and Associated Signaling and deemed Qwest to be compliant with 47 U.S.C. § 271(c)(2)(B)(x).

K. Checklist Item No. 11 – Local Number Portability

84. 47 U.S.C. § 271(c)(2)(B)(xi) requires that an Applicant provide nondiscriminatory access to such services or information deemed necessary to permit a requesting carrier to implement local dialing parity consistent with the requirements of 47 U.S.C. § 251(b)(3). The ACC Staff conducted an extensive review of Qwest's compliance with these requirements, and the Arizona SGAT and facilitated a series of Workshops with interested parties on August 16, 2000, March 5-9, 2001, and May 14-18, 2001.

85. At the conclusion of the March 5-9, 2001 and May 14-18, 2001 workshops, the parties were unable to agree on three issues that were referred to the ACC's impasse process for resolution. On September 17, 2001, ACC Staff issued its Final Report on Checklist Item No. 11 finding that serious concerns remained unresolved regarding Qwest's LNP provisioning. Qwest was ordered to supplement the record with additional evidence establishing its compliance. On November 1, 2001, ACC Staff filed a Supplemental Report finding that additional evidence submitted by Qwest and AT&T, as well as statements by Cox Communications that all of its concerns had been resolved, was sufficient for ACC Staff to conclude that Qwest is in compliance with the requirements of 47 U.S.C. § 271(c)(2)(B)(xi).

86. In its Decision No. 64629 issued March 15, 2002, the ACC found Qwest satisfied its obligations to provide number portability, interim telecommunications number portability through remote call forwarding, direct inward dialing trunks, or other comparable arrangements, with as little impairment of functioning, quality, reliability, and convenience as possible through the terms of its proposed SGAT as well as the terms of Commission-approved interconnection agreements. By its March 15, 2002 Decision, the ACC approved Checklist Item No. 11 – Local Number Portability and deemed Qwest to be compliant with 47 U.S.C. § 271(c)(2)(B)(x).

L. Checklist Item No. 12 – Local Dialing Parity

87. 47 U.S.C. § 271(c)(2)(B)(xii) requires an Applicant to provide nondiscriminatory access to such services or information as deemed necessary to allow the requesting carrier to implement local dialing parity in accordance with requirements set forth in 47 U.S.C. § 251(b)(3). The ACC Staff conducted an extensive review of Qwest's compliance with Local Dialing Parity requirements alongwith a review of the relevant provisions of the Arizona SGAT in workshops with interested parties on January 11, 2000, and March 25, 2000.

88. All parties at the Workshop agreed that Qwest met the requirements of Checklist Item No. 12. Based upon the comments, testimony and exhibits submitted, and the unanimous agreement of all parties at the Workshops, it is the opinion of the Arizona Corporation Commission that Qwest has demonstrated compliance with the requirements set forth in Checklist Item No. 12. Furthermore, the ACC found in its March 6, 2001 Decision No. 62344 that Qwest has demonstrated it provides nondiscriminatory access to such services or information as are necessary to allow the requesting carrier to implement local dialing parity in accordance with the requirements of 47 U.S.C. § 251(b)(3).

M. Checklist Item No. 13 – Reciprocal Compensation

89. U.S.C. § 271(c)(2)(B)(xiii) requires that an Applicant maintain reciprocal compensation arrangements with requesting carriers in accordance with requirements set forth in 47 U.S.C. §252(d)(2). The ACC Staff conducted an extensive review of the Arizona SGAT and facilitated several Workshops with interested parties on February 17, 2000, and March 7, 2000. Participants resolved all outstanding issues except for four items that were subsequently referred to the ACC for resolution.

90. On August 30, 2001, the Commission issued its Decision on Qwest's compliance with Checklist Item 13. In its Decision the Commission resolved the remaining impasse issues between the parties and found that Qwest has demonstrated it has entered into reciprocal compensation arrangements in accordance with the requirements of 47 U.S.C. § 252(d)(2) and that it satisfies the requirements set forth in 47 U.S.C. § 271(c)(2)(B)(xiii).

N. Checklist Item No. 14 – Resale

91. 47 U.S.C. § 271(c)(2)(B)(xiv) requires an Applicant to make telecommunications services available for resale by interested CLECs in accordance with the prescribed requirements of 47 U.S.C. § 251(c)(4) and 47 U.S.C. § 252(d)(3). The ACC Staff conducted an extensive review of Qwest's compliance with applicable requirements, the relevant Arizona SGAT provisions, and interconnection and resale agreements that set limits on resold services. These issues were examined in a series of Workshops with interested parties on August 16-18, 2000 and February 13-15, 2001. The performance measurements associated with resold services were also examined. In the course of the Workshops interested parties were able to resolve all but two issues that were referred to the ACC impasse process for resolution.

92. On October 3, 2001, the Commission entered Decision No. 64060 which resolved the remaining impasse issues and found that Qwest had demonstrated it complies with Checklist Item 14 and makes available " telecommunications services" for resale in accordance with the requirements of sections 251(c)(4) and 252(d)(3).

VI. General Terms and Conditions/Statement of Generally Available Terms (SGAT)

93. 47 U.S.C. § 271(c)(1)(B) requires an Applicant to have an approved statement of the terms and conditions that the Applicant generally offers to competitive local exchange carriers related to provisioning access and interconnection consistent with strictures set forth in 47 U.S.C. § 252(f). Pursuant to its responsibilities in ensuring the availability and utility of such material the ACC directed Qwest to submit an SGAT for consideration and deliberation prior to any approval of its request for Section 271 authority. The ACC deemed it prudent to condition all Checklist approvals on verification that the findings made in those reports were incorporated into the SGAT before Commission support for any Section 271 application would be granted. On August 29, 2003 Qwest submitted the Fourteenth Revised version of its SGAT. The Commission approved the General Terms and Conditions Section of Qwest's SGAT in Decision No. 66201.

VII. Enforcement Dockets

94. In the late spring of 2002, an issue arose related to unfiled agreements between Qwest and certain competitive local exchange carriers. With regard to the Company's alleged violations of Section 252(e) of the Act, Chairman Mundell instructed the Company to file all unfiled agreements with the Commission for review.

95. To examine these issues, completion of the OSS investigation conducted by the ACC was delayed in June 2002. It was the opinion of the ACC that further investigation into these agreements, and ongoing discrimination concerns, was needed before the ACC would consider Qwest's entry into the long distance market.

> "I am compelled to raise a question regarding the seven interconnection agreements purporting to prohibit parties from participating in proceedings before this Commission. ****
> I believe the process of regulation (or deregulation) is equally if not more important than the disposition of a particular contested matter. The question presented is whether Qwest's interconnection agreements precluding parties from participation in the Section 271 docket taint the integrity of the proceedings before this Commission."

Chairman Marc Spitzer, Letter of June 17, 2002 to All Parties

96. The Commission commenced two separate enforcement proceedings: Qwest's compliance with §252(e) No. RT-00000F-02-0271 and a subdocket, T-00000A-97-0238. Staff conducted an extensive investigation in both Dockets. For the next nine months, the parties issued discovery requests, filed testimony and a three-day hearing was held on Qwest's violations of Section 252(e) of the Federal Act.

97. Commencement of these Enforcement Dockets immediately preceded another Enforcement Action concerning Qwest's delay in implementing the generic wholesale rates ordered in Decision No. 64022 on June 12, 2002 by the ACC. Qwest did not implement those rates until December, 2002. The Commission was concerned that the lengthy delay in implementing the new wholesale rates was unreasonable and harmful to CLECs. An Order to Show Cause was entered against the Company for its failure to implement the rates within a reasonable time period.

VIII. Global Settlement

98. On July 25, 2003, a Settlement Agreement was reached between Qwest and ACC Staff encompassing all three Enforcement Dockets. Staff believes that the terms and conditions set forth in the Agreement provides assurances that Qwest will abide by State and Federal laws which were the subject of the Enforcement Dockets in the future. Staff also believes that the Agreement takes steps to: a) ensure Qwest's ongoing compliance with 47 U.S.C. § 252(e), b) ensures that Qwest does not interfere with the integrity of the ACC's regulatory process in the future, and, c) ensures that Qwest will implement future wholesale rate orders of the ACC on a timely basis. The Global Settlement Agreement has not yet been approved by the ACC nor has it been determined by the ACC to be in the public interest. The agreement was recently the subject of an evidentiary hearing with initial briefs of the parties due on October 15, 2003 and reply briefs due on October 29, 2003.

IX. Additional Workshops

99. Upon learning of the unfiled interconnection agreements between Qwest and other carriers, the ACC modified its procedural framework to provide an opportunity for those parties previously precluded from active participation in the 271 docket to voice issues and for Qwest to respond. This was done through a Supplemental Workshop which the Staff conducted on July 30-31, 2002, for the express purpose of addressing the concerns of Eschelon and McLeod who each believed they had been precluded from raising issues due to their unfiled agreements with Qwest. Other parties were allowed to participate to the extent they had issues which arose from the evidence presented.

100. To determine the extent of the possible problems with the record due to the unfiled agreements, the Staff issued data requests to all certified carriers in Arizona seeking information as to whether they were aware of or had entered into any unfiled agreements with Qwest, whether those agreements contained provisions which acted to limit their participation in the 271 case, and if so to submit copies of them. Altogether the ACC received approximately 100 unfiled agreements from Qwest and other providers. Those agreements are the subject of the Section 252(e) proceeding at the Commission. Qwest publicly filed 14 of the agreements with the Commission in September 2002. The Commission approved those with modifications. Staff has identified 28 other agreements which it believes should have been filed under Section 252(e), 23 of which have terminated. The other five are the subject of dispute between Qwest and Staff and will be resolved through the 252(e) proceeding.

101. With respect to the 271 record, Staff's discovery revealed that approximately 4 carriers had clauses in their agreements with Qwest, the effect of which limited their participation in the 271 proceeding. Two of these carriers believed that they would have raised other issues, but for the agreements.

102. The two parties raised a number of operational issues that had not previously been addressed by the participants. An extensive examination of those issues by ACC Staff suggested that many of the problems identified by the participants were unique to the telecommunications services that they provided and had not been encountered by other CLECs to date.

103. As a result of the issues raised, Qwest has made a number of changes in its procedures and protocols to eliminate many of the problems identified by the parties. On February 25, 2003, and June 27, 2003, the ACC Staff issued its Final Reports and Recommendations on these issues for consideration and deliberation by the ACC. In its

reports ACC Staff found Qwest to be compliant with the requirements of Section 271 in all areas raised by Eschelon and McLeod in the July 30-31, 2002 workshops. On September 11, 2003 members of the ACC reviewed Staff's findings and concluded Qwest was compliant with its duties and obligations under Section 271.

X. Section 271(D)(3)(c) – Public Interest

104. In its Final Orders granting Section 271 relief the FCC outlined a three-step process for examining the Public Interest requirement. In Docket No. T-00000A-07-0238 the ACC sought to determine whether Qwest's Section 271 approval in Arizona would be in the public interest. The FCC has stated in its order approving Bell Atlantic-New York's Section 271 application that it views the public interest requirement as an opportunity to review the circumstances presented by the application to ensure that no other relevant factors exist that would frustrate the congressional intent that markets be open, as required by the competitive checklist, and that entry will therefore service the public interest as Congress intended.

105. The FCC established a framework for use by a State regulatory agency in any Public Interest evaluation it might be required to perform on a Section 271 Applicant. Specifically, a State regulatory agency must:1) determine that the local markets are open to competition, 2) identify any unusual circumstances in the local exchange and long distance markets that would make entry by the applicant into the long distance market contrary to the Public Interest, and 3) assure future compliance by the Applicant. Whereas the Public Interest is not a specific Checklist Item with which an Applicant must demonstrate compliance, it is a showing that an applicant must satisfy prior to receiving approval of any Section 271 application.

106. Additionally, the FCC has indicated its interest in any evidence that an Applicant has engaged in discriminatory or other anticompetitive conduct, or failed to comply with State and Federal regulations. Because the success of the market opening provisions of the Act depend, to a large extent, on the cooperation of incumbent local exchange carriers, evidence that an Applicant has engaged in a pattern of discriminatory conduct or disobeying federal and state telecommunications regulations would serve to undermine the FCC's confidence that the incumbent's local market will remain open to competition once the Applicant has received interLATA authority. While no one factor is dispositive, the overriding goal is to ensure that nothing undermines the conclusion that markets are open and will remain open to competition.

107. The ACC directed Staff to examine Qwest's business practices, plans and representations to determine the extent to which Qwest's application satisfies the above mentioned Public Interest standards. To ensure its evaluation was full, fair and equitable to everyone the ACC Staff solicited comment from any interested parties. Additionally, a number of public hearings were conducted by Commissioners and Staff of the ACC in Tucson, Flagstaff and Phoenix to solicit public comment and evidence.

108. As to whether Qwest's local market is opened, the ACC examined the evidence from the Track A portion of this proceeding, the number of collocations supported by Qwest, the current state of competition in rural areas of Arizona, the number of residential subscribers receiving service from CLECs and the level of control still exercisable by Qwest in the residential market. Evidence presented in this proceeding by CLECs suggests that 32 competitors to Qwest serve an estimated 15.0% of the business access lines in Arizona and 3% of the residential access lines in Arizona. Additional evidence shows that 12 of 18 CLECs serving business customers in Arizona

use their own facilities for at least part of their service. Based upon the record developed in this proceeding we find no evidence to suggest that recommending approval of Qwest's Section 271 application would be inconsistent with promoting competition in the local and long-distance markets and believe such a recommendation to be consistent with the *de minimis* standard previously set forth by the FCC in FCC Docket No. 03-142 for determining compliance with 47 U.S.C. § 271(c)(1)(A). This information, together with Qwest's having met all Checklist requirements, constitutes demonstrable evidence that the local market is open to competition in Arizona.

109. Second, the FCC considers whether the Applicant has provided adequate assurance that the local exchange market will remain open after the application is granted. A fundamental part of the FCC's analysis is determining whether a state regulatory agency has adopted a PAP for the applicant. On June 5, 2002 the ACC issued Decision No. 64888 approving a PAP for Qwest-Arizona that provides a comprehensive framework for ensuring Qwest local exchange markets remain open in the future.

110. Finally, the FCC looks for a review of the local and long-distance markets to ensure that there are no "unusual circumstances" that would make entry contrary to the public interest under the particular circumstances of the application at issue. In the Arizona proceeding, a number of questions were raised by interested parties regarding Qwest's "winback" tariff, reciprocal compensation, EELs, structural separation, OSS testing procedures, access charge reform, wholesale pricing requirements, the PAP, a local service freeze, SGAT and checklist items and Qwest's conduct which was the subject of the Enforcement Dockets discussed above which resulted in a proposed Global Settlement Agreement between Staff and Qwest.

111. After extensive review of the claims made by parties regarding these issues, the ACC Staff recommended one change for Qwest to consider. Specifically, Staff recommended Qwest amend its tariffs to delay any "winback" initiative to lost customers for a period of ninety days from the date the customer left Qwest for another carrier. In its Open Meeting on September 18, 2003, the ACC ordered that Qwest's winback tariff be examined in a separate proceeding.

112. Separately, the ACC found other matters raised by the parties have been resolved by other actions. Concerns related to reciprocal compensation and EELs have been addressed through Workshops on Checklist Item No. 1 (Interconnection/Collocation, Decision No. 64600), Checklist Item No. 2 (Access to UNEs, Decision No. 64630) and Checklist Item No. 13 (Reciprocal Compensation, Decision No. 63977). Additionally, approval of the Arizona PAP (Decision No. 64888) resolves many issues as well.

113. The concerns raised regarding the need for structural separation (wholesale v. retail) are, in the opinion of this agency, not appropriately resolved in this Docket. The issue of structural separation has been raised at both the Federal and State level. This issue is far beyond the scope of a Section 271 review.

114. Matters related to OSS testing procedures raised by certain parties in 2002 were mooted with the completion of the OSS test. At the time the issues were raised, testing procedures had not been completed and final results had not been released. With the subsequent completion of the test and the release of performance data associated with it the claims had little relevance. Further activities during this nine month period related to Checklist Items 1 and 2, PIDs, OSS Testing and the examination of issues related to Section 252(e) and Section 271 subdocket and the OSC are discussed earlier in this

report. Approval of the OSS Test Final Report covering checklist items 1 and 2 disputes, was given on September 8, 2003. After extensive review of the Staff Final Report the Arizona Corporation Commission issued Decision No. 66224 wherein Qwest's Operational Support Systems were found to be in compliance with the requirements set forth in 47 U.S.C. § 271(c)(2)(B). It is the opinion of the ACC that issues raised regarding testing procedures require no further examination or consideration in this proceeding.

115. Similarly, decisions rendered by the ACC mooted concerns raised by parties in several proceedings including the Arizona Cost Docket. On June 12, 2002 the ACC issued Decision No. 64922 concluding Phase II of the cost proceeding and establishing wholesale pricing requirements for UNEs and resale discounts. It later issued orders in Phase IIA of the case addressing Qwest's rates for switching. In consequence of that action the ACC considers the issues raised regarding this matter to require no further examination or consideration in this proceeding.

116. Additional concerns were raised related to access charge reform investigations being conducted by the ACC. The ACC has been investigating the cost of telecommunications access in a separate proceeding (Docket No. T-00000D-00-0672) to determine if the charges currently in effect reflect the actual costs of providing local exchange access to carriers. The ACC considers this matter open and in its Open Meeting on September 18, 2003, concluded that AT&T's concerns regarding the level of intrastate access charges should be addressed on an expedited basis. Consequently, while the intrastate access charge issue is not sufficient with the ACC's opinion to hold that Qwest's application is not in the public interest, the ACC has nonetheless recognized that AT&T's concerns have merit and plans on addressing those on an expedited basis.

117. In similar fashion the ACC has reached closure on a number of subjects that were of interest to parties to this proceeding. On November 1, 2002, the ACC issued Decision No. 65349 denying Qwest's request to approve its Local Service Freeze tariff.

118. One of the more important issues that arose had to do with allegations that Qwest was engaging in conduct which was contrary to State and Federal law and that it had engaged in conduct that has adversely affected the integrity of the Commission's processes. The myriad of allegations involving Qwest's conduct resulted in concern on the Commission's part as to whether given what appeared to be a pattern of unlawful and discriminatory behavior on the Company's part, it should be given the privilege of providing long distance service in Arizona. At the Open Meeting, Mr. Pat Quinn, Arizona's Vice-President represented to the Commissioners that the conduct in question had been part of the earlier management team and that since he had taken over the Arizona operations and Mr. Notebaert had succeeded Mr. Nacchio as CEO of the Company, the Company was committed to doing things right.

119. At the Open Meeting, Qwest's application was found to be in the Public Interest by a vote of 3-2, with Chairman Spitzer, Commissioner Hatch-miller and Commission Gleason and with Commissioners Mundell and Irvin dissenting. Commissioner Mundell expressed his opinion that it was premature to adjudge their application to be in the public interest when the issues encompassed by the proposed Global Settlement had not yet been resolved. Commissioner Mundell also expressed concern with the seriousness of the allegations involving the three Enforcement Dockets.

XI. Performance Assurance Plan (PAP)

120. The ACC concluded that an efficient and effective PAP was necessary to assure Qwest's future compliance with the market opening measures established in this Dcket. Since the inception of Qwest's application for Section 271 authority the ACC has engaged in protracted negotiations with Qwest and other interested parties to design a PAP that is both acceptable to the parties and beneficial to the public. On July 3, 2001, Qwest submitted its most current PAP for consideration and deliberation by members of the ACC. The proposed PAP incorporates a number of revisions from earlier versions that substantially improve the value of the PAP to this Commission in its efforts to ensure future compliance by Qwest. As a measure of ensuring future suitability of the PAP the ACC took the extraordinary step of reviewing the PAP every six months and to provide interested parties an opportunity to review and comment on any proposed changes. Furthermore, the ACC will conduct an audit of the PAP one year following implementation. A second audit will be conducted 18 months after the first audit is completed. On June 5, 2002, in Decision No. 64888 members of the ACC considered the Qwest PAP for Arizona and deemed it to be compliant with the requirements of the Act, and fair and equitable and consistent with the Public Interest. Qwest filed its revised PAP with the Commission on July 12, 2002. Qwest filed its final version of the PAP on July 26, 2002. The July 26th filing eliminated typographical errors and redundancies. The revised PAP was filed with the Commission as Exhibit K to Qwest's SGAT on September 23, 2002.

XII. Section 272

121. Section 272 requires the BOC to provide interLATA long-distance service through a separate subsidiary for a period of at least 3 years from the date the BOC receives long-distance authority from the FCC. Section 272 contains a host of safeguards designed to prohibit discrimination, improper cost allocation and cross-subsidization between the BOC and its Section 272 affiliate. The FCC set standards for compliance with Section 272 in the Accounting Safeguards Order7 and Non-Accounting Safeguards Order8.

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[7] *Implementation of the Accounting Safeguards under the Telecommunications Act of 1996*, CC Docket No. 96-150, Report and Order, 11 FCC Rcd 17539 (1996) (*Accounting Safeguards Order*), Second Order on Reconsideration, 15 FC Rcd 1161 (2000).

[8] *Implementation of the Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended,* CC Docket No. 96-149, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 21905 (1996) (*Non-Accounting Safeguards Order*), First Order on Reconsideration, 12 FCC Rcd 2297 (1997), Second Order on Reconsideration, 12 FCC Rcd 8653 (1997), *aff'd sub nom. Bell Atlantic Tel. Cos. v. FCC*, 131 F.3d 1044 (D.C. Cir. 1997), Third Order on Reconsideration, 14 FCC Rcd 16299 (1999).

122. The ACC directed Staff to conduct an evaluation of Qwest's initial Section 272 affiliate as part of the Applicant's filing in this proceeding. Workshops were held and discovery conducted prior to Staff's proposed findings of facts and conclusions of law filed November 14, 2001. Staff's final report was filed on April 19, 2002. Qwest and Staff submitted a Joint Filing on May 8, 2002 to clarify Paragraph 216 of Staff's Final Report. The Administrative Law Judge's Recommendation Opinion and Order was filed June 28, 2002.

123. Staff's memorandum dated September 3, 2003 provided an update on Qwest Corporation's (Qwest's) compliance with Section 272 of the Act.

124. In summary, it states that, with respect to Qwest's initial two multi-state applications for in-region, interLATA authority, that it was unable to certify whether its financial statements were consistent with Generally Accepted Accounting Principles ("GAAP"), a necessary predicate to a finding of 272 compliance. As a result, Qwest withdrew its section 271 applications at the FCC. Qwest then formed a new long-distance company known as Qwest LD Corporation ("QLDC") and filed a new multi-state application with the FCC on September 30, 2002, for the states of Colorado, Idaho, Iowa, Montana, Nebraska, North Dakota, Utah, Washington, and Wyoming. QLDC is a switchless reseller, and is a wholly-owned subsidiary of Qwest Services Corporation. The FCC found that QLDC met the requirements of Section 272 in nine states in Qwest's region, and thereafter found that QLDC met the requirements in an additional 4 Qwest states. Accordingly, Staff believes that this issue is moot, and that it is no longer necessary for this Commission to make an independent finding on QLDC's Section 272 compliance. Further, this Commission will have an opportunity to review Qwest's 272 affiliate in the context of its application for a Certificate of Convenience and Necessity (CC&N) (Docket No. T-0419A-03-0464), that is currently pending before the Commission. In summary, Staff believes that there is no need for this Commission to make an independent finding at this time on QLDC's Section 272 compliance.

XIII. Conclusion

125. The Arizona Corporation Commission has, in conjunction with many other interested parties, devoted significant time and energy to the development of an evidentiary record which the Federal Communications Commission can use to assess Qwest's application to offer in-region interLATA service in the State of Arizona. The ACC fully understands that the FCC will be diligent in its review and consideration of this matter. By a vote of 3-2, with Commissioners Mundell and Irvin dissenting, the Arizona Corporation Commission respectfully recommends that Qwest's application in Docket No. T-00000A-97-0238 be approved.