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BEFORE THE ARIZONA CORPORATION COMMISSION

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SEP 11 2003

IN THE MATTER OF ILEC UNBUNDLING OBLIGATIONS AS A RESULT OF THE FEDERAL TRIENNIAL REVIEW ORDER.	DOCKET NO. T-00000A-03-0369

INITIAL COMMENTS OF QWEST CORPORATION

Qwest Corporation ("Qwest") hereby submits these initial comments in response to the Procedural Order issued June 24, 2003. In the Notice, the Administrative Law Judge seeks comment on issues relating to the Federal Communications Commission's ("FCC") Triennial Review Order ("Order"). In the Notice, the Commission posed several questions relating to the issues it may need to address as a result of the Order.

RESPONSES TO SPECIFIC QUESTIONS

Following are Qwest's responses to the specific questions raised by the Commission in its Procedural Order:

1. What issues pertaining to the 90 day proceeding will need to be addressed as a result of the FCC's Order? Please describe any issues identified in detail.

Qwest Response: As a preliminary matter, Qwest notes that it is still in the process of reviewing and analyzing the FCC's 576 page Order. Therefore, Qwest's responses to the questions raised by the Commission represent its best effort to interpret the Order given the limited time it has had to review the Order.

The Order has already been the subject of legal challenges by a variety of parties, including Qwest. On Thursday, August 28, 2003 Qwest joined Southwestern Bell, BellSouth and the United States Telephone Association in filing a Writ of Mandamus before the U.S. Circuit Court of Appeals in Washington D.C., asking the court to, among other things, vacate the FCC's rules governing the unbundling of mass market switching and high-capacity facilities and to order the Commission to issue a lawful order within 45 days. On Thursday, September 4, 2003 Qwest filed a Petition for Review in the U.S. Court of Appeals for the District of Columbia seeking judicial review of the FCC's Triennial Review Order on the grounds that portions of the Order exceed the Commission's authority and fail to comply with the Court's order in the *USTA* case. In addition, on that same date, Qwest joined with Verizon, BellSouth, SBC and USTA in petitioning the FCC for a stay of its Triennial Review Order. The FCC has until September 11, 2003 to act on this Petition. In providing its response to these questions and in suggesting possible procedures for state proceedings that result from the order, Qwest is not waiving its right to appeal any issue in the Order, including issues related to the state proceedings required by the Order.

With regard to the Commission's specific question regarding unbundled switching for enterprise customers (the 90-day proceeding), the FCC made a national finding of "no impairment," subject to further state review. The FCC permits the state commissions to file a waiver petition with the FCC within 90 days of the effective date of the Order if the state makes an "affirmative finding of impairment in a particular market. (Order, paragraph 455). The "affirmative finding" required by the order must be based on the specific operational and economic factors identified in the Order, in particular those discussed in paragraphs 454-57.

Because it is unclear whether any CLEC in Arizona will ask the Commission to file such a petition, CLECs should be required to notify the Commission by October 3, 2003, if they intend to present evidence that could form the basis for the findings the Commission must make prior to petitioning for a waiver. Only upon receipt of a notice, should the Commission open a generic 90-day proceeding.

2. Please provide substantive comments on the presumptive finding of no impairment for local circuit switching on high-capacity loops such as DS-1 for business customers. These substantive comments should include any information that you believe rebuts the presumptive finding of no impairment for not providing local circuit switching as a UNE on high-capacity loops such as DS-1 for business customers.

Qwest Response: Based on widespread switch deployment to serve enterprise customers, the FCC made a national finding of no impairment for unbundled switching for customers that are served using loops at the DS1 capacity and above. (FCC Triennial Review Order, Paragraph 451). Consistent with the FCC's national finding, carriers have widely-deployed self-provisioned switches to serve enterprise customers in areas served by Qwest, including Arizona. It is likewise clear that no barriers to entry exist. Therefore, Qwest believes the evidence will not support CLEC requests for state Commissions to rebut the presumption of no impairment in Arizona and other Qwest areas.

3. If there are any other issues that the Commission must resolve within the 90 day time frame please provide substantive comment on those issues as well.

Qwest Response: At this time, Qwest does not believe there are other issues that the Commission must resolve should a CLEC initiate a 90-day proceeding. As its analysis of the order continues, however, issues may come to light. Qwest will supplement its response in that event.

4. For the 90 day proceeding, what process and schedule should the Commission use to implement the FCC's Triennial Review Order, i.e., contested case process, comment and workshop process or merely a paper comment process? If you believe that a contested case process is necessary, please identify any disputed issues of material fact that would need to be addressed in any evidentiary proceeding conducted by the Commission. Are some issues more time sensitive than others? Please identify any issues that are time sensitive and discuss your responses in detail.

Qwest Response: To the extent a CLEC initiates a 90-day proceeding, an adjudicative hearing process is the most appropriate format for the Commission to obtain the information necessary to make the findings required by the Order.

Further, in the event that a proceeding takes place in Arizona, that proceeding should be binding on all carriers (ILECs, CLECs, IXCs, wireless and others). In the event of a case in Arizona, the Commission should provide notice to all such carriers that the case will bind them and that gives them an opportunity to participate in the case.

Should a CLEC initiate a 90-day proceeding, it would be necessary for them to present sufficient evidence to rebut the FCC's findings regarding no impairment associated with unbundled switching for customers served with DS1 level facilities or above. The FCC concluded that CLEC switch deployment "has almost doubled in two years, growing from 700 in 1999 to as much as 1,300 in 2001." (Triennial Review Order, Paragraph 436). The FCC also found that "more than 200" CLECs "of all sizes have deployed local voice switches," and that "[t]hese switches are capable of serving significantly broader services areas than traditional incumbent LEC rate centers." (Triennial Review Order, Paragraph 436). In Arizona, Qwest provides CLECs only 51 high capacity loops in conjunction with Qwest switching, thus demonstrating that not only is there no impairment in Arizona, but that CLECs are affirmatively declining the use of ILEC switching when serving enterprise customers.

The Commission should also should note that in an Order issued in docket 030850-TP, September 3, 2003, the Florida Commission has already found that "Based on the very limited demand that exists for the combination of DS1 loops with unbundled local switching, we believe that CLECs are not impaired absent access to unbundled local switching for business customers served via high-capacity loops, as presumed by the FCC. Accordingly, we shall not initiate a proceeding to investigate whether to challenge the FCC's presumption. Thus, no

further actions on this matter are necessary."

See also, Qwest's Response to Staff Set 1, Data Request No. 1.

5. For the issues in the 90 day proceeding, please describe what you believe is or should be, the procedural relationship between the 90-day proceeding involving the enterprise market and the nine month proceeding for the "mass market".

Qwest Response: Given the difference in the issues between the two cases, Qwest urges the Commission to not link the 90-day and 9-month proceeding.

6. Are any rule changes required to the Arizona Administrative Code as a result of the FCC's Triennial Review Order? For the issues in the 90 day proceeding, are any rulemaking proceedings advisable as a result of the FCC's Triennial Review Order?

Qwest Response: To the extent rules contained in the Arizona Administrative Code are inconsistent with the FCC's Triennial Review Order, the Order is clear that the "states must amend their rules and...alter their decisions to conform to our rules." (Triennial Review Order, paragraph 195). The FCC further found that "state authority preserved by section 251(d)(3) is limited to state unbundling actions that are consistent with the requirements of Section 251 and do not 'substantially prevent' the implementation of the federal regulatory regime." (Triennial Review Order paragraph 193, see also paragraphs 194-96).

Qwest in not presently aware of any Arizona Administrative Code rules that conflict with the Triennial Review Order. However, as noted in its Response to Staff Set 1, Data Request No. 1, Qwest has not completed its evaluation of the Order or its review of the Commission rules and will supplement these comments as appropriate.

7. Please comment on any other issues related to the 90 day proceeding you believe to be relevant to the ACC's implementation of the FCC's Triennial Review Order.

Qwest Response: Should a CLEC initiate a 90-day proceeding, Qwest strongly recommends that the state Commissions in the 14-state former U S WEST region develop a procedure to cooperate in coordinating hearing schedules for the proceedings. Because many parties will be participating in cases before multiple Commissions and because witnesses and legal counsel will need to be involved in several states, coordination among Commissions is essential.

8. Should the Commission address all of the issues relating to the 90 day and 9 month proceedings within this docket?

Qwest Response: As noted in its earlier Responses, given the difference in the issues between the two cases, Qwest does not believe that the 90-day proceeding and the 9-month proceeding should be procedurally linked or addressed in the same docket.

The Commission could, however, use this docket to begin compiling the data that may be used for either or both of the 90-day and 9-month proceedings, pursuant to the federal authority delegated to the states in the Triennial Review Order, paragraphs 179 to 196. Qwest recommends that the Commission issue standardized data requests to all providers of telecommunications services in Arizona. Qwest is in the process of preparing a set of standardized data requests that Qwest will propose the Commission use for this purpose. Qwest will provide those data requests to the Commission no later than September 15, 2003. Qwest stands ready to provide its data in response to these questions. It is essential that all telecommunications providers (CLECs, ILECs, IXCs, cable providers, wholesale providers, VoIP providers and wireless providers included) in Arizona provide this information because they are in possession of much of the factual information identified by the FCC as relevant for state Commission consideration in determining if CLECs are impaired without access to specific UNEs. Pursuant to the Commission's investigatory powers, responses to these data requests should be mandatory and should require CLECs, cable providers and wireless providers to provide the factual information necessary to address the impairment issue, the alternatives to unbundled ILEC facilities, and other relevant factors to be considered by the Commission when making its decisions. To ensure that it promptly receives the information it needs, the Commission should explicitly state in any order or orders issued by the Commission that the responses to the questions are due within 10 business days and that the responses must be full and complete.

The Commission should also issue a standard protective order to ensure that competitively sensitive information of the parties and non-parties produced in response to the Commission's data requests is made available to the parties and to the Commission, but is not disclosed or used improperly.

9. Should the Commission use the same process you identified in response to Question No. 4 in both the 90 day and nine month proceedings?

Qwest Response: For both the 90-day and 9-month proceedings, an adjudicative hearing process is the most appropriate format for the Commission to obtain the information necessary to make the findings required by the Order.

Further, assuming a proceeding takes place in Arizona, that proceeding should be binding on all carriers (ILECs, CLECs, IXCs, wireless and others). The Commission should provide notice to all such carriers that the case will bind them and that gives them an opportunity to participate in the case.

10. Please also indicate in which of the proceedings you intend to actively participate.

Qwest Response: Qwest intends to actively participate in the 9-month proceeding. In the event a CLEC initiates a 90-day proceeding, Qwest will also participate in that proceeding.

DATED this 10th day of September, 2003.

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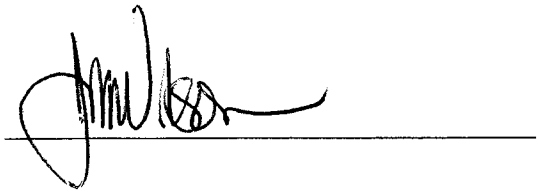

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