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BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Investigation into
U S WEST Communications, Inc.'s
Compliance with § 271 of the
Telecommunications Act of 1996

Docket No. UT-003022

In the Matter of U S WEST Communications,
Inc.'s Statement of Generally Available Terms
Pursuant to Section 252(f) of the
Telecommunications Act of 1996

Docket No. UT-003040

**OPPOSITION OF QWEST CORPORATION
TO AT&T MOTION TO REOPEN AND
SUPPLEMENT THE RECORD**

Qwest Corporation (“Qwest” or “QC”) hereby files its opposition to AT&T’s motion to reopen the record to examine whether Qwest’s 271 authorization will be carried out in accordance with the [separate affiliate] requirements of section 272 as required by 47 U.S.C. § 271(d)(3)(B). This Commission previously conducted an exhaustive examination of Qwest’s showing of compliance with section 272. AT&T is essentially asking this Commission – and eight others¹ – to repeat that examination from scratch, even though AT&T presents no basis for doubting that Qwest will in fact comply with section 272. This Commission should reject that blatantly self-serving effort to push back the date on which the consumers of this state will enjoy the benefits of greater long-distance competition.

¹ AT&T has filed an essentially identical motion in each of the nine states in which Qwest filed section 271 applications with the FCC, which it withdrew on September 10, 2002.

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1 **I. Summary**

2 It is Qwest's obligation to prove at the FCC that, once section 271 approval is granted, the
3 "books, records, and accounts" of Qwest's long-distance affiliate will comply with FCC rules relating to
4 generally accepted accounting principles ("GAAP"). See 47 U.S.C. § 272(b)(2). Qwest will make that
5 showing when it supplements its applications at the FCC later this month. As the other BOCs have done,
6 Qwest is now creating a new separate affiliate for the provision of in-region long-distance services.
7 AT&T presents no basis for questioning whether new Qwest management will ensure that the books of
8 that company will comply with GAAP. Moreover, despite AT&T's suggestion to the contrary (AT&T
9 Mot. 7-8), pursuant to the Act, the obligation of the BOC is to demonstrate that the books, records, and
10 accounts that reflect transactions *with the section 272 affiliate* are maintained in accordance with
11 GAAP. See 47 U.S.C. §272(c)(2).

12 It is important to recognize that this Commission has no statutory or other duty to duplicate the
13 FCC's forthcoming inquiry into Qwest's section 272 compliance. The FCC's statutory duty to consult
14 with the state commissions is expressly limited to questions about compliance with section 271(c). See
15 47 U.S.C. § 271(d)(2)(B). Section 271(c) includes the checklist and the Track A/B requirements – *i.e.*,
16 provisions relating to *local* competition – but it *excludes* questions about compliance with section 272.
17 Congress left those compliance questions to the FCC, in part because section 272 compliance issues do
18 not vary from state to state within a BOC's region.

19 Finally, the section 272 issues that AT&T has raised, both before and after the withdrawal of
20 Qwest's FCC applications, present no concerns that are remotely relevant to fairness in *long-distance*
21 competition, much less to fairness in local competition. As the FCC has made clear, section 272 is
22 designed to "ensure that BOCs do not discriminate in favor of their section 272 affiliates" by
23 "discourag[ing] and facilitat[ing] the detection of . . . improper cost allocation and cross-subsidization
24 between the BOC and its section 272 affiliate."² As discussed below, not even the GAAP-compliance

25 ² Memorandum Opinion and Order, *Joint Application by SBC Communications Inc., Southwestern Bell Tel. Co.,*
26 *and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section*
271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services in Arkansas and Missouri, 16
FCC Rcd 20719 ¶ 122 (2001) ("SBC Arkansas/Missouri Order").

1 issues concerning Qwest Communications Corporation (“QCC”) presented any threat to that statutory
2 objective. And, significantly, all four of the nine Qwest-region state commissions to address this issue in
3 response to the FCC’s recent inquiry argued that questions about QCC’s accounting should pose no
4 barrier even to the approval of Qwest’s previous section 271 application, particularly given their rigorous
5 prior scrutiny of Qwest’s section 272 controls, including an examination of those controls by KPMG,
6 LLP (“KPMG”).³ AT&T’s latest motion should be recognized for what it is: yet another effort to delay
7 the consumer benefits of price-reducing competition in the long-distance market now that Qwest has fully
8 opened its local markets to competition.

9 **II. Background**

10 In his statement concerning the withdrawal of Qwest’s applications, FCC Chairman Michael
11 Powell noted that those “applications were razor-close to approval” and that the important issues
12 outstanding “were very narrow.”⁴ The additional proceedings now proposed by AT&T would be a
13 waste of administrative resources. AT&T’s proposal is premised on a failure to understand how truly
14 narrow, and how bereft of factual dispute, those issues really are.

15 As discussed below, the prior proceedings confirm that Qwest is perfectly capable of setting up a
16 long-distance affiliate in compliance with the various obligations of section 272; the only section 272 issue
17 ultimately in dispute was QCC’s compliance with GAAP. Qwest’s creation of a new long-distance
18 affiliate puts that sole remaining section 272 issue to rest, and any further section 272 proceedings would
19 be redundant and pointless.

20 Both before this Commission and before the FCC, Qwest provided a detailed showing,
21 consistent with those approved in prior 271 applications, that QCC, would comply with each of the
22 requirements of section 272. Indeed, AT&T did not even take exception to the recommendation of the
23 Multistate Facilitator (in six of the nine states) that notwithstanding AT&T’s claims, “Qwest has met each

24 ³ See Comments of the Nebraska Public Service Commission (Sept. 3, 2002); Comments of the Iowa Utilities Board
25 (Sept. 4, 2002); Comments of the Wyoming Public Service Commission (Sept. 4, 2002); Letter from Commissioner Bob
Rowe (Sept. 4, 2002).

26 ⁴ Statement of FCC Chairman Michael Powell on Withdrawal of Qwest’s Multi-State 271 Applications at 1 (Sep. 10,
2002).

1 of the separate affiliate requirements established by Section 272 of the Telecommunications Act of
2 1996.”⁵

3 One of those requirements -- and, as described below, the only one recently at issue before the
4 FCC - was that QCC would maintain its books, records, and accounts in the manner prescribed by the
5 FCC.⁶ At the request of the Multistate Facilitator, Qwest retained KPMG to verify that showing (as well
6 as compliance with other section 272 requirements not at issue here) late last year. KPMG confirmed,
7 based on its review of specific QCC transactions with QC, that Qwest had implemented controls that met
8 the FCC’s standard with respect to these requirements: they were “reasonably designed to prevent, as
9 well as detect and correct, any noncompliance with section 272.”⁷

10 As part of an ongoing review of Qwest’s accounting policies and practices, Qwest (working with
11 KPMG) recently identified a number of past transactions by QCC that may not have been accounted for
12 correctly, which it has been diligently working to address in connection with any necessary restatement of
13 the financial statements of its parent company. As set forth in a supplemental KPMG report recently filed
14 by Qwest with the FCC, none of the transactions identified for potential restatement during this review
15 that implicate section 272 accounting issues were direct affiliate transactions between QC and QCC.⁸
16 These past transactions thus had nothing to do with either of the purposes of section 272: to guard
17 against cross-subsidization and to prevent any discrimination by QC in favor of QCC. Nor did they
18 implicate any of the specific requirements of that section governing the QC-QCC relationship, as to which
19 this Commission and the FCC have received clear and convincing evidence of compliance: *e.g.*, that
20 QCC “operate independently” from QC; that it have “separate” books, records, and accounts; that it
21 have “separate officers, directors, and employees”; that it not obtain credit with recourse to the assets of

22 ⁵ *In the Matter of Investigation into U S WEST Communications, Inc.’s Compliance with § 271 of the*
23 *Telecommunications Act of 1996, Seven State Collaborative Section 271 Workshop, Facilitator’s Report on General*
Terms and Conditions, Section 272 and Track A (Sept. 21, 2001) at 6-7 (“Multistate Facilitator’s Report”).

24 ⁶ 47 U.S.C. § 272(b)(2).

25 ⁷ Memorandum Opinion and Order, *Application by SBC Communications Inc., Southwestern Bell Tel. Co., and*
Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of
the Telecommunications Act of 1996 To Provide In-region, InterLATA Services in Texas, 15 FCC Rcd 18354 ¶¶ 397-98
(2000) (“*SBC Texas Order*”). See also MES-272-4 (Jacobsen KPMG Declaration, Dec. 14, 2001).

26 ⁸ See Comments of Qwest Communications International Inc. at 2 (September 4, 2002) (WC Docket Nos. 02-148, 02-189).

1 QC; that it conduct its transactions with QC at arm's length with descriptions promptly posted to a web
2 site; that QC not discriminate in favor of QCC; that QC account for its transactions with QC as required
3 by the FCC; and that QC fulfill requests for exchange service, exchange access, and other facilities and
4 services by QCC on a nondiscriminatory basis.⁹

5 There was one -- and only one -- of the requirements of section 272 that was arguably implicated
6 by QCC's accounting for these transactions with unaffiliated third parties. This is the requirement of
7 section 272(b)(2) that a BOC's long distance affiliate "shall maintain books, records, and accounts in the
8 manner prescribed by the [FCC]."¹⁰ In its *Accounting Safeguards Order*, the FCC prescribed GAAP
9 for these purposes.¹¹ That order treated this requirement in tandem with the corresponding provision of
10 section 272(c)(2) that the BOC (here, QC) "account for all transactions *with [a 272] affiliate . . . in*
11 *accordance with accounting principles designated or approved by the Commission.*"¹² The biennial audit
12 provision of section 272(d) similarly reflects a focus on verifying the accounting for transactions solely
13 between the BOC and the 272 affiliate -- the relationship that lies at the core of the statutory protection.
14 *See 47 U.S.C. § 272(d).*¹³ Nevertheless, the *Accounting Safeguards Order* contains language that
15 could be construed to extend beyond that QC-QCC relationship, for QCC.¹⁴ Because this issue was
16 one of first impression, the question whether the FCC's GAAP requirement for QCC was limited to its
17 QC transactions (just as the corresponding requirement for QC is by statute limited to its QCC
18 transactions) was not free from doubt.

19 Qwest accordingly withdrew its FCC applications and, to avoid the need for the FCC to resolve

20 ⁹ 47 U.S.C. §§ 272(b)(1), (b)(2), (b)(3), (b)(4), (b)(5), (c), (e), (g).

21 ¹⁰ *Id.* § 272(b)(2).

22 ¹¹ *Accounting Safeguards Order* ¶ 170.

23 ¹² *Id.* § 272(c)(2) (emphasis added).

24 ¹³ That provision requires "[a] company" with a separate affiliate (*i.e.*, a BOC) to undergo biennial audits of its
25 compliance with the requirements of section 272. 47 U.S.C. § 272(d)(1). To permit such audits, it ensures access to "the
26 financial accounts and records" of each such company and its affiliates that are relevant to the activities permitted for a
section 272 affiliate and "necessary to verify transactions conducted *with that company*" [*i.e.*, with the BOC]. *Id.* §
272(d)(3)(A) (emphasis added).

¹⁴ The order simply states, in describing Section 272(b)(2), that "separate affiliates prescribed under section
272(a)(2) must maintain their books, records, and accounts in accordance with GAAP." *Accounting Safeguards Order* ¶
170.

1 this issue, it is creating a new 272 affiliate that will be structured to comply with GAAP for all
2 transactions, with all parties, from the date of its incorporation. It is this decision that has led to AT&T's
3 raft of motions, designed to set the prospect of interLATA competition back for as many months as
4 possible. For the reasons set forth below, this proposed procedure is neither required by the Act, nor
5 supported by FCC precedent, nor consistent with sound administrative policy.

6 **III. Argument**

7 1. AT&T begins with the suggestion that the FCC requires the state commissions to develop
8 a factual record on the question of a BOC's compliance with section 272. Indeed, it asserts that "[t]he
9 FCC is required by law to consult with the state commissions on any application. 47 U.S.C. §
10 271(d)(2)(B)." AT&T Motion at 9. This is misleading at best. The provision actually states: "the
11 Commission shall consult with the State Commission of any State that is the subject of the application in
12 order to verify the compliance of the Bell operating company with *the requirements of subsection (c)*."
13 47 U.S.C. §271(d)(2)(B) (emphasis added). These requirements include only those 271 requirements
14 that relate to *local competition* issues specific to each state -- compliance with the 14 competitive
15 checklist items and the Track A/B requirement. 47 U.S.C. § 271(c). The subsection (c) requirements
16 do not include the requirement of compliance with section 272; that requirement is in subsection 271(d)
17 instead. Thus, although this Commission did exhaustively review Qwest's compliance with section 272, it
18 was never required to do so, and it is neither necessary nor required to repeat that exercise at AT&T's
19 behest now.

20 2. AT&T's suggestion that the FCC nevertheless looks to the states to develop a record on
21 section 272 is equally disingenuous. AT&T cites various FCC statements about the "opportunity [for
22 states] to present their views *regarding the opening of the BOC's local networks to competition*," to
23 "the status of *local competition*," and to "a state commission's verification *under section*
24 *271(d)(2)(B)*." AT&T Motion at 4-5 (quoting *Ameritech Michigan Order*) (emphases added).¹⁵ None

25 ¹⁵ See also, e.g., *SBC-Texas Order* ¶¶ 17-18 (looking to the Texas Commission's determination that SBC "has taken
26 the statutorily required steps to open its local markets to competition" by establishing interconnection agreements with
competing carriers and carrying out its obligations under the 14 point checklist); See also, e.g., Memorandum Opinion
and Order, *Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act
To Provide In-Region, InterLATA Service in the State of New York*, 15 FCC Rcd 3953 ¶ 20 (1999) ("Bell Atlantic New

1 of these references is to section 272. That is not surprising, since a BOC's relationship with its section
2 272 affiliate would not be expected to vary from state to state, and in fact Qwest's new section 272
3 affiliate, Qwest LD Corp., will provide interLATA service in all 14 of its in-region states.

4 3. AT&T next suggests that the FCC relies upon the states to develop a record as to how
5 "the BOC has corrected the problems identified in previous applications." AT&T Motion at 5-6 (quoting
6 FCC) (emphasis deleted). This suggestion is also incorrect. First, the FCC was referring here to the
7 "determination that the statutory requirements *for certain checklist items* have been met," *id.* at 6
8 (quoting FCC) (emphasis added), as to which (again) the Act does require the FCC to consult with the
9 states. Second, the FCC and other similarly situated states have made clear that applications withdrawn
10 and promptly refiled (as Qwest contemplates)¹⁶ need not be rerouted through the same state processes all
11 over again, as AT&T would have it -- even where (unlike here) the issue prompting that refileing *was*
12 directly related to the subsection (c) issue of checklist compliance in that state.

13 When Verizon withdrew and refiled its 271 application in Massachusetts, for example, the
14 Massachusetts commission did not ask Verizon to submit to new hearings, even though the dispute that
15 had led to the withdrawal related to the checklist. Rather, it reviewed the additional evidence that
16 Verizon submitted to the FCC and verified -- during the 90-day section 271 process at the FCC -- that it
17 could reaffirm its order recommending 271 approval.¹⁷ And the Texas commission required no interval at
18 all between the first and second Texas 271 proceedings: SBC refiled its second application on the same
19 day that it withdrew its first, again to address issues of checklist compliance.¹⁸ In neither of these nor

20 York Order") (explaining that the FCC "must consult with the relevant state commission to verify that the BOC has one
21 or more state approved interconnection agreements with a facilities-based competitor, or a statement of generally
22 available terms and conditions (SGAT), and that either the agreement(s) or general statement satisfy the 'competitive
23 checklist.'). Memorandum Opinion and Order, *Application of Verizon New England Inc., Bell Atlantic
24 Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise
25 Solutions) And Verizon Global Networks Inc., For Authorization to Provide In-Region, InterLATA Services in
26 Massachusetts*, 16 FCC Rcd 8988, App. D ¶ 2 (2001) ("*Verizon Massachusetts Order*") (same)

¹⁶ As noted in Qwest's recent letter to the Commission, it expects to "file a supplement to [its] applications by the end of the month."

¹⁷ See Evaluation of Massachusetts Dept. of Telecom and Energy of Verizon Massachusetts Compliance with Section 271 of the Telecommunications Act of 1996, *In the Matter of Application by Verizon New England Inc. for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of Massachusetts*, CC Docket No. 01-9, filed Feb. 6, 2001, at i (noting -- on the basis of Verizon "supplemental filings" with the FCC -- that its new application "supports and further confirms the conclusions we reached last year").

¹⁸ *SBC Texas Order* ¶ 16. See also Written Consultation of the Missouri Public Service Commission, *In the Matter*

1 other cases have the FCC or the states submitted to the kind of delaying tactics that AT&T is now
2 proposing. Here, where the issue does not even relate to the subsection (c) checklist requirements, as to
3 which the FCC *is* required to consult with the states, further proceedings would be even more
4 superfluous.

5 4. Finally, AT&T cites no basis for sacrificing the obvious competitive benefits of prompt
6 interLATA entry by delaying Qwest's resubmission of its application now that it has opened its local
7 markets to competition. Qwest has already demonstrated its ability to establish a separate affiliate,
8 separate personnel, separate books, posted transactions, and nondiscrimination and cross-subsidization
9 protections, as well as controls designed reasonably to assure compliance with these requirements of
10 section 272. AT&T identifies no basis for doubting that Qwest will remain in compliance with these
11 obligations. The new application will reflect the creation of a new separate 272 affiliate, which will be
12 totally unrelated to and unaffected by the past third-party transactions of QCC that have raised questions
13 about compliance with Section 272(b)(2).

14 AT&T has also advanced no persuasive reason why the replacement of QCC with a new 272
15 affiliate, with no prior transactional history of any kind, would be likely to create any disputed issues about
16 compliance with GAAP. In fact, AT&T concedes that "[c]reating a new subsidiary may resolve the
17 section 272 affiliate's GAAP problems." AT&T Motion at 7. But it asserts that, under section 272, "the
18 BOC also must be in compliance with [GAAP]." *Id.* Here, again, AT&T is playing fast and loose with
19 the statute, which requires -- consistent with the purposes of section 272 -- that the BOC account only
20 "for all transactions *with an affiliate described in subsection (a)*" (*i.e., with the 272 affiliate*) in
21 accordance with FCC requirements. 47 U.S.C. § 272(c)(2) (emphasis added). There has been no

22 *of Application of SBC Communications, Inc. Pursuant to Section 271 of the Telecommunications Act of 1996 to*
23 *Provide In-Region, InterLATA Services in Arkansas and Missouri*, CC Docket No. 01-194, filed Sep. 10, 2001, at 1-2
24 (noting that SBC withdrew its application to give the FCC "more time to review new information that had been supplied
25 to it in response to issues raised after the filing of the application" and reaffirming the finding of its previous "detailed
26 review" that SBC meets section 271's requirements). AT&T's citation of the FCC's 1998 *BellSouth-Louisiana II Order*
is entirely misplaced. At that time, BellSouth's applications revealed multiple and very serious concerns about
checklist compliance, and the FCC therefore stood to benefit from further state commission review of those checklist
issues.

1 question raised here about QC's compliance with GAAP with respect to its direct transactions even with
2 QCC, much less with Qwest's new section 272 affiliate.

3 Engaging in a second round of section 272 proceedings would be particularly inappropriate here,
4 given the attenuated relationship of QCC's accounting issues to the core discrimination and cross-
5 subsidization concerns of the statute, and also because those issues relate purely to past transactions. As
6 Qwest has demonstrated to the FCC, QCC is presently making entries in its books, records, and
7 accounts for all new transactions in accordance with GAAP.

8 There is no basis for additional procedures, beyond the usual comment rounds, necessary for the
9 FCC to make the "predictive judgment"¹⁹ that Qwest's 271 authorization will be carried out by its newly-
10 established 272 affiliate in accordance with the requirements of section 272(b)(2) as well as all of the
11 other provisions of section 272. This is particularly true given the FCC's consistent reliance on the
12 biennial audit process to assure continued compliance with these requirements.²⁰

13 **IV. Conclusion**

14 For the foregoing reasons, this Commission should reject AT&T's motion to replicate this
15 Commission's comprehensive review of Qwest's section 272 compliance showing.

16 DATED this 20th day of September, 2002.

17 QWEST

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23 ¹⁹ Memorandum Opinion And Order, *Application of Ameritech Michigan Pursuant to Section 271 of the*
24 *Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services in Michigan*, 12 FCC Rcd 20543
¶ 347 (1997).

25 ²⁰ *Bell Atlantic New York Order* ¶ 412; *SBC-Texas Order* ¶ 406; Memorandum Opinion and Order, *Joint*
26 *Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell*
Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA
Services in Kansas and Oklahoma, 16 FCC Rcd 6237 ¶ 260 (2001), *modified Sprint Communications Co. v. FCC*, 274
F.3d 549 (D.C. Cir. 2001).

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