

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
Qwest Communications International, Inc.)
Application for Authority to Provide) WC Docket No. 03-194
In-Region, InterLATA Services)
in the State of Arizona)

EVALUATION OF THE
UNITED STATES DEPARTMENT OF JUSTICE

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DOJ Minnesota Evaluation	Evaluation of the U.S. Department of Justice, <i>In re: Application by Qwest Communications International, Inc. for Authorization to Provide In-Region, InterLATA Services in Minnesota</i> , FCC WC Docket No. 03-90 (May 2, 2003), available at < http://www.usdoj.gov/atr/public/comments/sec271/sec271.htm >.
DOJ Missouri I Evaluation	Evaluation of the U.S. Department of Justice, <i>In re: Application of 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 Missouri</i> , FCC CC Docket No. 01-88 (May 9, 2001), available at < http://www.usdoj.gov/atr/public/comments/sec271/sec271.htm >.
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<i>FCC Minnesota Order</i>	Memorandum Opinion and Order, <i>In re: Application by Qwest Communications International, Inc. for Authorization to Provide In-Region, InterLATA Services in Minnesota</i> , 18 FCC Rcd 13,323 (June 26, 2003), available at < http://www.fcc.gov/Bureaus/Common_Carrier/in-region_applications >.
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Arizona CC OSS Test Staff Report	Arizona CC Staff Supplemental Report on Qwest's Compliance with Checklist Item No. 2: OSS Requirements, <i>In re: Investigation into Qwest Corporation's Compliance with Section 271 of the Telecommunications Act of 1996</i> , Arizona CC Docket No. T-00000A-97-0238 (May 1, 2002), attached to Qwest Br. App. H as Vol. 5, Tab 8.112.
Arizona CC Pricing Order	Opinion and Order, <i>In re: Investigation into Qwest Corporation's Compliance with Certain Wholesale Pricing Requirements for Unbundled Network Elements and Resale Discounts</i> , Arizona CC Docket No. T-00000A-00-0194 (Phase II) (June 12, 2002), attached to Qwest Br. App. C Vol. 2 as Tab 10.

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Qwest Br.	Brief of Qwest Communications International Inc. in Support of Application for Authority to Provide In-Region, InterLATA Services in Arizona, <i>In re: Qwest Communications International Inc. Consolidated Application for Authority to Provide In-Region, InterLATA Services in Arizona</i> , FCC WC Docket No. 03-194 (Sept. 4, 2003).
Qwest Buhler Decl.	Declaration of Dean Buhler, <i>attached to</i> Qwest Br. App. A as Tab 26.
Qwest CMP <i>Ex Parte</i>	Qwest International Inc., Information on Change Management Process Issues, Qwest <i>Ex Parte</i> Submission, FCC WC Docket No. 03-194 (Sept. 29A, 2003).
Qwest Multistate I UNE-Platform Calculations <i>Ex Parte</i>	Qwest International Inc., UNE-Platform Business and Residential Line Estimates, Qwest <i>Ex Parte</i> Submission, FCC WC Docket No. 02-148 (June 18, 2002).
Qwest Notarianni/Huff Decl.	Declaration of Lynn M.V. Notarianni and Loretta A. Huff, <i>attached to</i> Qwest Br. App. A as Tab 30.
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Qwest Teitzel Decl.	Declaration of David L. Teitzel, <i>attached to</i> Qwest Br. App. A as Tab 2.
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MCI Comments	Letter from Lori Wright, MCI, to Marlene Dortch, FCC, <i>In re: Qwest Communications International, Inc. Application for Authority to Provide In-Region, InterLATA Services in Arizona</i> , FCC WC Docket No. 03-194 (Sept. 24, 2003).

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EVALUATION OF THE
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Introduction and Summary

The United States Department of Justice (“the Department”), pursuant to Section 271(d)(2)(A) of the Telecommunications Act of 1996¹ (“the 1996 Act”), submits this Evaluation of the application filed by Qwest Communications International, Inc. on September 4, 2003, to provide in-region, interLATA services in Arizona. Qwest’s application to the Federal Communications Commission (“FCC” or “Commission”) is Qwest’s first for long distance authority in this state. It follows the FCC’s approval of Qwest’s applications for long distance authority in Colorado, Idaho, Iowa, Minnesota, Montana, Nebraska, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming.²

As the Department has explained, in-region, interLATA entry by a regional Bell Operating Company (“BOC”) should be permitted only when the local markets in a state have been “fully and irreversibly” opened to competition.³ Qwest’s application demonstrates that it

¹ Pub. L. No. 104-104, 110 Stat. 56 (1996) (codified as amended in scattered sections of 47 U.S.C.).

² See *FCC Minnesota Order*; *FCC Qwest Multistate II Order*; *FCC Qwest Multistate I Order*.

³ See DOJ Oklahoma I Evaluation at vi-vii, 36-51.

has succeeded in opening its local markets in Arizona in most respects. The Operations Support Systems (“OSS”) in Arizona are the same as those reviewed and approved by the Commission in its prior orders pertaining to Qwest’s previous applications,⁴ and the performance data submitted in support of this application appear generally consistent with those submitted in support of those applications.⁵ The Department concludes that Qwest has generally succeeded in opening its local markets in Arizona to competition and recommends that the Commission approve its Section 271 application.

I. State Commission Proceedings

The Arizona Corporation Commission (“Arizona CC”) has facilitated the development of competition in its local telecommunications markets. The Arizona CC conducted pricing proceedings to establish unbundled network element (“UNE”) rates that appear consistent with the Commission’s prior analysis using the Colorado rates as benchmarks of Total Element Long Run Incremental Cost (“TELRIC”) compliance.⁶ It adopted performance measurements and standards⁷; selected Cap Gemini Ernst & Young Telecom, Media and Networks (“CGE&Y”) to

⁴ Qwest Br. at 74 & n.38; *see FCC Qwest Multistate I Order* ¶ 34 (“Qwest provides non-discriminatory access to its OSS”), ¶¶ 35-37 (discussing relevance of Qwest’s nationwide OSS); *FCC Qwest Multistate II Order* ¶¶ 36-38 (same); *FCC Minnesota Order* ¶¶ 16-18 (same). *See generally* Qwest Notarianni/Huff Decl. (addressing Qwest OSS).

⁵ *See generally* Qwest Buhler Decl. (addressing commercial performance results); Qwest Br. Attach. 5 App. D (commercial performance results); *FCC Qwest Multistate I Order* Apps. B-J (same); *FCC Qwest Multistate II Order* Apps. B-E (same); *FCC Minnesota Order* App. B (same).

⁶ Arizona CC Comments at 8; Arizona CC Pricing Order at 2-4, 82-85; *see also* Qwest Thompson Decl. ¶¶ 3-12, 44-49 (detailing pricing proceedings and orders, including use of Colorado Public Utilities Commission (“Colorado PUC”) rates as benchmarks). Qwest appealed various provisions of the Arizona CC’s latest pricing order, asserting that some UNE rates were well below corresponding rates set by the Colorado PUC. Qwest Br. at 102-03. Qwest and the Arizona CC are in the process of settling the litigation. *Id.* at 103.

⁷ Arizona CC Comments at 3; Qwest Quinn Decl. ¶ 115.

administer a comprehensive third-party test of Qwest's OSS⁸; and approved a performance assurance plan ("Arizona QPAP").⁹

The Arizona CC also has conducted two proceedings concerning "unfiled agreements" between Qwest and certain competitive local exchange carriers ("CLECs"), in which it has investigated whether Qwest violated Section 252 of the Act and whether Qwest had interfered with the Section 271 process to the extent that, pursuant to the agreements, certain CLECs refrained from opposing Qwest's application before the state commission.¹⁰ A settlement agreement pertaining to all issues relating to the "unfiled agreements" and to a proceeding related to Qwest's delay in implementing wholesale rates was filed jointly by Qwest and the Arizona CC Staff with the Arizona CC on July 25, 2003.¹¹

Last month the Arizona CC recommended that the FCC approve Qwest's application to provide in-region, interLATA service.¹²

⁸ Arizona CC Comments at 9; CGE&Y Arizona Final Report at 27 (finding "Qwest's OSS . . . meet[] the applicable standards established for the test"); *see also* Arizona CC OSS Test Staff Report ¶ 73 (same).

As noted previously, in 1999, the Regional Oversight Committee ("ROC"), a cooperative group of the 13 other state regulatory commissions in the Qwest local service region, initiated a collaborative process focusing on the attainment of Section 271 authority by examining the legal framework for opening local markets, and by designing and executing a third-party OSS test. DOJ Qwest Multistate I Evaluation at 6-7; *see also* FCC *Qwest Multistate I Order* ¶¶ 9-13 (describing the development of the ROC process). Repeated iterations of documentation, systems, and processes, and substantial retesting throughout the testing conducted by KPMG, improved Qwest's OSS to the point where only a few questions regarding their adequacy to support competitive local entry remained when Qwest filed its first Section 271 applications. DOJ Qwest Multistate I Evaluation at 7-8. The results of the ROC test "are applicable to Arizona also inasmuch as Arizona falls within Qwest's central region, which was included within the ROC test." Qwest Br. at 5 n.3, 76; Qwest Notarianni/Huff Decl. ¶ 99.

⁹ Arizona CC Comments at 5, 24; *see also* Qwest Quinn Decl. ¶¶ 93-101 (noting revised QPAP filed in July 2002).

¹⁰ Arizona CC Comments at 4, 19. *See generally* FCC *Minnesota Order* ¶¶ 73-93; FCC *Qwest Multistate II Order* ¶¶ 124-42; FCC *Qwest Multistate I Order* ¶¶ 466-99; DOJ Qwest Multistate I Evaluation at 2-4; DOJ Qwest Multistate II Evaluation at 3 n.6; DOJ Qwest Multistate III Evaluation at 2 n.5; DOJ *Minnesota Evaluation* at 2-3.

¹¹ Arizona CC Comments at 4, 19-20; *see also* Qwest Br. at 121-22 & n.73. The ACC will consider the settlement later this year. Arizona CC Comments at 4.

¹² Arizona CC Comments at 25.

II. The Department's Evaluation

In assessing whether the local markets in a state are fully and irreversibly open to competition, the Department looks first to the actual entry in a market.¹³ But the Department does not broadly presume that all three entry tracks – facilities-based, UNEs, and resale – are open or closed on the basis of an aggregate level of entry alone.¹⁴ The following table reports CLEC entry in Arizona in terms of shares of total residential and business lines served and shares of residential and business lines served by each mode of entry.

¹³ See DOJ Pennsylvania Evaluation at 3-4 (“The Department first looks to actual competitive entry, because the experience of competitors seeking to enter a market can provide highly probative evidence about the presence or absence of artificial barriers to entry. Of course, entry barriers can differ by types of customers or geographic areas within a state, so the Department looks for evidence relevant to each market in a state.” (Footnote omitted.)).

¹⁴ See, e.g., DOJ Georgia/Louisiana I Evaluation at 7 (“Although the Department presumes that fully facilities-based competition is not hindered in a competitively significant manner based on the entry recorded in Georgia, the amount of entry does not justify extending such a presumption to other modes of entry in Georgia.”); DOJ Missouri I Evaluation at 6-7 (“The Department presumes that opportunities to serve business customers by fully facilities-based carriers and resellers are available in Missouri, based on the entry efforts reflected in SBC’s application. There is significantly less competition to serve residential customers. There also is less competition by firms seeking to use UNEs, including the UNE-platform, and there are some indications that a failure by SBC to satisfy all of its obligations may have constrained this type of competition.” (Footnotes omitted.)).

CLEC Entry in Arizona¹⁵

Total Lines¹⁶		3,161,643
Total Bus. Lines		1,128,173
Total Res. Lines		2,033,470
CLEC Shares	% Total Lines	20.6
	% Total Bus.	36.9
	% Total Res.	11.6
	% Bus. Fac-B	32.8
	% Bus. UNE-P¹⁷	3.8
	% Bus. Resale	0.3
	% Res. Fac-B	10.3
	% Res. UNE-P¹⁸	1.0
	% Res. Resale	0.3

Given the regional nature of Qwest's OSS,¹⁹ the Department evaluates entry regionwide, taking note that pricing or other state-specific factors may significantly affect the degree to which CLECs use a mode of entry in a particular state. In Arizona, the levels of entry, the evidence of entry in other states within the region, and the absence of evidence that entry has

¹⁵ See Qwest Teitzel Decl. at 13 tbl. (line counts as of May 2003) & Ex. DLT-Track A/PI-AZ-1 at 1, 4. The second three categories report CLEC lines as percentages of total lines, business lines, and residential lines, respectively; the last six categories report percentages of business and residential lines served by CLECs by means of each mode of entry, i.e., facilities-based (service via primarily a CLEC's own fiber optic network that is either connected directly to the customer premises or connected through loops leased from the BOC), UNE-platform (a combination of loop, switch, and transport elements), and resale.

Qwest offers two sets of calculations of line estimates, see Qwest Teitzel Decl. ¶¶ 19-25, and, as explained previously, the Department generally relies on the E-911 database entries, see, e.g., DOJ Georgia/Louisiana I Evaluation at 8 n.24; see also DOJ Qwest Multistate I Evaluation at 12 n.48. However, E-911 database entries understate the number of CLEC facilities-based lines in the states examined here because many of the local exchanges served by such carriers do not yet have E-911 capability. Qwest Teitzel Decl. ¶ 20 & n.19. Further, E-911 records do not reflect lines served by independent LECs within Qwest's service territory. *Id.* ¶ 21 & n.22.

¹⁶ Figures report total lines in Qwest's service area in Arizona, which has several incumbent local exchange carriers other than Qwest. See, e.g., Qwest Teitzel Decl. ¶ 21.

¹⁷ Qwest Multistate I UNE-Platform Calculations *Ex Parte* at 1-2 (explaining estimate of business and residential line counts).

¹⁸ *Id.* at 1-2.

¹⁹ Qwest Br. at 74 ("Qwest uses the same OSS throughout its 14-state region."); see also FCC Qwest Multistate I Order ¶¶ 11, 35-36.

been unduly hindered by problems with obtaining inputs from Qwest,²⁰ lead the Department to conclude that opportunities are available to competitive facilities-based carriers serving both business and residential customers. The Department notes that most CLEC service to residential customers in Arizona is facilities-based, including that provided over the cable facilities of Cox Communications.²¹ Although there is less entry to serve customers via the UNE-platform, the Department does not believe there are any material obstacles to such entry created by Qwest. The Department also concludes, due largely to the absence of CLEC complaints, that Qwest has fulfilled its obligations to open the resale mode of entry to competition in Arizona.

²⁰ CLECs assert that Qwest, through its change management process (“CMP”), should be required to fix software defects within established time frames according to the severity of the defect. *See* AT&T Comments at 26-29; MCI Comments at 1-2. Qwest’s CMP is identical throughout its 14-state region and was developed through a lengthy, collaborative process. *See FCC Qwest Multistate I Order* ¶¶ 132-36, 145-52; Qwest Schultz Decl. ¶¶ 3, 10, 17; Qwest CMP *Ex Parte* at 1; Arizona CC Comments at 12. However, the CMP is a dynamic process and “efficient implementation of system fixes for known defects” is important. *See* DOJ Georgia/Louisiana I Evaluation at 29 & n.97; *see also FCC Georgia/Louisiana Order* ¶ 195 (Commission reassured by performance metrics developed in Georgia designed to measure how well Bell South fixed defects within the required time frames). In addition, both the Arizona CC and CLECs have addressed concerns as to whether Qwest has made appropriate use of the CMP in its attempts to change policies pertaining to provisioning and pricing of DS-1s. Qwest Arizona CC Orders *Ex Parte* Attach. 3 ¶¶ 104-09; AT&T Comments at 15-17. The Department urges the Commission to consider whether Qwest’s CMP, as well as its compliance with that process, continues to be adequate.

²¹ Qwest Teitzel Decl. Ex. DLT-Track A/PI-AZ-4 at 1-9.

III. Conclusion

The record in this matter demonstrates that Qwest has generally succeeded in opening its local markets in Arizona to competition, and the Department therefore recommends that the FCC approve Qwest's application.

Respectfully submitted,

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October 9, 2003

Certificate of Service

I hereby certify that I have caused a true and accurate copy of the foregoing Evaluation of the United States Department of Justice to be served on the persons indicated on the attached service list by first class mail, overnight mail, hand delivery, or electronic mail on October 9, 2003.

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