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BEFORE THE ARIZONA CORPORATION COMMISSION

MARC SPITZER  
Chairman

JAMES M. IRVIN  
Commissioner

WILLIAM MUNDELL  
Commissioner

JEFF HATCH-MILLER  
Commissioner

MIKE GLEASON  
Commissioner

Arizona Corporation Commission  
**DOCKETED**  
MAR 10 2003

DOCKETED BY *nae*

MOUNTAIN TELECOMMUNICATIONS, INC.

Complainant,

v.

QWEST CORPORATION,

Respondent.

DOCKET NO. T-01051B-03-0092

**CONSOLIDATED ANSWER  
OPPOSITION TO MOTION FOR PRELIMINARY INJUNCTION  
&  
MOTION TO DISMISS COMPLAINT**

Qwest Corporation ("Qwest") hereby files its Consolidated Answer, Opposition to MTI's Motion for Preliminary Injunction and Motion to Dismiss Complaint in response to the pleadings filed in the above-referenced proceedings by Mountain Telecommunications, Inc. ("MTI") on February 12, 2003 (the "Complaint"). For Its Answer to the Complaint, Qwest admits, denies and alleges as follows:

1. Qwest admits the allegations of Paragraphs 2, 3, 5, 18, 19 and 23 of the Complaint.
2. Responding to Paragraph 1, Qwest is without knowledge or information sufficient to

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form a belief as to the truth of the allegations contained in this paragraph.

3. Responding to Paragraph 4, Qwest is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in the second sentence of this paragraph. Qwest admits the remaining allegations in this paragraph.

4. Responding to Paragraph 6, Qwest denies the allegations contained in the first sentence of this paragraph. Qwest admits the remaining allegations contained in this paragraph.

5. Responding to Paragraph 7, Qwest is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in the second sentence of this paragraph. Qwest denies the remaining allegations contained in this paragraph.

6. Responding to Paragraph 8, Qwest's admits the allegations contained in the first sentence of this paragraph. Qwest denies the remaining allegations contained in this paragraph. Qwest avers that recurring and non-recurring loop rate changes were implemented on December 6, 2002 and that all other rate elements were implemented between December 6, 2002 and December 11, 2002. Qwest avers that these changes were reflected in MTI's January 2003 bill.

7. Responding to Paragraph 9, Qwest admits the allegations contained in this paragraph.

8. Responding to Paragraph 10, Qwest admits that the Direct Trunk Transport rates changed from a flat rate plus mileage sensitive to a flat rate as ordered in Phase II Decision No. 64922, dated June 12, 2002; that the Channel Termination charges decreased from \$4.28 to \$0.85, for DS1 and from \$14.98 to \$8.06 for DS3. Qwest further admits that the Direct Trunk Transport rates for the following Circuit ID Nos.

1 16HCFU710813 (Tucson Main-Tucson East); 16HCFU710814 and 16HCFU711110  
2 (Tucson Main-Tucson Craycroft); 14HCFU998297 and 14HCFU998298 (Scottsdale  
3 Main-Tempe Main); 14HCFU969107 and 14HCFU970017 (Scottsdale Main-  
4 Scottsdale Thunderbird) changed from \$46.49 to \$153.59; \$47.79 to \$153.59 and  
5 \$353.05 to \$1,834.61, respectively, as ordered in Decision No. 64922.

- 6  
7 9. Responding to Paragraph 11, Qwest admits that the transport rate to which the  
8 Relative Use Factor (RUF, percentage (%) of use on a 2-way trunk from the CLEC to  
9 Qwest and Qwest to the CLEC whereby the CLEC pays fifty percent (50%) of the  
10 facility those trunks utilize), is applied, changed from a flat rate plus mileage sensitive  
11 to a flat rate as ordered in Phase II Decision No. 64922, dated June 12, 2002. Qwest  
12 admits that the Relative Use Factor (RUF) changed for DS1 to \$75.95 (50% of  
13 \$151.89 Direct Trunk Transport); and to \$909.25 for DS3 (50% of \$1,818.49 Direct  
14 Trunk Transport). Qwest further admits that the Relative Use Factor (RUF) for the  
15 following Circuit ID Nos. 101T1ZF SNMNAZMADADCO (San Manuel Main -  
16 Tucson Main); 105T1ZF SRVSAZMAHJ1, 107 SRVSAZMAHJ1 and  
17 108T1ZFSRVZSAZMAHJ1 (Sierra Vista Main - Sierra Vista South);  
18 101T3MESAAZMAK19 (Mesa Main - Scottsdale Main); 101T3PHNXAZMAK06  
19 and 101T3PHNXAZNOK14 (Scottsdale Main - Phoenix Main);  
20 102T1PHNXAZMYDCO (Phoenix North - Phoenix Maryvale); and  
21 102T1PHNXAZSODGO changed from \$46.88 - \$75.95; \$19.94 to \$75.95; \$20.59 -  
22 \$75.95 for DS1 circuits and from \$371.71 - \$1,137.30; and \$391.48 - \$1,137.30 for  
23 DS3 circuits. The DS3 circuits include a DS3 to DS1 multiplexing charge of \$228.05.  
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10. In responding to Paragraph 12, Qwest admits that MTI has been back-billed for the Direct Trunk Transport (DTT) provided by Qwest between June 12, 2002 and December 25, 2002.
11. Responding to Paragraph 13, Qwest is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph.
12. Responding to Paragraph 14, Qwest denies the allegation that it continues to delay its implementation of price decreases for other network elements mandated by the Commission in decision No. 64922. Qwest further states that recurring and non-recurring loop rates were implemented on December 6, 2002 and that all other rate elements were implemented between December 6, 2002 and December 11, 2002 and were reflected in MTI's January 2003 bill. As a result, MTI received a credit of \$84,233.11, plus \$5,054.02 interest. In addition, Qwest admits that it implemented the rate changes for Direct Trunk Transport (DTT) as ordered in the Commission's Phase II Decision No. 64922, dated June 12, 2002.
13. In responding to Paragraph 15, Qwest denies that it delayed implementing the lower local loop rate. All rate elements were implemented between December 6, 2002 and December 11, 2002.
14. Responding to Paragraph 16, Qwest is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph. Qwest denies that the transport, local interconnection and unbundled local loop rates reflected in Qwest invoices to MTI are unlawful.
15. Responding to Paragraph 17, Qwest denies the allegations incorporated into this

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paragraph as set forth above.

16. Responding to Paragraph 20, Qwest denies the allegations contained in this paragraph.

Qwest avers that the Commission has determined that its rates in Arizona for transport and local interconnection are consistent with the FCC's pricing rules for unbundled network elements (UNEs), including the rule that requires prices based on total element long-run incremental costs (TELRIC).

17. Responding to Paragraph 21, Qwest denies the allegations contained in this paragraph.

18. Responding to Paragraph 22, Qwest denies the allegations incorporated into this paragraph as set forth above.

19. Responding to Paragraph 24, Qwest denies the allegations contained in this paragraph.

Qwest avers that its charges for transport and local interconnection were approved by the Commission and are derived directly and accurately from the HAI cost model that the Commission adopted to establish costs and rates for UNEs. Qwest avers that the Commission has determined that these rates are both just and reasonable.

20. Responding to paragraph 25, Qwest denies the allegations contained in this paragraph.

Qwest avers that its charges for network elements, including unbundled loops, reflect the rates that the Commission adopted in Decision No. 64922.

21. Qwest further avers that the relief requested in MTI's "Request for Relief" is unwarranted and that, as set forth below, MTI's complaint should be dismissed with prejudice.



1 findings to the clear detriment of not only Qwest, but all other participants in the proceeding.  
2 Finally, given MTI's prior non-participation, and the fact that the Commission has identified the  
3 issues raised by MTI as subject for re-examination in Phase III of Docket No. T-00000A-00-  
4 0194, the public interest clearly is served by a prompt, but orderly review of these issues in the  
5 forum already designated by the Commission for that purpose. In its Response to Comments  
6 recently filed by Time Warner Telecom of Arizona in Docket No. T-00000A-00-0194 requesting  
7 an expedited Phase III hearing, Qwest proposed an expedited schedule that is consistent with that  
8 goal. Qwest submits that prompt resolution of MTI's issues in Phase III of the AZ Cost Docket,  
9 as opposed to any grant of injunctive relief, is the appropriate course of action consistent with the  
10 public interest. MTI's Motion should be summarily rejected.  
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14 **MOTION TO DISMISS**

15 Consistent with the foregoing and Rule 16 of the Arizona Rules of Civil Procedure, Qwest  
16 respectfully requests that the Commission dismiss MTI's Complaint for failure to state a claim  
17 upon which relief can be granted. MTI's Complaint is an impermissible attack on a valid  
18 Commission Order. In addition, MTI's failure to participate in the Phase II proceedings  
19 undermine its standing to attempt to challenge the Commission's determination in the Phase II  
20 Decision.

21 Qwest's conduct with regard to MTI relating to implementation of the rates approved by  
22 the Commission in Decision No. 64922 has been wholly consistent with the rates the Commission  
23 adopted in that decision. Qwest conducted a review of its December 2002 and January 2003  
24 invoices to MTI subsequent to its implementation of the Phase II Order, and confirmed that it  
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26 Attachment A.

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1 properly billed MTI for DTT transport and Local Interconnection Service trunks, in addition to  
2 other elements and services, at the rates the Commission ordered in Decision No. 64922. Qwest  
3 avers that all rate table changes for CLECs were implemented at the same time. Any rate  
4 increases or decreases for DTT and Local Interconnection services MTI experienced as a result  
5 the Phase II Order were implemented simultaneously. Qwest has identified no basis for MTI's  
6 contention that Qwest has sporadically and selectively implemented Local Interconnection or  
7 "loop" rates for MTI. Qwest has acknowledged, and the Commission is now well aware, that  
8 these rate changes occurred for all CLECs beginning in December 2002, six months after the  
9 effective day of the Phase II Order.

10 More importantly, the Commission has determined that the rates ordered for Transport  
11 and for Local Interconnection Service meet the requirements of the Federal Communications Act  
12 of 1996 ("the 1996 Act"), related FCC TELRIC rules and the anti-discrimination requirements of  
13 Section 201 of the Act. In this instance, after substantial review and argument, the Commission  
14 simply followed the Staff and CLEC request to implement the HAI model. In determining that it  
15 must apply its adopted model consistently, the Commission adopted HAI-generated transport  
16 rates to match the selection of HAI loop rates. Consistent Commission application of its adopted  
17 economic model is both just and reasonable. Qwest's implementation of rates in accordance with  
18 the Commission's Order is a *legal requirement*, not anti-competitive activity, as MTI contends.  
19 Accordingly, there is no supportable basis for MTI's Complaint. It should be dismissed, and the  
20 identified issues set for review during the next phase of Docket No. T-00000A-00-0194.

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PRAYER

1. Wherefore Qwest requests that the MTI's Complaint and Motion for Preliminary Injunction be Dismissed with Prejudice.

DATED this 11<sup>th</sup> day of March, 2003.

FENNEMORE CRAIG

By   
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-and-

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*Attorneys for Qwest Corporation*

ORIGINAL and 13 copies of the foregoing hand-delivered for filing this 11<sup>th</sup> day of March, 2003 to:

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# EXHIBIT A

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BEFORE THE ARIZONA CORPORATION COMMISSION

**MARC SPITZER**  
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IN THE MATTER OF THE GENERIC INVESTIGATION INTO U S WEST COMMUNICATIONS, INC.'S COMPLIANCE WITH CERTAIN WHOLESALE PRICING REQUIREMENTS FOR UNBUNDLED NETWORK ELEMENTS AND RESALE DISCOUNTS.

DOCKET NO. T-00000A-00-0194 ✓

ARIZONA CORPORATION COMMISSION,  
  
Complainant,

DOCKET NO. T-01051B-02-0871

v.

QWEST CORPORATION,  
  
Respondent.

**QWEST'S OPPOSITION TO MTI'S MOTION FOR INJUNCTION**

Qwest Corporation ("Qwest") hereby files its Opposition to a Motion for Injunction filed in the above-referenced proceedings by Mountain Telecommunications, Inc. ("MTI") on January 16, 2003 ( the "Motion"). MTI's Motion requests that the Commission "enjoin Qwest...from charging unjust and unreasonable prices to MTI for unbundled network elements." Motion, pg. 1. MTI also asked the Commission to stay the effective date of rules established in Decision 64922 (June 12, 2002) for pricing transport facilities. For the reasons set forth below, Qwest asserts that

1 there is no legal or policy basis for the extraordinary relief requested by MTI. MTI's Motion  
2 should be denied.

3 **I. The Commission's Order to Show Cause Proceeding is An Inappropriate**  
4 **Forum For A Grant of Injunctive Relief**

5 As Qwest noted in its Response to MTI's Motion for Intervention in this proceeding (the  
6 "Response"), the Commission established the wholesale rate implementation OSC for an  
7 important, but narrow purpose: to evaluate Qwest's actions, and related procedures, associated  
8 with implementation of the Commission's June 12, 2002 Order (the "Phase II Order"). The issue  
9 raised by MTI – that the Commission's adoption of Direct Trunk Transport rates generated by the  
10 HAI model has resulted in rates that "are far higher than the previously-applicable charges for  
11 that service"<sup>1</sup> – is wholly unrelated to the Commission's focused investigation of Qwest's  
12 wholesale rate implementation procedures. Quite simply, the OSC was not established for the  
13 purpose of review of the Commission's decisions regarding particular wholesale rates adopted in  
14 the Phase II Order. By extension, a grant of injunctive relief precluding implementation of rates  
15 adopted in the Phase II Order would be extraordinary, unwarranted, and far beyond the scope of  
16 review set forth by the Commission for this proceeding. In essence, under the cloak of claims  
17 regarding alleged Qwest anti-competitive conduct, MTI seeks to collaterally attack the  
18 Commission's rate determinations in the Phase II Order.

19 Over the past two months, in several public statements regarding the OSC, the  
20 Commission has expressed its dissatisfaction with the wholesale rate implementation process,  
21 mandated that a full investigation occur, and declared that appropriate process improvements will  
22 be implemented.<sup>2</sup> In response, Qwest has publicly expressed its desire to work expeditiously and,  
23 to the extent possible, cooperatively with Staff to resolve the implementation issues raised in the  
24

25 <sup>1</sup> Application, pg. 3, emphasis in original.

26 <sup>2</sup> See, e.g., Comments of Commissioners Spitzer and Mundell, RT-00000F-02-0271, December 13, 2002 Procedural  
Conference, Transcript pp. 9-13.

1 OSC.<sup>3</sup> MTI's Injunction request seeks to hijack this focused administrative process for the  
2 purpose of litigating issues more properly the subject of a Motion to Re-Open the proceedings, or  
3 a Motion for Reconsideration. Indeed, the Commission's Application for Rehearing process, as  
4 set forth in A.R.S. 40-253, is the only mechanism that provides for Commission issuance of a stay  
5 of its previously-issued orders. As MTI acknowledges, the procedural deadline for any such filing  
6 has long since passed. As discussed further below, even were MTI able to meet statutory filing  
7 deadlines, the circumstances present do not support a stay of implementation of any rates  
8 established in the Phase II Order. In this regard, Qwest concurs in the January 31, 2003 Response  
9 filed by AT&T to MTI's Motion for Injunction. AT&T Motion succinctly sets forth the legal  
10 obstacles to MTI's attempt to collaterally attack the Commission's Phase II Order (pp. 2-5), and  
11 Qwest will not repeat these arguments and related citations here. However, the record clearly  
12 demonstrates that there simply is no basis for injunctive relief.<sup>4</sup>

## 13 14 **II. MTI Is Not Entitled To Preliminary Injunctive Relief.**

15 In its Motion, MTI correctly identifies the four factors the Commission must examine in  
16 evaluating a request for injunctive relief:

- 17 • Whether the applicant has made a strong showing of likelihood of success on the  
18 merits
- 19 • Whether the applicant will be irreparably harmed absent an injunction
- 20 • Whether the grant of injunction will substantially injure other interested parties
- 21 • Where the public interest lies

22 MTI's Motion fails to carry its burden on all four factors.

### 23 **A. MTI is unlikely to succeed on the merits.**

24 In order to succeed in obtaining injunctive relief, MTI must show a likelihood of success  
25 on the merits and the possibility of irreparable harm. *Walczak v. EPL Prolong, Inc.*, 198 F. 3<sup>rd</sup>

26 <sup>3</sup> *Ibid.*, Comments of Qwest Arizona State President Pat Quinn, pp. 6-8.

1 725, 731 (9<sup>th</sup> Cir. 1999). Mere economic loss does not constitute irreparable harm for purposes of  
2 obtaining preliminary injunctive relief. *Colorado River Indian Tribes v. Town of Parker*, 776  
3 F.2d 846, 850-51 (9<sup>th</sup> Cir. 1985).

4 To support its claim of likely success on the merits, MTI inexplicably contends  
5 that by implementing Commission-approved rates for Direct Trunk Transport and Local  
6 Interconnection Service, Qwest has engaged in charging “unjust or unreasonable” rates to its  
7 customers, in violation of Section 201(b) of the Communications Act and A.R.S. Section 40-361.  
8 MTI blithely ignores that Commission-approved rates, if adopted in conformance with due  
9 process norms, are by definition “just and reasonable.” As Qwest pointed out in its Response, the  
10 adopted rates in question are the result of an extensive and time-consuming evaluation of  
11 numerous wholesale rates generated by competing cost models submitted by parties in Phase II of  
12 this proceeding. The Commission’s Order explicitly addressed concerns raised by the parties  
13 regarding using the HAI model to set applicable transport rates and determined that:

14  
15 We believe that consistency requires adoption of the HAI model’s results for both loop  
16 costs and transport. As Qwest points out, any UNE pricing inquiry necessarily involves  
17 some cost averaging among different kinds of facilities. Even loop costs within a given  
18 zone require averaging of costs for different loop lengths within that zone. Accordingly,  
19 we will adopt the HAI model’s results for purposes of pricing transport in this  
20 proceeding...Although we are adopting the HAI model’s results at this time, we believe  
21 that this issue should be re-examined in Phase III so that a full record may be developed.<sup>5</sup>

22  
23 Clearly, in its Phase II Order the Commission considered the effect of implementing the  
24 rates under discussion, made a determination, and also set forth a specific procedural framework  
25 for re-examination of that decision. While MTI, a non-participant in any aspect of the Phase II  
26 hearing process, now may find the Commission’s determination objectionable, such objections do  
not support its contention either Qwest, or the Commission, implemented rates for Transport and  
Local Interconnection Service that do not “comply with the pricing standards codified in Section

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<sup>5</sup> Decision No. 64922, pg. 79.

1 252 of the Communications Act...and with the FCC's TELRIC pricing rules."<sup>6</sup>

2       Indeed, Qwest has conducted a review of its December 2002 and January 2003 invoices to  
3 MTI subsequent to its implementation of the Phase II Order, and reiterates that it has correctly  
4 calculated and billed MTI for the DTT transport and Local Interconnection Service Rate(s) as  
5 well as for all other unbundled recurring and non-recurring elements, consistent with the  
6 Commission's Order. Qwest avers that all rate table changes for CLECs were implemented at the  
7 same time. Any rate increases or decreases for DTT and Local Interconnection services MTI  
8 experienced as a result the Phase II Order were implemented simultaneously. Qwest has  
9 identified no basis for MTI's contention that Qwest has sporadically and selectively implemented  
10 Local Interconnection or "loop" rates for MTI. Qwest has acknowledged, and the Commission is  
11 now well aware, that these rate changes occurred for all CLECs beginning in December 2002, six  
12 months after the effective day of the Phase II Order.

13       More importantly, the rates set by this Commission for Transport and for Local  
14 Interconnection Service meet the requirements of the Federal Communications Act of 1996 ("the  
15 1996 Act"), related FCC TELRIC rules and the anti-discrimination requirements of Section 201  
16 of the Act. In this instance, after substantial review and argument, the Commission simply  
17 followed the Staff and CLEC request to implement the HAI model. In determining that it must  
18 apply its adopted model consistently, the Commission adopted HAI-generated transport rates to  
19 match the selection of HAI loop rates. Consistent application of an adopted economic model is  
20 both just and reasonable. Qwest's implementation of rates in accordance with the Commission's  
21 Order is mere compliance, not potentially anti-competitive activity, as MTI contends.

22       MTI nevertheless seeks to improperly link its dissatisfaction with the rates adopted by the  
23 Commission to Qwest's purportedly tardy implementation timeframe and processes. The latter is  
24 properly the focus of the OSC; the former is not. Since the rates implemented were Commission-

25  
26 <sup>6</sup> MTI's Reply to Qwest's Response to MTI's Application for Intervention, pg. 3.

1 approved, MTI's likelihood of success on the merits – in receiving a reduction in applicable rates  
2 due to malfeasance on Qwest's part – is low. MTI correctly notes that the Commission may, on  
3 its own Motion or in response to a party request, re-open the record or alter or amend a previous  
4 decision. The Commission has the authority, assuming procedural due process requirements are  
5 met, to take such action. There is, however, simply no legal or policy basis for doing so in the  
6 context of the OSC proceeding, particularly where the Commission has already agreed to revisit  
7 the rates in Phase III of the Cost Docket.

8  
9 **B. MTI Faces No Irreparable Harm**

10 To support its extraordinary request for injunctive relief, MTI cites severe economic harm.  
11 As Arizona courts consistently have held, mere economic loss does not constitute irreparable  
12 harm for purposes of obtaining preliminary injunctive relief. *Colorado River Indian Tribes v.*  
13 *Town of Parker*, 776 F.2d 846, 850-51 (9<sup>th</sup> Cir. 1985). In order to avoid this clear limitation on  
14 circumstances constituting irreparable harm, MTI claims that “[c]ontinued imposition on MTI of  
15 the transport rates and local loop rates reflected in Qwest's recent invoices will make it  
16 uneconomic for MTI to offer competing local telecommunications services through use of  
17 unbundled network elements...” Motion, pg. 5. MTI's argument acknowledges both that (1) any  
18 alleged injury to MTI is wholly economic in nature, and (2) since Qwest only recently  
19 implemented the rate changes in question, MTI thus far has incurred little, if any, actual economic  
20 harm at all. The extent of purported “harm” MTI may experience as a result of Phase II Order rate  
21 changes is dependant on when the Commission's scheduled Phase III re-evaluation of the Direct  
22 Trunk Transport rate occurs, and whether after a full review with participation of all interested  
23 parties, the Commission decides to modify the rate at all. Accordingly, MTI's purported harm is  
24 speculative at best. More importantly, the only harm that MTI claims to suffer is an economic  
25 loss, simply not suitable for injunctive relief.

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C. An Injunction Would Substantially Injure Other Interested Parties and Not Further The Public Interest

The purpose of injunctive relief is to deter, not to punish. *Rondeau v. Mosinee Paper Corporation*, 422 U.S. 49, 95 S. Ct. 2069, 45 L. Ed. 2d 12 (1975). What MTI seeks to deter here is Qwest rightfully implementing rates approved by the Commission because it contends that these new Commission-approved rates will cause it economic harm. This is not the purpose of injunctive relief.

More importantly, MTI's requested relief would severely harm the interests of all parties who chose to participate in the Phase II proceedings, and undermine the integrity of the Commission's administrative hearing process. At the January 27, 2003 Procedural Conference, MTI admitted it was aware of wholesale cost proceedings and made a decision not to participate. As the record indicates, concerns regarding Commission treatment of the rates in question have been under discussion for over a year. In spite of the apparent importance of these rates to MTI's business, the company did not intervene in the case, did not submit any testimony offering input during the proceeding and was not involved in Phase II hearing. MTI now requests that this issue not only be addressed immediately, but also considered in the context of an OSC proceeding that focuses on wholly distinct factual matters. This request is extraordinary, inconsistent with the Commission's directives, would set a dangerous precedent for the orderly handling of future proceedings of this nature.

As a practical matter, granting MTI's request possibly would subject all rates adopted in the Phase II Order to similar collateral attack, leading to an inefficient use of both Commission and party resources. Such a result would not further the public interest.

III. **Qwest Does Not Oppose MTI's Intervention in Phase III of the Wholesale Cost Proceeding**

As noted in its Response to MTI's Motion for Intervention (January 21, 2003), although

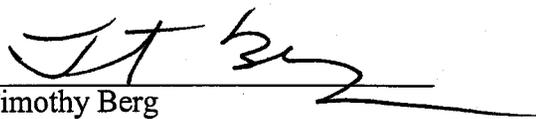
1 premature, Qwest does not at this time oppose MTI's proposed intervention in Phase III of the  
2 wholesale cost proceeding. The Commission has established that proceeding for re-examination  
3 of the issues raised by MTI. Qwest believes that the Commission's approach is reasonable, and  
4 should not be altered at this time. Qwest also does not oppose expedited Commission scheduling  
5 of evidentiary hearings in that docket.  
6

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8 **IV. Conclusion**

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10 Based on the foregoing, MTI has not demonstrated and cannot demonstrate that there is a  
11 legal or policy basis supporting its extraordinary request for an injunction precluding Qwest from  
12 implementing Commission-approved wholesale rates in accordance with the Phase II Order. The  
13 Commission therefore should deny MTI's Motion for Intervention. Qwest does not oppose MTI's  
14 request for intervention in the Phase III docket, where these issues may be fully addressed by all  
15 parties.

16 DATED this 4<sup>th</sup> day of February, 2003.

17  
18 FENNEMORE CRAIG

19  
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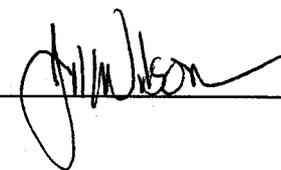
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8  A handwritten signature in black ink, appearing to read "E. Jeffrey Walsh", is written over a horizontal line. The signature is cursive and somewhat stylized.

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