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BEFORE THE ARIZONA CORPORATION COMMISSION
Arizona Corporation Commission

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MARC SPITZER, Chairman
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MAR - 5 2003

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AZ CORP COMMISSION
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IN THE MATTER OF THE GENERIC
INVESTIGATION INTO U S WEST
COMMUNICATIONS, INC.'S, NKA QWEST
CORPORATION, COMPLAINEE 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

VS.

QWEST CORPORATION,

RESPONDENT.

DOCKET NO. T-01051B-03-0092

MOUNTAIN TELECOMMUNICATIONS, INC.

COMPLAINANT,

VS.

QWEST CORPORATION,

RESPONDENT.

PROCEDURAL ORDER

BY THE COMMISSION:

On June 12, 2002, the Arizona Corporation Commission ("Commission") issued Decision No. 64922 for "Phase II" of Docket No. T-00000A-00-0194 ("Wholesale Cost Docket"), establishing permanent unbundled network element ("UNE") rates for Qwest Corporation ("Qwest") in Arizona. On December 12, 2002, the Commission issued Decision No. 65451 in "Phase IIA" of Qwest's Wholesale Cost Docket. The Phase IIA Decision primarily addressed UNE rates for switching elements.

In Decision No. 65450 (December 12, 2002), the Commission issued a Complaint and Order

1 to Show Cause in this proceeding against Qwest in the above-captioned Docket No. T-01051B-02-
 2 0871 (the "Show Cause Docket"). That Decision ordered Qwest to appear and show cause as to "(1)
 3 why its failure to implement the rates required by Decision No. 64922 is not unreasonable, (2) why
 4 its implementation of rates in the other states with pending 271 applications at the FCC ahead of
 5 Arizona is not unreasonable, and (3) why its failure to notify the Commission of the delay and seek
 6 relief from the Order is not unreasonable."

7 **Procedural Schedule in the Show Cause Docket**

8 A Procedural Conference was conducted in the Show Cause Docket on January 27, 2003 to
 9 discuss procedural issues and scheduling of the hearing in that case. On February 3, 2003, Qwest,
 10 AT&T Communications of the Mountain States, Inc. ("AT&T), and the Commission's Utilities
 11 Division Staff ("Staff") submitted a Joint Stipulation Regarding the Procedural Schedule. Based on
 12 the Joint Stipulation, the following schedule shall be established for the Show Cause Docket:

13	Staff Direct Testimony	March 27, 2003
14	Intervenor Direct Testimony	April 11, 2003
15	Qwest Rebuttal Testimony	May 8, 2003
16	Staff and Intervenor Reply	May 30, 2003
17	Hearing Commences	June 9, 2003 ¹

18 **Intervention Requests by Mountain Telecommunications, Inc.**

19 On January 10, 2003, Mountain Telecommunications, Inc. ("MTI") filed Applications to
 20 Intervene in the Show Cause Docket and in "Phase III" of the Wholesale Cost Docket. MTI claims
 21 that it is reliant on UNEs purchased from Qwest at the rates established by the Commission in the
 22 Wholesale Cost Docket. According to MTI, in January 2003 it received the first bills from Qwest
 23 reflecting the UNE rates determined in Decision No. 64922. MTI states that the charges from Qwest
 24 for transport service and local interconnection service are far higher than the previously applicable
 25 charges and that such charges are inconsistent with the Commission's intent of encouraging local
 26 competition. MTI argues that it should be permitted to intervene in the Show Cause Docket to

27 ¹ The parties should be aware that the Commission has an Open Meeting scheduled for June 10 and 11, 2003. In the
 28 event the hearing does not conclude on June 9, 2003, a break in the hearing may be required to accommodate the Open
 Meeting schedule.

1 challenge the reasonableness of the transport rates and the competitive damage that will occur if
2 Qwest's transport and local interconnection rates are permitted to remain in effect.

3 On January 21, 2003, Qwest filed a Response to MTI's Application to Intervene. Qwest
4 argues that, although it does not oppose MTI's intervention in the Phase III Wholesale Cost Docket
5 proceeding, MTI should not be permitted to intervene in the Show Cause Docket. Qwest contends
6 that it has correctly calculated and billed MTI for the DTT transport rate in question, in accordance
7 with Decision No. 64922. Qwest asserts that permitting MTI's intervention request would
8 inappropriately transform the Show Cause Docket into a potentially open-ended process or
9 reconsideration of rates authorized in Phase II of the Wholesale Cost Docket. Qwest points out that
10 MTI did not intervene in the Phase II proceeding, nor did it offer input to the Commission on this
11 issue. Qwest argues that, since the transport rates questioned by MTI have already been slated for
12 reconsideration in Phase III, MTI should not be permitted to intervene in the Show Cause Docket for
13 purposes of challenging the legitimacy of the transport rates.

14 On January 29, 2003, MTI filed a Supplement to the Applications to Intervene to "clarify the
15 reasons for its interest in these proceedings." MTI claims that its intervention in the Show Cause
16 Docket is justified because, although Qwest has imposed substantial increases for transport and local
17 interconnection services, Qwest's downward rate adjustments for other UNEs, including unbundled
18 loops, has been "sporadic and selective."

19 On January 31, 2003, MTI filed a Reply to Qwest's Response to MTI's Applications for
20 Intervention. MTI reiterates many of the same arguments raised in its earlier pleadings. MTI
21 contends that the impact on competition of Qwest's implementation of the rate changes determined in
22 Decision No. 64922 is a central aspect of the Show Cause Docket. MTI states that it seeks cessation
23 of the transport and local interconnection service rates implemented by Qwest until the Commission
24 addresses the appropriate modeling of transport costs in Phase III of the Wholesale Cost Docket.

25 **MTI's Motion for Injunction**

26 On January 17, 2003, MTI filed a Motion for Injunction requesting that the Commission
27 enjoin Qwest from charging "unjust and unreasonable prices to MTI for [UNEs]." MTI further
28 requested that the Commission stay the effective date for pricing transport facilities until the

1 Commission issues a final decision with respect to transport pricing issues. The basis of MTI's
2 request is that the transport and local interconnection rates imposed by Qwest starting in January
3 2003 are substantially higher than the rates previously in place for those services. MTI contends that
4 it meets the requirements for injunctive relief because: it is likely to prevail on the merits; absent
5 relief it will suffer irreparable harm; other parties will not suffer substantial injury if relief is granted;
6 and there is a strong public interest in maintaining competition for local telecommunications services.

7 On February 3 and 4, 2003, AT&T and Qwest, respectively, filed Responses in Opposition to
8 MTI's request for an injunction. AT&T and Qwest argue that MTI's request represents a collateral
9 attack on Decision No. 64922 and the requested relief is beyond the scope of the Commission's
10 authority. Qwest contends that the Show Cause Docket is an inappropriate forum for a grant of
11 injunctive relief because that proceeding is intended to address Qwest's actions related to
12 implementation of UNE rates established by the Commission, not as a means to challenge the merits
13 of the Commission's Decision. Both AT&T and Qwest assert that the appropriate forum for
14 consideration of MTI's claims is in the Phase III portion of the Wholesale Cost Docket, as stated in
15 Decision No. 64922.

16 On February 18, 2003, MTI filed a Reply to the Responses of AT&T and Qwest. MTI argues
17 that the Commission has ample authority pursuant to its general supervisory powers to grant the
18 requested injunctive relief. MTI reiterates the arguments raised in its Motion for Injunction, and
19 claims that the Commission was unaware of the magnitude of the cost effect on small competitors
20 when Decision No. 64922 was issued. MTI asserts that it has satisfied the criteria for injunctive
21 relief, and stresses that imposition of the increased transport facilities charges will make it
22 uneconomical for MTI to continue to provide competitive local telecommunications service in
23 Arizona.

24 On February 21, 2003, Time Warner Telecom of Arizona ("Time Warner") filed a pleading
25 entitled "Comments on Transport Rates and Request for Expedited Hearing of Phase III or
26 Modification of Decision No. 64922." Time Warner states that it has experienced the same
27 substantial increase in transport rates cited by MTI. Time Warner contends that the transport rate
28 increase constitutes "rate shock" and that the Commission did not have the benefit of evidence

1 regarding the impact on small CLECs at the time Decision No. 64922 was issued. Time Warner
2 requests that the Commission modify Decision No. 64922 to alleviate rate shock or, in the alternative,
3 that the Commission expedite Phase III of the Wholesale Cost Docket so that the transport rates are
4 reviewed promptly.

5 On March 3, 2003, Qwest filed a Response to Time Warner's Comments. Qwest argues that
6 there is no basis for amending Decision No. 64922 as suggested by MTI and Time Warner regarding
7 transport issues. Qwest recommends that, rather than bifurcating transport issues in Phase III of the
8 Wholesale Cost Docket, the entire Phase III proceeding should be expedited, with a hearing
9 beginning on July 7, 2003.

10 **MTI's Complaint**

11 On February 14, 2003, MTI filed a Complaint in the above-captioned Docket No. T-01051B-
12 03-0092 ("Complaint Docket") raising the same allegations contained in its prior pleadings. MTI
13 argues that the rate increases for transport facilities, as well as Qwest's continued delay in
14 implementing new lower rates for local loops, are inconsistent with the Commission's intent in
15 Decision No. 64922 and violate the federal statutory requirements set forth in the 1996
16 Telecommunications Act (47 U.S.C. §252(d)(1)(A)). Concurrent with its Complaint, MTI filed a
17 Motion for Preliminary Injunction, raising the same arguments discussed above with respect to the
18 detrimental effect of imposing the higher transport rates and MTI's satisfaction of the elements for
19 injunctive relief.

20 **TNS Request for Payment**

21 On May 9, 2002, a Procedural Order was issued in Phase II of the Wholesale Cost Docket
22 directing Qwest, AT&T and WorldCom, Inc. ("WorldCom") to provide year 2000 customer location
23 data to TNS Telecoms ("TNS") in order for TNS to process the data and run it through the HAI
24 model. The Procedural Order also directed AT&T/WorldCom and Qwest to each pay one-half of
25 TNS' data processing costs. To date, Qwest has paid only \$5,000 of TNS' bill to Qwest for \$15,000.

26 On November 8, 2002, Qwest filed a Request for Expedited Clarification of the May 9
27 Procedural Order. Qwest claims that the Procedural Order did not contemplate that the parties would
28 be required to pay for the work done by TNS without being provided the underlying information and

1 documentation that supports the TNS analysis. Qwest states that "it is wholly reasonable that Qwest
2 be provided with the data as a condition of its obligation [to] make further payment to TNS."

3 On November 15, 2003, AT&T filed a Response in Opposition to Qwest's Request for
4 Expedited Clarification. AT&T argues that Qwest's request for clarification is untimely, having been
5 filed nearly six months after the issuance of the May 9, 2002 Procedural Order, and nearly five
6 months after the issuance of the Commission's Order in Decision No. 64922 which approved the cost
7 estimates provided by TNS. AT&T also asserts that Qwest's Motion is procedurally improper and
8 lacks substantive merit because TNS processed the data in accordance with the Procedural Order, and
9 provided the same information to all parties including Qwest.

10 On November 25, 2003, Qwest filed a Reply to AT&T's Response. Qwest restates the
11 arguments raised in its Motion and claims that it attempted to work cooperatively with TNS to
12 analyze and understand the work TNS performed to incorporate the 2000 Arizona customer location
13 data into the HAI model. Qwest claims that, absent TNS' provision of the underlying data behind its
14 2000 customer location run, Qwest should be released from any obligation to make additional
15 payment to TNS.

16 On February 11, 2003, TNS submitted a letter requesting the Commission and Staff to assist
17 in obtaining payment from Qwest of the remaining \$10,000 due for the data processing undertaken
18 by TNS in accordance with the directive set forth in the May 9, 2002 Procedural Order.

19 **AT&T's Motion for Pro Hac Vice Admission of Richard S. Wolters**

20 On February 20, 2003, local counsel for AT&T filed a Motion and Consent of Local Counsel
21 for Pro Hac Vice Admission of Richard S. Wolters in the Show Cause Docket. The Motion
22 represents that Mr. Wolters has completed all requirements under the Arizona Supreme Court's rules
23 for admission pro hac vice.

24 No party objected to Mr. Wolters' request for pro hac vice admission in this proceeding.

25 IT IS THEREFORE ORDERED that a hearing shall be scheduled in the Show Cause Docket
26 for June 9, 2003, at 10:00 a.m., at the offices of the Commission.

27 IT IS FURTHER ORDERED that Staff's Direct Testimony shall be filed by no later than
28 March 27, 2003.

1 IT IS FURTHER ORDERED that Intervenor Direct Testimony shall be filed by April 11,
2 2003.

3 IT IS FURTHER ORDERED that Qwest's Rebuttal Testimony shall be filed by no later than
4 May 8, 2003.

5 IT IS FURTHER ORDERED that Staff and Intervenor Reply Testimony shall be filed by no
6 later than May 30, 2003.

7 IT IS FURTHER ORDERED that a Procedural Conference shall be scheduled in the above-
8 captioned dockets for March 13, 2003, at 1:30 p.m., at the offices of the Commission. The purpose
9 of the Procedural Conference will be to discuss each of the issues discussed above and the various
10 pending motions filed in these dockets.

11 IT IS FURTHER ORDERED that Staff shall file a Response regarding its position on the
12 TNS payment issue by March 10, 2003.

13 IT IS FURTHER ORDERED that the request by Richard S. Wolters for admission pro hac
14 vice shall be granted.

15 IT IS FURTHER ORDERED that the Presiding Officer may rescind, alter, amend, or waive
16 any portion of this Procedural Order either by subsequent Procedural Order or by ruling at hearing.

17 DATED this 5th day of March, 2003.

18
19 

20 DWIGHT D. NODES
21 ASSISTANT CHIEF ADMINISTRATIVE LAW JUDGE

22 Copies of the foregoing mailed/delivered
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