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**FORMAL COMPLAINT**

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**BEFORE THE ARIZONA CORPORATION COMMISSION**

**AZ CORP COMMISSION  
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Arizona Corporation Commission  
**DOCKETED**

**FEB 13 2003**

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COMMISSIONER**

**MOUNTAIN TELECOMMUNICATIONS, INC.  
Complainant,**

**v.**

**QWEST CORPORATION,  
Respondent**

**DOCKET NO. T-01051B-03-0092**

**COMPLAINT**

**COMPLAINT**

Complainant Mountain Telecommunications, Inc. ("MTI"), by its attorneys and pursuant to Arizona Administrative Code R14-3-106, hereby submits this Complaint against Defendant Qwest Corporation ("Qwest").

**PARTIES**

1. Complainant Mountain Telecommunications, Inc. is a telecommunications carrier certificated by the Commission to provide services, including competitive local exchange services, in the State of Arizona. MTI is incorporated under the laws of the State of Arizona, and its corporate headquarters are located at 1430 W. Broadway, Suite A-200, Tempe, Arizona 85282.

2. Upon information and belief, defendant Qwest Corporation is a telecommunications carrier which provides services, including local exchange services, in the State of Arizona and is subject to the jurisdiction of the Commission. Qwest is incorporated under the laws of the State of Delaware, and its corporate headquarters are located at 1801 California Street, Denver Colorado 80202.

### STATEMENT OF JURISDICTION

3. This Commission has jurisdiction over this Complaint pursuant to Sections 40-248 and 40-249 of Arizona's Revised Statutes (A.R.S. §§ 40-248 and 40-249).

### STATEMENT OF FACTS

4. As a provider of telecommunications services, MTI utilizes network elements of Qwest Communications, the predominant incumbent local exchange carrier (ILEC) in Arizona, which it acquires on an unbundled basis pursuant to Section 251(c)(3) of the Communications Act of 1934, as amended ("Communications Act") (47 U.S.C. § 251(c)(3)) and subject to an interconnection agreement approved by the Commission. MTI is especially reliant on the transport facilities of Qwest, as well as Qwest's local interconnection facilities. MTI uses Qwest transport facilities to connect its customers' premises with serving wire centers and to move telecommunications traffic between central offices within Qwest territory.

5. On June 12, 2002, the Commission issued Decision No. 64922, in which the Commission adopted new rates to be charged by Qwest for unbundled network elements and resale.<sup>1</sup>

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<sup>1</sup> In the Matter Of Investigation Into Qwest Corporation's Compliance With Certain Wholesale Pricing Requirements For Unbundled Network Elements and Resale Discounts, Docket No. T-00000A-00-0194 (*Phase II*) ("Qwest Wholesale Pricing Decision" or "Decision No. 64922").

6. In the Qwest Wholesale Pricing Decision, regarding transport, the Commission adopted the results of the HAI model for development of transport rates, notwithstanding its concern that rates based on that model might not be appropriate. The Commission stated in Decision No. 64922:

[a]lthough we are adopting the HAI model's results at this time, we believe that this issue should be re-examined in Phase III so that a full record may be developed. . . . In Phase III, Qwest should provide the parties, through discovery, the wire center specific information necessary for the CLECs to determine how the HAI model can be deaveraged into appropriate fixed and per mile components.<sup>2</sup>

The issue of appropriate modeling for establishment of transport rates will be re-examined based on a full record in Phase III of the proceeding.

7. As a CLEC operating in Arizona, MTI is reliant on access to Qwest unbundled network elements at prices approved by the Commission based upon the Total Element Long Run Incremental Cost (TELRIC) standard promulgated by the Federal Communications Commission (FCC), as part of its implementation of the Telecommunications Act of 1996 (Pub. L. 104-104, 110 Stat. 56 (1996)).<sup>3</sup> The Commission indicated in the Qwest Wholesale Pricing Decision that the record compiled to date is not sufficient to conclude that transport rates and the rates for local interconnection facilities based on the HAI model will produce lawful rates in accordance with Sections 251(c)(3) and 252(d) of the Communications Act (47 U.S.C. §§ 251(c)(3)), 252(d)) and the FCC's TELRIC standard.

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<sup>2</sup> Decision No. 64922, at 79.

<sup>3</sup> In Re Local Competition Provisions of the Telecommunications Act of 1996, 11 FCC Rcd 15499 (1996), *aff'd. sub. nom. Verizon Communications, Inc. et al. v. FCC*, 122 S. Ct. 1646 (2002).

8. The rates for network elements, interconnection and resale mandated by the Qwest Wholesale Pricing Decision were to be effective on June 12, 2002. Qwest did not begin to implement those rates until January 2003.<sup>4</sup>

9. On January 2, 2003, MTI received its first invoice from Qwest containing charges for transport based upon Qwest's understanding and implementation of Decision No. 64922. Qwest's invoice to MTI received on January 2, 2003 included charges for transport facilities that were significantly higher than the previously-applicable charges for those facilities. Indeed, the charges for transport and local interconnection facilities provided as unbundled network elements as reflected in that January 2 invoice, as well as in subsequently-received invoices, are significantly higher than the charges for the identical facilities when purchased pursuant to Qwest's interstate access service tariff (Tariff FCC No. 1) on file with the FCC, rates which are not subject to TELRIC pricing.

10. Qwest's invoice received by MTI on January 2, 2003, included monthly transport charges for December 2002 that represented an increase by forty-two percent (42%) in the Tucson LATA (668) and by seventy-one percent (71%) in the Phoenix LATA (666).<sup>5</sup> For example, Qwest implemented the following monthly rate increases for transport: Circuit ID No. 16 HCFU710813 (Tucson Main – Tucson East) has increased from \$46.49 to \$153.59; Circuit ID

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<sup>4</sup> Qwest's delay led to Commission Staff filing a Complaint and Order to Show Cause on November 26, 2002 requesting that Qwest be ordered to show cause why its failure to implement the rates required by Decision No. 64922 is not unreasonable and why it should not be held in contempt. By Decision No. 65450 issued December 12, 2002, Qwest has been ordered to show cause.

<sup>5</sup> MTI has calculated these percentage increases by comparison of its invoices received from Qwest for October 2002 service (based on the pre-Decision No. 64922 rates) with its invoices for December 2002 service (received in January 2003, based upon Qwest's selective implementation of the rate changes reflecting its understanding of Decision No. 64922).

Nos. 16 HCFU710814 and 16 HCFU711110 (Tucson Main – Tucson Craycroft), each has increased from \$48.44 to \$153.59; Circuit ID Nos. 14 HCFU998297 and 14 HCFU998298 (Scottsdale Main – Tempe Main), each has increased from \$47.79 to \$153.59; Circuit ID Nos. 14 HCFU969107 and 14 HCFU970017 (Scottsdale Main – Scottsdale Thunderbird) (DS-3 circuits), each has increased from \$353.05 to \$1,834.61.

11. Qwest's invoice received by MTI on January 2, 2003, included monthly local interconnection facilities charges for December 2002 that represented an increase by thirty-four percent (34%) in the Tucson LATA and by one hundred fifty four percent (154%) in the Phoenix LATA. For example, Qwest implemented the following monthly rate increases for local interconnection facilities: Circuit ID 101T1ZF SNMNAZMADADCO (San Manuel Main – Tucson Main) increased from \$46.88 to \$75.95; Circuit ID Nos. 105T1ZFSRVSAZMAHJ1, 107SRVSAZMAHJ1, and 108T1ZFSRVZSAZMAHJ1 (Sierra Vista Main – Sierra Vista South), each increased from \$19.94 to \$75.95; Circuit ID No. 101T3MESAAZMAK19 (Mesa Main – Scottsdale Main) increased from \$371.71 to \$1,137.30; Circuit ID Nos. 101T3PHNXAZMAK06 and 101T3PHNXAZNOK14 (Scottsdale Main – Phoenix Main), each increased from \$391.48 to \$1,137.30; Circuit ID No. 102T1PHNXAZMYDCO (Phoenix North – Phoenix Maryvale) increased from \$20.59 to \$75.95; Circuit ID No. 102T1PHNXAZSODGO increased from \$20.59 to \$75.95.

12. In addition to the substantial rate increases for transport and local interconnection facilities first reflected in Qwest's January 2, 2003 invoice to MTI, Qwest now has attempted to invoice MTI the far higher transport and local interconnection facilities rates retroactively to June 2002. Qwest's invoices dated January 26, 2003 included line item charges totaling

\$327,274.66 retroactively applying increased transport charges to service provided between June 12, 2002 and December 25, 2002.

13. MTI estimates that the increased monthly charge for transport and local interconnection service will increase MTI's costs by \$54,866.60 per month, based upon current usage levels.

14. While Qwest has implemented substantial price increases for transport facilities, it continues to delay its implementation of price decreases for other network elements mandated by the Commission in Decision No. 64922. In invoices received on January 10, 2003, Qwest incorporated the rate changes for unbundled loops only for recurring charges on new loops installed in December 2002. Recurring charges for loops installed prior to December 2002 continue to be invoiced at the far higher pre-Decision No. 64922 rates. The nonrecurring (installation) charge for local loops installed in December failed to reflect the new rates set forth in Decision No. 64922. Therefore, MTI is being charged rates significantly higher than those permitted in the Qwest Wholesale Pricing Decision.

15. Qwest's massive rate increases for transport, as well as Qwest's continued and unjustified delay in implementing new lower rates for local loops, are inconsistent with the Commission's intent in Decision No. 64922 and violate the statutory requirements codified at Section 252(d)(1)(A) of the Communications Act (47 U.S.C. § 252(d)(1)(A)) that unbundled network element rates must be based on cost (without reference to rate of return or other rate-based proceeding), must be nondiscriminatory, and may include a reasonable profit. Neither do the rates charged for transport conform with the FCC's TELRIC standard, nor with the statutory standard of lawfulness codified at A.R.S. § 40-361 .

16. Continued imposition on MTI of the unlawful transport, local interconnection facility, and unbundled local loop rates reflected in Qwest's recent invoices will make it uneconomic for MTI to offer competing local telecommunications services through use of unbundled network elements as it is statutorily entitled to do, and may have the unintended consequence of forcing MTI to exit the local service marketplace in Arizona.

**COUNT I**  
**(Violation of 47 U.S.C. §§ 251(c)(3) and 252(d)(1)(A))**

17. MTI adopts and incorporates the allegations contained in paragraphs 1 through 16 of this Complaint as if fully rewritten here.

18. Section 251(c)(3) of the Communications Act (47 U.S.C. § 251(c)(3)) requires incumbent local exchange carriers, such as Qwest, to provide nondiscriminatory access to unbundled network elements on an unbundled basis "on rates, terms, and conditions that are just, reasonable, and nondiscriminatory in accordance with . . . Section 252."

19. Section 252 of the Communications Act (47 U.S.C. § 252) requires that state commissions establish rates based on the statutory standard contained in that section. Section 252(d)(1)(A) provides that the "just and reasonable rate for network elements for purposes of subsection (c)(3) [of Section 251] (A) shall be – (i) based on the cost (determined without reference to a rate-of-return or other rate-based proceeding) of providing the interconnection or network element (whichever is applicable), and (ii) nondiscriminatory, and (B) may include a reasonable profit."

20. Qwest's substantially increased charges for transport and local interconnection facilities (including the retroactive application of such charges) are inconsistent with the intent of

Decision No. 64922, violate Section 252(d)(1)(A) of the Communications Act because they are not based on the cost of providing the services, and violate the FCC's TELRIC standard.

21. Qwest's charges for transport and local interconnection facilities are unjust and unreasonable in violation of Sections 251(c)(3) and Section 252(d)(1)(A) of the Communications Act.

**COUNT II**  
**(Violation of A.R.S. § 40-361)**

22. MTI adopts and incorporates the allegations contained in paragraphs 1 through 21 of this Complaint as if fully rewritten here.

23. Section 40-361 of Arizona's Revised Statutes mandates that "[c]harges demanded or received by a public service corporation for any commodity or service shall be just and reasonable. Every unjust and unreasonable charge demanded or received is prohibited and unlawful."

24. Qwest's substantially increased charges for transport and local interconnection facilities (including the retroactive application of such charges) are inconsistent with the intent of Decision No. 64922, and are unjust and unreasonable in violation of Section 40-361 of Arizona's Revised Statutes.

25. Qwest's charges for other network elements, including unbundled loops, which continue to be priced far above the rate levels mandated by Order No. 64922 are unjust and unreasonable in violation of Section 40-361 of Arizona Revised Statutes.

## REQUEST FOR RELIEF

WHEREFORE, MTI requests that the Commission order the following relief:

1. Issue an order enjoining Qwest from charging MTI unjust and unreasonable prices for transport and local interconnection facilities, both retroactively and prospectively.<sup>6</sup>
2. Issue an order declaring Qwest's charges for transport and local interconnection facilities to be unjust and unreasonable in violation of Sections 251 and 252(d)(1)(A) of the Communications Act and Section 40-361 of the Arizona Revised Statutes;
3. Issue an order enjoining Qwest from charging MTI unjust and unreasonable rates for other network elements, including unbundled loops, both retroactively and prospectively.
4. Issue and order declaring Qwest's charges for other network elements, including unbundled loops, to be unjust and unreasonable in violation of Sections 251 and 252(d)(1)(A) of the Communications Act and Section 40-361 of the Arizona Revised Statutes.
5. Issue an order granting MTI reasonable attorneys' fees and costs; and
6. Any further relief that the Commission deems to be just and proper.

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<sup>6</sup> Simultaneously with the filing of this Complaint, MTI has filed a Motion for Preliminary Injunction requesting that Qwest be enjoined from charging the unlawful rates for transport and local interconnection facilities based upon its implementation of Decision No. 64922 pending resolution of this complaint matter and completion of Phase III of Docket No. T-00000A-00-0194.

Respectfully submitted,

**MOUNTAIN TELECOMMUNICATIONS, INC.**



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February 12, 2003

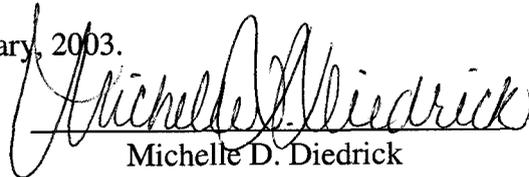
**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the foregoing Complaint on Defendant Qwest Corporation by mailing a copy thereof, properly addressed with first class postage prepaid to the following:

Timothy Berg  
FENNEMORE CRAIG  
3003 North Central Avenue  
Suite 2600  
Phoenix, AZ 85012

QWEST Corporation  
1801 California Street  
Suite 5100  
Denver, CO 80202

Dated at Washington, D.C., this 12<sup>th</sup> day of February, 2003.

  
Michelle D. Diedrick