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BEFORE THE ARIZONA CORPORATION COMMISSION

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2004 SEP 24 A 9:43

MARC SPITZER, Chairman  
WILLIAM A. MUNDELL  
JEFF HATCH-MILLER  
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AZ CORP COMMISSION  
DOCUMENT CONTROL

IN THE MATTER OF:

DOCKET NO. T-01051B-03-0092

MOUNTAIN TELECOMMUNICATIONS, INC.

Arizona Corporation Commission

DOCKETED

Complainant

SEP 24 2004

vs.

QWEST CORPORATION,

DOCKETED BY

Respondent.

**PROCEDURAL ORDER**

BY THE COMMISSION:

On February 13, 2003, Mountain Telecommunications, Inc. ("MTI") filed with the Arizona Corporation Commission ("Commission") a Complaint against Qwest Corporation ("Qwest"). In its Complaint, MTI alleged that Qwest's charges for transport facilities pursuant to Decision No. 64922 (June 12, 2002) were unreasonable because the charges applied to MTI included entrance facilities not required by MTI, and because Qwest had attempted in January 2003 to bill MTI retroactive to June 2002. MTI also filed a Motion for Preliminary Injunction seeking to prevent Qwest from charging the combined transport and entrance facility prices until the Commission determined final rules governing the pricing of transport facilities<sup>1</sup>.

In Decision No. 66385 (October 6, 2003), the Commission issued a Phase II and IIA Supplemental Opinion and Order Regarding Transport and Analog Port Rate Issues (Docket No. T-00000A-00-0194). In that Decision, the Commission agreed with MTI that the new transport rates imposed by Qwest were based on a mistaken assumption that all competitive local exchange carriers ("CLECs") required bundled transport and entrance facilities. The Commission determined that,

<sup>1</sup> MTI had filed a similar Motion for Injunction on January 17, 2003 in Qwest's "Wholesale Cost Docket" (Docket No. T-00000A-00-0194) and in a "Show Cause Docket" initiated by the Commission's Utilities Division Staff (Docket No. T-01051B-02-0871).

1 because certain CLECs such as MTI do not require entrance facilities, Qwest must charge the  
2 transport and entrance facilities in effect prior to the Phase II Order (Decision No. 64922) and that  
3 such rates would remain in effect on an interim basis from June 12, 2002 until the Commission  
4 establishes permanent transport rates in Phase III of Docket No. T-00000A-00-0194. In effect,  
5 Decision No. 64922 rendered moot MTI's Complaint in the above-captioned docket.

6 On June 28, 2004, a Procedural Order was issued directing MTI to file a Motion to Dismiss its  
7 Complaint or an explanation as to why this matter should not be administratively closed.

8 On July 14, 2004, MTI filed a Conditional Motion to Dismiss. MTI agrees that the issues  
9 raised in its Complaint were resolved by Decision No. 66385, and that there is no need for the above-  
10 captioned docket to remain open. However, MTI asks that this docket be dismissed without  
11 prejudice, and that MTI be permitted to reinstate its Complaint, retroactive to the initial February 13,  
12 2003 filing date, in the event that Qwest prevails in its federal court appeal of Decision No. 66385.<sup>2</sup>

13 IT IS THEREFORE ORDERED that the Complaint filed February 13, 2003 by Mountain  
14 Telecommunications, Inc. is hereby dismissed without prejudice.

15 Dated this 24<sup>th</sup> day of September, 2004

16  
17 

18 DWIGHT D. NODES  
ASSISTANT CHIEF ADMINISTRATIVE LAW JUDGE

19 The foregoing was mailed/delivered  
20 this 24 day of September, 2004 to:

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28 <sup>2</sup> *Qwest Corporation v. Arizona Corporation Commission, et al.*, United States District Court for the District of Arizona,  
No. CV 03-2462 PHX FJM.

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