



BEFORE THE ARIZONA CORPORATION COMMISSION

CARL J. KUNASEK  
Chairman  
JAMES M. IRVIN  
Commissioner  
WILLIAM A. MUNDELL  
Commissioner

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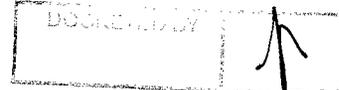
Arizona Corporation Commission

DOCKETED

2000

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Docket No. T-00000A-97-0238

IN THE MATTER OF U S WEST  
COMMUNICATIONS, INC.'S  
COMPLIANCE WITH § 271 OF THE  
TELECOMMUNICATIONS ACT OF 1996

COMMENTS OF AT&T AND TCG  
ON CHECKLIST ITEMS 3 AND 13

AT&T Communications of the Mountain State, Inc. and TCG Phoenix (collectively "AT&T"), hereby file their initial comments on Checklist Items 3 (Nondiscriminatory Access to Poles, Ducts, Conduits, and Rights-of-Way) and 13 (Reciprocal Compensation for the Exchange of Local Traffic).

**A. Checklist Item 3: Access to Poles, Ducts, Conduits and Rights of Way.**

Section 27(c)(2)(B)(iii) requires BOCs to provide "nondiscriminatory access to the poles, ducts, conduits, and rights-of-way owned or controlled by the [BOC] at just and reasonable rates in accordance with the requirements of section 224."<sup>1</sup>

In the *Local Competition Order*, the FCC interpreted section 251(b)(4) as requiring nondiscriminatory access to incumbent local exchange carriers' ("LECs") poles, ducts, conduits and rights-of-way for competing providers of telecommunications services in accordance with the requirements of section 224.<sup>2</sup> The Federal Communications Commission ("FCC") has reinforced the requirements set out in its *Local Competition Order*

<sup>1</sup> *Application of BellSouth Corporation Pursuant to Section 271 of the Communications Act of 1934, as amended to Provide In-Region InterLATA services in Louisiana*, CC Docket No. 98-121, Memorandum Opinion and Order, FCC 98-271 (rel. Oct. 13, 1998), ¶ 171 ("*BellSouth Second Louisiana Order*").

<sup>2</sup> *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, FCC 99-266 (rel. Aug. 6, 1996).

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1 in its recent *Order on Reconsideration*.<sup>3</sup> In addition, the FCC more recently interpreted the  
2 revised requirements of section 224 governing rates, terms and conditions for  
3 telecommunications carriers' attachments to utility poles in the *Pole Attachment*  
4 *Telecommunications Rate Order*.<sup>4</sup>

5 Section 224(f)(1) states that "[a] utility shall provide a cable television system or any  
6 telecommunications carrier with nondiscriminatory access to any pole, duct, conduit, or  
7 right-of-way owned or controlled by it."<sup>5</sup> Notwithstanding this requirement, section  
8 224(f)(2) permits a utility providing electric service to deny access to its poles, ducts,  
9 conduits, and rights-of-way, on a nondiscriminatory basis, "where there is insufficient  
10 capacity and for reasons of safety, reliability and generally applicable engineering  
11 purposes."<sup>6</sup>

12  
13 Section 224 also contains two separate provisions governing the maximum rates that  
14 a utility may charge for "pole attachments."<sup>7</sup> Section 224(b)(1) states that the Commission  
15 shall regulate the rates, terms, and conditions governing pole attachments to ensure that they  
16 are "just and reasonable."<sup>8</sup> Notwithstanding this general grant of authority, section 224(c)(1)  
17 states that "[n]othing in [section 224] shall be construed to apply to, or to give the  
18 Commission jurisdiction with respect to the rates, terms, and conditions, or access to poles,  
19  
20

21  
22 <sup>3</sup> *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC  
Docket No. 96-98, Order on Reconsideration, FCC 99-266 (rel. Oct. 26, 1999). ("*Order on Reconsideration*")

23 <sup>4</sup> *Implementation of Section 703(e) of the Telecommunications Act of 1996, Amendment of the*  
*Commission's Rules and Policies Governing Pole Attachments*, CS Docket No. 97-151, 13 FCC Rcd 6777  
(1998) (*Pole Attachment Telecommunications Rate Order*).

24 <sup>5</sup> 47 U.S.C. § 224(f)(1). Section 224(a) defines "utility" to include any entity, including a LEC, that  
controls, "poles, ducts, conduits, or rights-of-way used, in whole or in part, for any wire communications."  
25 47 U.S.C. § 224(a)(1).

26 <sup>6</sup> 47 U.S.C. § 224(f)(2).

<sup>7</sup> Section 224(a)(4) defines "pole attachment" as "any attachment by a cable television system or  
provider of telecommunications service to a pole, duct, conduit, or right-of-way owned or controlled by a  
utility." 47 U.S.C. § 224(a)(4).

<sup>8</sup> 47 U.S.C. § 224(b)(1).

1 ducts, conduits and rights-of-way as provided in [section 224(f)], for pole attachments in any  
2 case where such matters are regulated by a State."

3 In its recent *Bell South Second Louisiana* decision, the FCC concluded that  
4 BellSouth demonstrated that it was providing nondiscriminatory access to its poles, ducts,  
5 conduits, and rights-of-way at just and reasonable rates, terms and conditions by  
6 demonstrating that it has established nondiscriminatory procedures for: (1) evaluating  
7 facilities requests pursuant to section 224 of the Act and the *Local Competition Order*; (2)  
8 granting competitors nondiscriminatory access to information on facilities availability; (3)  
9 permitting competitors to use non-BellSouth workers to complete site preparation; and (4)  
10 compliance with state and federal rates.  
11

12 The Commission also concluded that, consistent with the Commission's regulations  
13 implementing section 224, we conclude that BellSouth must provide competing  
14 telecommunications carriers with access to its poles, ducts, conduits, and rights-of-way on  
15 reasonable terms and conditions comparable to those which it provides itself and within  
16 reasonable time frames. Procedures for an attachment application should ensure expeditious  
17 processing so that "no [BOC] can use its control of the enumerated facilities and property to  
18 impede, inadvertently or otherwise, the installation and maintenance of telecommunications  
19 . . . equipment by those seeking to compete in those fields."<sup>9</sup> Pursuant to the Commission's  
20 rules, BellSouth must deny a request for access within 45 days of receiving such a request or  
21 it will otherwise be deemed granted.<sup>10</sup> If BellSouth denies such a request, it must do so in  
22 writing and must enumerate the reasons access is denied, citing one of the permissible  
23 grounds for denial discussed above. A lack of capacity on a particular facility does not  
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<sup>9</sup> *Local Competition Order*, 11 FCC Rcd at 16067.

<sup>10</sup> 47 C.F.R. § 1.1403(b).

1 entitle a BOC to deny a request for access. Sections 224(f)(1) and 224(f)(2) require a BOC  
2 to take all reasonable steps to accommodate access in these situations. If a  
3 telecommunications carrier's request for access cannot be accommodated due to a lack of  
4 available space, a BOC must modify the facility to increase capacity under the principle of  
5 nondiscrimination.<sup>11</sup>

6  
7 There are numerous problems with U S WEST's treatment of this checklist item in  
8 its SGAT. U S WEST does not provide sufficient information regarding the terms and  
9 conditions under which it intends to offer access to poles, ducts and rights-of-way for it to be  
10 determined whether it will provide nondiscriminatory access. In addition, U S WEST's  
11 SGAT fails to satisfy critical requirements of the Act, the FCC rules and implementing  
12 orders and Section 224 of the Communications Act. U S WEST's SGAT is particularly  
13 silent on the terms and conditions on which it will offer access to rights-of-way ("ROW").  
14

15 In addition to these problems, there are numerous other deficiencies. First, in  
16 Section 10.8.2, U S WEST sets forth the terms and conditions for accessing poles, ducts and  
17 rights of way and states that it will provide nondiscriminatory access. It then states that the  
18 terms and conditions are set forth in a document entitled "U S WEST Pole and Attachments  
19 and/or Innerduct Occupancy General Terms and Conditions." U S WEST has not presented  
20 that document as evidence in this proceeding. Therefore, there is no way to evaluate the  
21 terms and conditions set forth in that document. In short, there is no way for this  
22 Commission to ascertain whether the terms and conditions set forth in that document are  
23 nondiscriminatory. Nor is there any way to determine if the terms and conditions set forth in  
24 the document are consistent with the provisions of the SGAT. For this reason alone, U S  
25 WEST cannot satisfy checklist item iii.  
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<sup>11</sup> *Local Competition Order*, 11 FCC Rcd at 16075-76.

1 Second, nowhere in the SGAT does U S WEST provide assurances to competitive  
2 local exchange carriers (“CLECs”) that it will provide access to poles, ducts and rights-of-  
3 way “owned or controlled by” U S WEST as is required by the Act. Without such  
4 assurances, U S WEST would not be legally bound to provide access to the full panoply of  
5 poles, ducts and rights-of-way required by the Act.

6 Similarly, the SGAT provides no guarantee that U S WEST will provide access to  
7 and use of poles, ducts and rights-of-way to the same extent and for the same purpose as U S  
8 WEST may access or use such poles, ducts and rights-of-way, as is required by the FCC.<sup>12</sup>

9 Third, Section 10.8.4.6 of the SGAT addresses denial of access, but this section fails  
10 to acknowledge that U S WEST may only deny a request for access for reasons of safety,  
11 reliability and generally applicable engineering purposes, provided these principles are  
12 applied in a nondiscriminatory manner.<sup>13</sup> The lack of capacity does not automatically entitle  
13 U S WEST to deny a request for access. If a CLEC request for access cannot be  
14 accommodated due to a lack of available capacity, U S WEST must modify the facility to  
15 increase its capacity under the principle of nondiscrimination and must explore  
16 accommodation in good faith with the party seeking access.<sup>14</sup>

17 Fourth, U S WEST may not reserve space for the provision of telecommunications or  
18 video service to the detriment of a new entrant, although the utility may reserve space for its  
19 core utility service.<sup>15</sup> The SGAT is completely silent on when and how U S WEST will  
20 reserve space for itself. The SGAT should explicitly address this issue, in order to ensure  
21 that U S WEST will not use the SGAT’s silence to advantage itself.  
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26 <sup>12</sup> *BellSouth Second Louisiana Order*, ¶ 178.

<sup>13</sup> 47 U.S.C §224(f)(2); *Local Competition Order*.

<sup>14</sup> 47 U.S.C §224(f)(2); *Order on Reconsideration*, ¶ 8.

<sup>15</sup> *Local Competition Order*, ¶ 1120.

1 Fifth, Section 10.8.2.17 provides that the CLEC may use any contractor approved by  
2 U S WEST. The FCC has indicated that an incumbent LEC may not use such an approval  
3 process to discriminate against competitors by delaying their ability to commence facilities  
4 work.<sup>16</sup> Such assurances must be provided by U S WEST.

5 Sixth, Section 10.8.2.6 provides that if U S WEST determines that rearrangements or  
6 modifications are required before CLEC's facilities can be accommodated, such  
7 modification will be included in the CLEC's nonrecurring charges. Similarly, Section  
8 10.8.2.11 speaks fairly broadly about modifications and imposes costs upon CLECs for such  
9 modifications. Section 224 limits responsibility for modification costs to any party who  
10 "adds to or modifies its existing attachment after receiving notice" of a proposed  
11 modification.<sup>17</sup> Further, the FCC, in its *Local Competition Order*, states that a utility or  
12 other party that uses a modification as an opportunity to bring its facilities into compliance  
13 with applicable safety or other requirements will be deemed to be sharing in the  
14 modification and will be responsible for its share of the modification cost.<sup>18</sup> In addition, the  
15 FCC has indicated that attaching entities will not be responsible for sharing in the cost of  
16 governmentally-mandated pole or other facility modification, because such costs are not  
17 caused by the attaching party and would occur in any event.<sup>19</sup> U S WEST's SGAT is  
18 unclear as to the modification costs that CLECs will be required to pay.

19 U S WEST does not make any affirmative statement as to what ROW will be made  
20 available or where it will be made available. There should be an affirmative statement that  
21 access to all ROW, whether on public property, private property or owned property, that is  
22 owned or controlled by U S WEST, will be made available to the CLEC. For example, U S  
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<sup>16</sup> *BellSouth Second Louisiana Order* ¶181.

<sup>17</sup> 47 U.S.C. §224 (h).

<sup>18</sup> *Local Competition Order*, ¶ 105.

1 WEST makes no affirmative statement about access to Multiple Dwelling Unit (MDU) and  
2 other multiple tenant environments. The FCC has tentatively concluded that the obligations  
3 under Section 224 encompass in-building conduit, such as riser conduit, that may be owned  
4 or controlled by U S WEST.<sup>20</sup> U S WEST should allow access to this type of location in the  
5 same manner and in the same places that U S WEST has access. Availability of space on  
6 rooftops of U S WEST buildings and public and private buildings where U S WEST has  
7 access is also not mentioned. U S WEST must make affirmative statements on its definition  
8 of ROW, where it is available, and how it is made available.  
9

10 Nor does the SGAT describe how a CLEC can order right-of-way. The SGAT refers  
11 to methods for applying for and ordering poles and ducts, but does not specify any  
12 mechanisms for ordering or negotiating ROW.  
13

14 In addition, the new SGAT specifically prohibits CLECs from making splices in the  
15 central office manhole. If U S WEST is making splices in the central office manhole, or has  
16 made splices there, this provision is discriminatory.

17 Moreover, Paragraph 10.8.2.19 of the SGAT would seem to require CLECs to give  
18 up the use of ROW when U S WEST decides to abandon it or to buy the poles/innerduct  
19 from U S WEST. If U S WEST sells poles or innerduct to another party, this paragraph  
20 seems to preclude the CLECs rights for existing use. This could be very expensive for the  
21 CLECs and potentially disruptive to existing service. U S WEST should include provisions  
22 in any contract for sale of poles, innerduct or rights-of-way that protects existing and  
23 continuing CLEC use of the conveyed poles, conduits, ducts or rights-or-way.  
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<sup>19</sup> *Order on Reconsideration*, ¶ 106.

<sup>20</sup> *Promotion of Competitive Networks in Local Telecommunications Market*, WT Docket No. 99-217, Notice of Proposed Rulemaking and Notice of Inquiry, FCC 99-141 (rel. July 7, 1999), ¶ 44.

1 U S WEST is in the process of selling large chunks of its rural serving area to  
2 Citizens Utilities, including property in Arizona. U S WEST presents no evidence as to the  
3 impact this sale will have on existing interconnection agreements. Nor does U S WEST  
4 present any evidence as to what will happen to CLECs' existing rights in poles, ducts,  
5 conduit and rights-of-way. U S WEST must provide assurances that its agreements with  
6 Citizen's Utilities, or any other company with which U S WEST is negotiating for the sale  
7 of rural exchanges, will honor existing interconnection agreements with CLECs, including  
8 rights CLECs currently have in poles, ducts, conduits and rights-of-way.

10 AT&T has experienced problems, caused by U S WEST, in the provisioning of new  
11 access lines to Multiple Dwelling Units and to some campus type business arrangements  
12 using AT&T's Hybrid Fiber Coax facilities to supply local telephony. U S WEST is using  
13 existing, proprietary contracts with MDU and campus business operators to exclude AT&T  
14 from accessing rights of way and access to attachment arrangements in the immediate  
15 vicinity of the MDUs and campus businesses which are necessary for the installation of the  
16 new access facilities. This prevents AT&T from providing competitive service to residential  
17 and business customers located within the complexes. There is some indication that U S  
18 WEST is misusing proprietary information, obtained from AT&T in the course of AT&T's  
19 ordering of access and number portability, to alert sales and marketing teams of potential  
20 customer losses in these locations. U S WEST sales and marketing personnel then contact  
21 the owner or operator of the MDU or campus complex to assure the exclusion of AT&T  
22 from the areas necessary for the placement of new facilities. These actions by U S WEST  
23 are designed to exclude AT&T from placing competing facilities and offering residence and  
24 business customers a competitive alternative.  
25  
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1           Given the problems and issues stated above, U S WEST can not hope to complete  
2 checklist item 3 before it modifies its SGAT and interconnection agreements. Further, U S  
3 WEST must discontinue policies of exclusion to MDU and business campuses and the  
4 misuse of CLEC proprietary information.  
5

6       **B. Checklist Item 13: Reciprocal Compensation.**

7           Section 271(c)(2)(B)(xiii) of the Act (checklist item (xiii)) requires that a BOC's  
8 access and interconnection include "[r]eciprocal compensation arrangements in accordance  
9 with the requirements of Section 252(d)(2)."<sup>21</sup> In turn, Section 252(d)(2)(A) states that "a  
10 State commission shall not consider the terms and conditions for reciprocal compensation to  
11 be just and reasonable unless (i) such terms and conditions provide for the mutual and  
12 reciprocal recovery by each carrier of costs associated with the transport and termination on  
13 each carrier's network facilities of calls that originate on the network facilities of the other  
14 carrier; and (ii) such terms and conditions determine such costs on the basis of a reasonable  
15 approximation of the additional costs of terminating such calls."<sup>22</sup>  
16

17           Reciprocal compensation is the payment by one local carrier to another for the  
18 transport and termination of local traffic. If traffic is balanced, each carrier sending  
19 approximately the same number of minutes to the other, then the net payment would be zero.  
20 This would constitute a bill-and-keep situation, where each carrier bills its own customers  
21 and keeps the revenue. When one carrier sends more minutes of traffic to the other, that  
22 carrier must pay the other for the termination of excess minutes.  
23

24           The SGAT confuses interconnection trunks with a U S WEST product called "Local  
25 Interconnection Service" ("LIS"). In paragraph 7.3.1.1.3, U S WEST describes  
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<sup>21</sup> 47 U.S.C. § 271(c)(2)(B)(xiii).

1 interconnection trunks, which can be provided by either party, as LIS trunks. LIS is a  
2 “product” that U S WEST has developed to provide leased facilities for interconnection to  
3 CLECs. A CLEC may provide interconnection trunks to U S WEST for the exchange of  
4 traffic. It is doubtful that the CLEC would have a “product” called LIS. The U S WEST  
5 language in the SGAT should be more generic in nature, for interconnection trunks, and  
6 should be more definitive that either party may provide interconnection trunks. This  
7 confusion between interconnection trunks and LIS occurs throughout the reciprocal  
8 compensation section of the SGAT.  
9

10 In addition, U S WEST’s SGAT improperly assumes that the CLEC must have a  
11 Point of Interconnection (“POI”) at every U S WEST wire center. This discriminates  
12 against the CLEC, forcing the CLEC to provision and pay for a trunking network as large as  
13 the U S WEST network. This issue was already arbitrated in Arizona and the Commission  
14 determined that because single POIs per LATA were technically feasible, U S WEST must  
15 allow such interconnection. U S WEST has evolved its network for 100 years, putting many  
16 more switches in place than would be considered efficient by today’s standards. U S WEST  
17 would force the CLECs to provide POIs for every wire center and to pay for tandem  
18 trunking when they can not provide a POI at a wire center. This is additional expense that  
19 the CLECs should not be forced to bear. While this provision is not in the reciprocal  
20 compensation portion of the SGAT, it impacts the reciprocal compensation section as the  
21 cost sharing provisions contained in paragraphs 7.3.1.1.3.1 and 7.3.2.3 (a) assume that the  
22 CLECs are required to trunk to the U S WEST wire center rather than some other point of  
23 the CLEC’s choice. Leaving this language in the SGAT is contrary to the Act, FCC rules  
24 and implementing orders and this Commission’s orders.  
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<sup>22</sup> *Id.*, § 252(d)(2)(A).

1 SGAT paragraph 7.3.1 excludes the use of third party transit providers for the  
2 exchange of traffic “absent a separately negotiated agreement . . . .” CLECs may use third  
3 parties for tandem functions, for instance. No detail or information is provided which would  
4 indicate the type of agreement that would be acceptable for this arrangement. U S WEST  
5 must provide specific language that would indicate the types of agreements and  
6 arrangements that will be allowed.  
7

8 In paragraphs 7.3.1.1.3.1, 7.3.2.3 (a), and 7.3.4.1.3, U S WEST assumes that the  
9 factor for ISP traffic, or any traffic to an enhanced service provider, will be totally ignored  
10 for purposes of reciprocal compensation. This Commission has not determined that ISP  
11 traffic should be excluded for purposes of reciprocal compensation. Indeed, this  
12 Commission recently ruled in an interconnection complaint matter that ISP traffic should be  
13 treated as local in nature. In the Matter of the Petition of Electric Lightwave, Inc. to  
14 Establish an Interconnection Agreement with U S WEST Communications, Inc., Decision  
15 No. 62015 (November 2, 1999). Until the FCC adopts rules relating to this traffic, the  
16 SGAT should be consistent with the Arizona Commission’s Order treating this traffic as  
17 local for purposes of reciprocal compensation.  
18

19 Paragraph 7.3.4.2.3 of the SGAT is incorrect from an engineering point of view, is  
20 contrary to common practice, and cannot be supported by FCC orders. In this paragraph, U  
21 S WEST is requiring that the host switch for a remote office be considered as a tandem  
22 switch. This provision would burden the CLEC with tandem switching charges in a  
23 discriminatory manner, when no such charge is warranted. A remote office is the site of one  
24 or more Remote Switching Units (“RSUs”). The RSU provides remote switching functions  
25 for lines that are terminated on it. However, for all intents and purposes, the RSU is nothing  
26 more than a switching module on the host switch, no different from other switch modules

1 attached to the host switch except for the distance between the RSU and the host switch. U  
2 S WEST chose to place remote switches in its network for economic efficiency. Other  
3 alternatives are available, such as Digital Loop Carrier. In no way is the host switch  
4 performing tandem functions for the remote switch. If it were, all switches would be, or  
5 could be, defined concurrently as end offices and tandem switches. All modern switches  
6 have multiple switch modules. Under the U S WEST definition, each switch module could  
7 be classified as a local switch and every host switch could be considered as a tandem.  
8 Double tandem charges would be assessed because the host switch will many times use a  
9 real tandem switch to access other end offices. U S WEST end office switches that host  
10 remote modules are not currently identified as tandem switches in the U S WEST network.  
11 There is no provision in the Act or FCC orders which will support this definition of tandem  
12 switching. The distance between the remote office and the host switch cannot be counted as  
13 tandem access.  
14

15  
16 U S WEST cannot meet the qualifications for this checklist item until U S WEST  
17 brings its SGAT into compliance with FCC and Arizona rules and regulations.

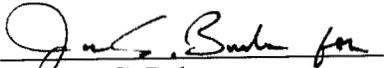
### 18 CONCLUSION

19 U S WEST fails to meet the requirements of the Act and FCC orders for these  
20 checklist items. U S WEST must revise and clarify its SGAT to incorporate the  
21 requirements established by the FCC for access to poles, ducts, conduit and rights-of-way.  
22 In addition, U S WEST must revise its SGAT on reciprocal compensation to make clear that  
23 interconnection is available for reciprocal compensation purposes and to eliminate the  
24 improper POI requirement.  
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RESPECTFULLY SUBMITTED this 8th day of February, 2000.

AT&T COMMUNICATIONS OF THE  
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### VERIFICATION

I, Kenneth Wilson, being duly sworn, hereby state that I am a Senior Consultant and Technical Witness with Boulder Telecommunications Consultants, LLC and have been retained by AT&T Communications of the Mountain States, Inc. and AT&T Local Services on behalf of TCG Phoenix to provide expertise on technical matters in Arizona Docket No. T-00000A-97-0238. I verify that I have read the attached **COMMENTS OF AT&T AND TCG PHOENIX ON CHECKLIST ITEMS 3 AND 13** and state that, to the best of my knowledge, information and belief, the contents thereof are true and correct.

Dated: February 7, 2000.

Kenneth Wilson

Subscribed and sworn to before me, this 7<sup>th</sup> day of February, 2000.

Alexandria Rustin  
NOTARY PUBLIC

residing at 1875 Lawrence, #1575  
Denver, CO 80202  
My Commission expires 5-3-12

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that the original and 10 copies of Comments of AT&T and TCG on  
3 Checklist Items 3 and 13 were filed this 8<sup>th</sup> day of February, 2000, with:

4 Arizona Corporation Commission  
5 Docket Control – Utilities Division  
6 1200 West Washington Street  
7 Phoenix, AZ 85007

8 and that a copy of the foregoing was hand-delivered, this 8<sup>th</sup> day of February, 2000 to the  
9 following:

10 Timothy Berg  
11 Fennemore Craig, P.C.  
12 3003 North Central Ave., #2600  
13 Phoenix, AZ 85012

14 and that a copy of the foregoing was sent via United States Mail, postage prepaid, this 8<sup>th</sup>  
15 day of February, 2000 to the following:

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17 Arizona Corporation Commission  
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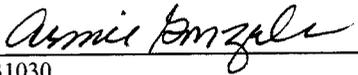
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