



0000012080

CARL  
C  
JI  
COM

WILLIAM A. MUNDELL  
COMMISSIONER



ORIGINAL *OB*

BRIAN C. McNEIL  
EXECUTIVE SECRETARY

RECEIVED

ARIZONA CORPORATION COMMISSION  
DOCKETED

2000 OCT 18 P 12:14

Oct 18, 2000

AZ CORP COMMISSION  
DOCUMENT CONTROL

DOCKETED BY	<i>JJ</i>
-------------	-----------

Mr. Brian McNeil, Executive Secretary  
Ms. Deborah Scott, Utilities Director  
Arizona Corporation Commission  
1200 W. Washington St.  
Phoenix, Arizona 85007

*T-01051B-99-0105*

Re: Qwest Rate Case Proceedings – Settlement Negotiations

Dear Mr. McNeil and Ms. Scott:

I am concerned about the current controversy arising from the US West/Qwest rate case, and the reported settlement negotiations occurring between the company and Commission Staff. As you are aware, in May of 1998, this Commission ordered US West (now Qwest) to file an application for a rate case on the belief that it was over-earning. That Decision (No. 60928), which granted US West's application for a waiver to A.A.C. R14-2-102(C)(1), was made with the caveat that if the company was truly over-earning profits, such facts would be revealed in the context of a subsequent rate case procedure. The Decision states on page 6;

“It is clear that many of US WEST's cost and expense levels have changed and need to be examined, and it would be inappropriate to examine only those that would benefit US WEST. Therefore, US WEST should be required to file a rate application to enable the Commission to examine all of the Company's cost, expense and revenue levels.”

On October 7, 2000, an article appeared in The Arizona Republic which reported that Commission staff was negotiating a settlement agreement with Qwest. Based on an October 11, 2000 letter to The Arizona Republic from the Commission's Public Information Officer, it appears that the author of the article confused staff's pre-filed testimony with provisions of a negotiated settlement. However, that same letter raises important issues of concern as a matter of procedure.

The letter states, “The concept of a settlement was addressed in a procedural sense – to emphasize the fact that an evidentiary hearing still takes place, followed by an order drafted by the hearing officer *and ending with a decision by the Commissioners in a open meeting.*” [Emphasis added]. Indeed, it is the decision of a majority of Commissioners which drives public policy in all regulatory matters.

My concern arises from the fact that my office was never conferred with on the issue of whether to engage in settlement negotiations with Qwest. As a purely procedural matter, Commission staff is not barred by our own ex-parte rules to confer with Commissioners on how to proceed with any specific matter pending before us. Given that Decision No. 60928 ordered US West/Qwest to file a rate application on the alarm that the company might be over-earning profits, in addition to the numerous allegations that the Commission's decision in US West/Qwest's depreciation matter has caused a \$100 million dollar rate increase, I find settlement discussions inappropriate at this time.

Because the decision to proceed with settlement negotiations is one that should be made by a majority of Commissioners, I can only surmise that the Utilities Division entered into settlement negotiations on the approval of Commissioners Mundell and Kunasek. If I am incorrect in my assessment, please provide an explanation as to why Commissioners were not given input with respect to this highly important and sensitive issue.

Based on the October 17, 2000 procedural order in this matter, I am VERY concerned that the subsequent evidentiary hearing will focus more upon the merits of any proposed settlement instead of a true examination of, "all of the Company's cost, expense and revenue levels" as ordered by Decision No. 60928. On page 3 of the procedural order, it states, "IT IS FURTHER ORDERED that all Intervenors shall file specific disagreements/testimony/comments regarding the Agreement by 4:00 p.m. on November 13, 2000. IT IS FURTHER ORDERED that cross examination/direct testimony by Intervenors shall be limited to those areas filed as specific disagreements/testimony/comments."

I will also point out that by procedural order dated June 19, 2000, the Commission conducted nine public hearings around the state in order to gain "maximum public input" prior to any hearing in this matter. These public hearings occurred between June 21, 2000 and September 6, 2000, with an evidentiary hearing scheduled for September 25, 2000. During those hearings, the public was not aware of any settlement agreement between Commission staff and Qwest, and could therefore not provide any meaningful input. I find it interesting, though, that during an October 16, 2000 procedural conference, Commission staff did not request public hearings to gain "maximum public input" into any negotiated settlement between staff and Qwest.

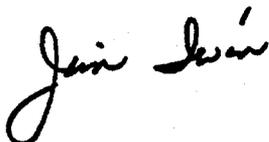
This appears to be yet another case of limiting the public from any meaningful input into a very important matter pending before this Commission. Arizona telephone consumers deserve better than public hearings intended as nothing more than political maneuvering – primarily to guard against any criticism that the 'public' was not made a part of the process. Under the October 17, 2000 procedural schedule, only *parties* will have any meaningful input into the settlement arrived at by staff and the applicant before the evidentiary hearing commences on November 29, 2000.

October 18, 2000

Page 3

Please provide an explanation to my two most pressing concerns in this matter; 1) whether the procedural decision to enter into settlement discussions is supported by a majority of Commissioners, and if not, why were we taken out of this process, and 2) why members of the public are not afforded an opportunity to provide input – through public hearings – into any negotiated settlement between Commission Staff and Qwest. I expect a response no later than October 20, 2000.

Sincerely,

A handwritten signature in cursive script that reads "Jim Irvin".

Jim Irvin, Commissioner  
Arizona Corporation Commission

Cc: Commissioner Kunasek  
Commissioner Mundell  
Jerry Rudibaugh, Chief Hearing Officer  
Lindy Funkhouser, RUCO Director  
All Parties of Record  
Docket Control