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BEFORE THE ARIZONA CORPORATION COMMISSION

2000 NOV 20 P 4:18

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Chairman
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Commissioner

AZ CORP COMMISSION NOV 20 2000
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5
6 IN THE MATTER OF THE APPLICATION
7 OF U S WEST COMMUNICATIONS, INC.,
8 A COLORADO CORPORATION, FOR A
9 HEARING TO DETERMINE THE EARNINGS
10 OF THE COMPANY, THE FAIR VALUE OF
THE COMPANY FOR RATEMAKING
PURPOSES, TO FIX A JUST AND
REASONABLE RATE OF RETURN THEREON
AND TO APPROVE RATE SCHEDULES
DESIGNED TO DEVELOP SUCH RETURN.

DOCKET NO. T-01051B-99-0105

QWEST CORPORATION'S RESPONSE
TO THE JOINT MOTION OF AT&T
AND COX TO RECONSIDER
PROCEDURAL SCHEDULE

11

12 Qwest Corporation ("Qwest"), formerly U S WEST
13 Communications, Inc., hereby responds to the Joint Motion of AT&T
14 Communications of the Mountain States, Inc. ("AT&T") and Cox
15 Arizona Telcom, L.L.C. ("Cox") requesting that the Hearing
16 Division reconsider the schedule adopted in the October 17, 2000
17 Procedural Order.

18 Qwest believes that the schedule adopted in the Procedural
19 Order allows for the full consideration of the Settlement
20 Agreement proposed by Qwest and the Arizona Corporation Commission
21 Staff ("Staff"). The procedural concerns raised by AT&T and Cox
22 not only lack merit, but have also been thoroughly considered and
23 rejected by the Hearing Division. Further, the additional issues
24 raised by AT&T and Cox speak to the merits of the Settlement
25 Agreement. Such substantive issues are not relevant to the

26

1 procedural schedule and may be appropriately raised at the
2 hearing.

3 **A. The Procedural Order Affords The Parties An Adequate**
4 **Opportunity To Raise Objections To the Settlement**
5 **Agreement.**

6 One month after the issuance of the Procedural Order, with a
7 majority of the dates provided for therein having past, AT&T and
8 Cox are requesting that the schedule set forth in the Procedural
9 Order be reconsidered. Not only is their request belated, the
10 bases for their request have been exhaustively considered and
11 rejected.

12 The dates contained in of the Procedural Order were
13 discussed during the October 16, 2000 pre-hearing conference.
14 During the October conference, AT&T and Cox raised their concerns
15 about the proposed schedule. The Administrative Law Judge
16 considered their arguments and decided on the schedule in the
17 Procedural Order. The Joint Motion of AT&T and Cox does not
18 raise any new or additional concerns about the procedural
19 schedule. Therefore, there is no need to reconsider the
20 Procedural Order.

21 AT&T and Cox once again argue that schedule in the
22 Procedural Order must be lengthened in order to provide notice to
23 interested parties and afford additional time to understand the
24 Settlement Agreement. In support of their request, AT&T and Cox
25 incorrectly state that they were excluded from the settlement
26 negotiations and that they have had only a few weeks to
understand the Settlement Agreement.

1 Qwest. Therefore, there is no need to reconsider the Procedural
2 Order.

3 Additionally, AT&T and Cox assert that the suspension of the
4 time-clock rules compromise these proceedings. There are no
5 time-clock rules which afford either AT&T or Cox any set pre-
6 hearing schedule. The only rule cited by AT&T and Cox concerns a
7 post-hearing time-clock. Therefore, AT&T and Cox are not
8 prejudiced by the suspension of the time-clock rules.

9 Lastly, AT&T and Cox suggest that the voters' rejection of
10 Proposition 108 signals a need for additional time for the
11 parties to understand and comment on the Settlement Agreement.
12 Any inferences attributed to voter preference concerning
13 Proposition 108 are misplaced because the Price Cap Plan proposed
14 in the Settlement Agreement is not identical to Proposition 108.
15 Unlike the Settlement Agreement, Proposition 108 provided for the
16 deregulation of all services in certain areas. The Price Cap
17 Plan merely permits Qwest to treat as competitive, new services
18 and those determined to be competitive by the Commission.
19 Therefore, any claim that the defeat of Proposition 108 warrants
20 a change in the procedural schedule is erroneous.

21 **B. Substantive Challenges To the Settlement Agreement May**
22 **Be Raised At The Hearing.**

23 AT&T and Cox raise two issues which concern the merits of
24 the Settlement Agreement. These issues are not relevant to the
25 adequacy of the procedural schedule and should be reserved for
26 the hearing.

1 On October 6, 2000, all parties including AT&T and Cox were
2 provided with a detailed Statement of Principles of Settlement
3 and the Terms, Conditions and Operation of the Price Cap Plan.¹
4 Staff and Qwest met with various parties, including AT&T on
5 October 12, 2000 and Cox on October 13, 2000, in order to explain
6 the settlement principles and the Price Cap Plan. Further, Staff
7 solicited proposed changes from the other parties. Neither Cox
8 nor AT&T submitted specific language or provisions to be included
9 in the Agreement.

10 On October 20, 2000 the parties received the Settlement
11 Agreement. Thereafter, the parties had over three weeks to serve
12 discovery requests on Qwest and Staff. Pursuant to the
13 Procedural Order, Qwest was required to respond to the discovery
14 within 24 hours, thereby affording the parties sufficient time to
15 seek additional information. Although afforded the opportunity
16 for discovery, AT&T served only one data request on October 17,
17 2000 and one data request on October 19. Cox served two sets of
18 data requests, one on October 26, 2000 and the other on November
19 8, 2000.

20 The history of the Settlement Agreement demonstrates that
21 the parties have had ample opportunity review the Settlement
22 Agreement and seek additional information or clarification from
23

24 _____
25 ¹ The Price Cap Plan contained in the Settlement Agreement is
26 essentially the plan proposed by Mr. Shooshan in his August 9, 2000
testimony. Therefore, the parties have had several months to consider
the plan.

1 First, AT&T and Cox assert that the Settlement Agreement is
2 not consistent with the Competitive Telecommunications Services
3 Rules (the "Rules"). Contrary to these arguments, the Settlement
4 Agreement and Price Cap Plan are consistent with the Commission
5 rules. To the extent that the parties wish to challenge the
6 Settlement Agreement on these grounds, the appropriate place to
7 do so is the hearing on the merits of the Agreement.

8 Second, AT&T and Cox contend that Qwest's and Staff's
9 agreement as to Qwest's revenue requirement is inappropriate. As
10 with any settlement, the revenue requirement contained in the
11 Settlement Agreement reflects a compromise. The revenue
12 requirement is not as high as Qwest believes it should be, nor as
13 low as Staff may propose. However, there is nothing
14 inappropriate about agreeing to a revenue requirement that both
15 parties find acceptable in the context of the settlement.

16 Regardless of whether the issues raised by AT&T and Cox have
17 any merit, they are not issues that can or should be addressed in
18 connection with their request to reconsider the Procedural Order.
19 All parties, including AT&T and Cox, were permitted to raise
20 these and any other objections in their prefiled testimony and at
21 the November 29, 2000 hearing.

22 The scope of the hearing was affirmed during the November 2,
23 2000 pre-hearing conference held in response to RUCO's motion for
24 clarification. During the pre-hearing conference the
25 Administrative Law Judge confirmed that each party may raise its
26 objections to the Settlement Agreement, file prefiled testimony

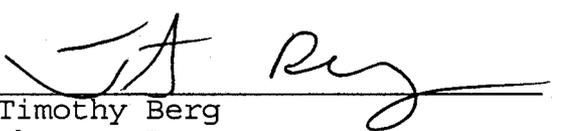
1 is support of its position, and advocate its position at the
2 hearing. (11/2/00 Procedural Conference transcript at 8-9).

3 The scope of the hearing has been defined in the October 17,
4 2000 Procedural Order and reconfirmed during the November 2, 2000
5 pre-hearing conference. Therefore, no further reconsideration of
6 the Procedural Order is necessary.

7 Based on the foregoing, the Procedural Order need not be
8 reconsidered and this matter should proceed to hearing.

9 RESPECTFULLY SUBMITTED this 20TH day of November, 2000.

10 FENNEMORE CRAIG, P.C.

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12
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