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Commission

~~BEFORE THE~~ ARIZONA CORPORATION COMMISSION

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Chairman

JAMES M. IRVIN

Commissioner

WILLIAM A. MUNDELL

Commissioner

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AZ CORP COMMISSION
DOCUMENT CONTROL

IN THE MATTER OF THE APPLICATION)
OF U S WEST COMMUNICATIONS, INC.)
A COLORADO CORPORATION, FOR A)
HEARING TO DETERMINE THE)
EARNINGS 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

JOINT RESPONSE OF AT&T AND
COX TO MOTION FOR
PROCEDURAL ORDER AND
REQUEST FOR AN EXPEDITED
RULING

AT&T Communications of the Mountain States, Inc. ("AT&T") and Cox Arizona
Telcom, L.L.C. ("Cox") hereby responds to the Motion for Procedural Order and Request for an
Expedited Ruling filed on December 5, 2000 by Qwest Corporation ("Qwest").

Qwest has filed a remarkable motion. Qwest seeks to accelerate further an already
accelerated process. The schedule proposed by Qwest (i) gives the parties inadequate time to
brief complicated issues, (ii) deprives the Hearing Officer a full opportunity to make a well
reasoned decision after careful consideration of the issues and (iii) forces the Commission to
consider exceptions in less than 24 hours.

Equally troubling is Qwest's concern that this settlement will be unreasonably delayed if
a new Commissioner examines the merits of the agreement. Any concern about a lack of
institutional knowledge is a red herring. The main issues regarding the proposed settlement
arose less than two months ago when the agreement was filed. The Commission did not consider
the settlement issues prior to that time. If the agreement is good for consumers and in the public
interest, why would the new Commission not promptly approve the agreement?

Decisions made in the eleventh hour without standard due process protections rarely save the State time or expense. The problems created by the proposed schedule far outweigh any benefit associated with rushing to vote prior to the end of December. The schedule proposed by Qwest would require parties to file briefs next Tuesday. Hearing Officer Rodda would have to issue an order based on those briefs and the hearing record in just four business days. Exceptions would be filed 10 days later, on December 28th, and Commissioners would be required to vote on the recommended order the very next morning. This schedule poses a number of very serious problems.

1. The Hearing Officer Will Not Have Adequate Time to Learn the Case

Qwest is not complaining that the current schedule interposes inordinate delay. Indeed, the current schedule moves with remarkable speed given the events of the last few weeks. On November 24, 2000, the Commission's Chief Hearing Officer, and the hearing officer assigned this case, was dismissed by the Commission. Hearing Officer Jane Rodda, who is located in Tucson, was assigned the case. She had not worked on the case prior to her assignment. On Monday, November 27, 2000, the case file was shipped to Hearing Officer Rodda. Despite her admitted lack of familiarity with the case, she agreed to move forward with the scheduled hearing on November 29, 2000. Qwest is now asking that a new Hearing Officer assigned to a complex case review the record and issue a recommended opinion and order in less than a week's time. Hearing Officer Rodda, through no fault of her own, is faced with a difficult undertaking and has much to do to thoroughly understand the arguments. Presiding over the hearing was not an effective way to thoroughly learn the arguments. Furthermore, Qwest chose (for its own strategic reasons) not to cross-examine key witnesses who opposed the settlement agreement. This was Qwest's option, but it denied the Hearing Officer the opportunity to obtain a better understanding of the settlement's shortcomings. The schedule proposed by Qwest

simply does not give Hearing Officer Rodda sufficient time to study the case and draft a recommended opinion and order.

Qwest's presumptuous motion assumes to know precisely how much time Hearing Officer Rodda needs to review the briefing and draft an order. This is a complex settlement which adopts a new system of local service pricing in Arizona. Just two days before he was dismissed, Chief Hearing Officer Jerry Rudibaugh offered the following comments concerning the Price Cap Plan: "I can tell you that I certainly have some major concerns over that plan and certainly have questions in those areas . . . This is clearly not a done deal . . ." 11/23/2000 Hearing, Tr. at 23. The Price Cap Plan should receive close scrutiny. For example, the Plan allows Qwest to competitively price services in geographic zones. This proposal, which was one component of ballot Proposition 108, was rejected by 80% of Arizona voters just one month ago. Hearing Officer Rodda should decide what is a reasonable amount of time to study and evaluate the plan and draft an order.

2. The Post-Hearing Brief Deadline Proposed by Qwest is Unreasonable

Parties were informed on Monday, December 4, 2000, that post-hearing briefs would be due on Monday, December 18, 2000. Qwest proposes that parties now be ordered to file briefs six days earlier, or on December 12, 2000. The briefing schedule was already compressed and reply briefs were eliminated. To further compress the deadlines threatens to turn the hearing and briefing process on the Settlement Agreement into a charade.

3. The Commissioners, the Hearing Officer and Parties Must have Time to Review Exceptions to the Recommended Opinion and Order

This proposed schedule requires parties to file exceptions to the recommended opinion and order by December 28th, just one day before the open meeting date proposed by Qwest. This schedule is far too compressed. The Commissioners, Hearing Officer Rodda, the parties, and the public should have time to review all exceptions filed in the case. The Qwest schedule would

require the parties to draft their exceptions over the Christmas holiday and would force the Commissioners to review and consider exceptions the night before the open meeting. In response to these proposed deadlines, Commissioner Mundell recently commented: "I don't think that gives the public, or myself, adequate time to digest the order or the exceptions." THE TRIBUNE, December 6, 2000, B1, B2. AT&T and Cox agree. Indeed, A.A.C. R14-2-103(H)(11)(c) provides that the hearing officer should issue a recommended opinion and order *20 days prior* to the open meeting where the order will be discussed. The schedule proposed by Qwest allows only 11 days between the recommended opinion and order and the open meeting, and greatly disadvantages those who wish to file exceptions to the recommended opinion and order.

4. This "Case" Has Not Been Pending for Two Years

Before the Commission today in this docket is a Price Cap Plan which, if approved, will dramatically change local service pricing in Arizona. This plan was first presented the parties in early October, just two months ago. This proposal has not been pending before the Commission for two years. Ironically, what has been pending for two years (the rate case and Qwest revenue requirement) are topics that were declared off-limits to all parties during the hearings. The delays that occurred in U S WEST's original rate case were largely the result of U S WEST's insistence that the depreciation case be decided before (and outside) the rate case, an approach opposed by DOD, RUCO and many local service competitors. In the last few months, the only delays in this case have been those requested by Qwest. Staff and Qwest requested, and were given, extensions of the hearing date in this docket on September 18 and on October 4.

Qwest's disappointment that this case has taken longer than expected to resolve does not warrant adopting a schedule that will compromise Commission's final order. The schedule proposed by Qwest almost certainly will compromise the Commission's final order because,

realistically, it does not provide sufficient time for the Commissioners to evaluate the merits of the proposal. If the Commission hastily adopts an unlawful or anti-competitive price cap plan, more time will ultimately be invested unraveling and amending the old plan to arrive at a lawful and fair plan for competitive pricing in Arizona. For these reasons, AT&T and Cox respectfully request that the Hearing Officer deny Qwest's Motion for Procedural Order and Request for an Expedited Schedule.

RESPECTFULLY SUBMITTED this 8th day of December, 2000.

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CERTIFICATE OF SERVICE

I hereby certify that the original and 10 copies of Response to Motion for Procedural Order and Request for an Expedited Ruling were filed this 8th day of December, 2000, with:

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and that a copy of the foregoing was hand-delivered, this 8th day of December, 2000, to the following:

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