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BEFORE THE ARIZONA CORPORATION COMMISSION

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IN THE MATTER OF THE APPLICATION )  
OF US WEST COMMUNICATION, INC. A )  
COLORADO CORPORATION, FOR A )  
HEARING TO DETERMINE THE EARNINGS )  
OF THE COMPANY FOR A HEARING TO )  
DETERMINE THE EARNINGS OF THE )  
COMPANY FOR RATEMAKING PURPOSES, )  
TO FIX A JUST AND REASONABLE RATE )  
OF RETURN THEREON AND TO APPROVE )  
RATE SCHEDULES )

DOCKET NO. T-01051B-99-0105

NOTICE OF FILING

Enclosed for filing are an original and ten(10) copies of the Brief, on behalf of the United States Department of Defense and All Other Federal Executive Agencies, in the above referenced proceeding.

Copies have been served on all known parties in accordance with the enclosed Service List.

Respectfully submitted this 15<sup>th</sup> day of December, 2000.

Sincerely,

*Peter Q. Nyce, Jr.*

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Enclosure

# BEFORE THE ARIZONA CORPORATION COMMISSION

CARL J. KUNASEK

Chairman

JIM IRVIN

Commissioner

WILLIAM A. MUNDELL

Commissioner

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**

## BRIEF

**OF THE UNITED STATES DEPARTMENT OF DEFENSE**

**And**

**ALL OTHER FEDERAL EXECUTIVE AGENCIES**

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By

Peter Q. Nyce, Jr.  
General Attorney

December 18, 2000

**BRIEF**  
**Of the United States Department of Defense**  
**And**  
**All Other Federal Executive Agencies**

**Table of Contents**

I. Introduction .....	1
II. The Settlement Agreement Is In The Public Interest.....	2
III. The Commission's Imputation Rules Should Be Clarified and/ or Revised .....	3
IV. The Wording of the Settlement Agreement Should Be Clarified As Necessary.....	4
V. Conclusion.....	6

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**DOCKET NO. T-01051B-99-0105**

**BRIEF**

**OF THE UNITED STATES DEPARTMENT OF DEFENSE**

**And**

**ALL OTHER FEDERAL EXECUTIVE AGENCIES**

The Department of Defense and all other Federal Executive Agencies  
("DOD/FEA") hereby submits this Brief in the above-captioned proceeding.

## I. Introduction and Summary

DOD/FEA maintains facilities of all types and size throughout Arizona. In aggregate, DOD/FEA is probably the largest consumer of telecommunications services in the state. As a large user, DOD/FEA has consistently supported the Commission's efforts to promote competition in all telecommunications markets. Until competition provides an effective control over incumbent local exchange carrier ("ILEC") prices, however, DOD/FEA urges the Commission to continue to regulate the ILECs in a firm but fair manner.

DOD/FEA has been an active participant in this proceeding, and the related depreciation proceeding,<sup>1</sup> since June 1998. DOD/FEA finds that the Settlement Agreement between the Commission Staff and Qwest dated October 20, 2000, is in the public interest based upon the full record of this proceeding. DOD/FEA finds that the revenue requirement determination and Price Cap Plan established by the Settlement Agreement will promote competition and provide Qwest with the opportunity to earn a fair rate of return over the next three years.

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<sup>1</sup> Docket No. T-01051B-97-0689

## **II. The Settlement Agreement Is In The Public Interest**

In its January 8, 1999, filing, Qwest proposed an increase of \$225.9 million in authorized net revenues, with \$70.9 million to be implemented immediately. DOD/FEA, Staff, the Residential Utility Consumer Office ("RUCO") and AT&T all found Qwest's revenue requirement proposal to be excessive. The Settlement Agreement authorizes a \$42.9 million increase in net intrastate revenues, with \$17.6 million to be implemented immediately. DOD/FEA finds that the Settlement Agreement represents a reasonable compromise given the many contentious issues raised by the parties and the inherent uncertainty of revenue requirement projections. The fact that all revenue increases are applied to competitive services, while all revenue decreases relate to noncompetitive or wholesale services, places the burden on Qwest to realize the net revenue increase authorized under the Settlement Agreement.

DOD/FEA also finds the proposed Price Cap Plan to be in the public interest. The productivity factor of 4.2 percent represents a realistic, but challenging, target. The three-year period of the Price Cap Plan represents a long enough period to provide Qwest with a real incentive, but a short enough period to prevent Qwest from reaping a windfall if the productivity factor is found to be too low. In the interim, the strengthening of the penalties associated with service quality failure should serve to discourage the achievement of higher earnings at the expense of service quality.

DOD/FEA also finds that the proposed \$5 million per year decrease in access charges serves the public interest. In fact, DOD/FEA urged the parties to agree to a larger annual decrease in access charges. A larger decrease could be offset by either

an End User Common Line ("EUCL") charge or a further increase in the Basket 3 price cap.

**III. The Commission's Imputation Rules Should Be Clarified and/or Revised**

The Price Cap Plan states:

Nothing in this Price Cap Plan is intended to change or modify in any way the imputation requirements contained in A.A.C. R-14-1-1310.<sup>2</sup>

It was noted during the hearing in this proceeding that the above citation should be corrected to read A.A.C. R-14-2-1310. This section of the Commission's rules states, in part, the following:

An incumbent local exchange carrier shall recover in the retail price of each telecommunications service offered by the company the TSLRIC of all nonessential, and the imputed prices of all essential services, facilities, components, functions, or capabilities that are utilized to provision such telecommunications service, whether such service is offered pursuant to tariff or private contract.<sup>3</sup>

It became apparent during the hearing that Qwest considers originating access to be a nonessential service and terminating access to be an essential service for purposes of this rule. Qwest apparently considers the price floor for its intrastate toll service to include only the Total Service Long Run Incremental Cost ("TSLRIC") of originating

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<sup>2</sup> Settlement Agreement, Attachment A, Section 3g.

<sup>3</sup> A.A.C. R-14-2-1310 C1.

access, instead of the price of originating access. Since the TSLRIC of originating access is far below the price of originating access, this interpretation allows a much lower price floor for Qwest's toll services.

DOD/FEA disagrees with Qwest's interpretation of the Commission's imputation rule. Both originating and terminating access are essential to the provision of retail toll services. If Qwest were allowed to price below a floor which imputed the price of both originating and terminating access, a price squeeze could be created that would be seriously anti-competitive.

The Commission should promptly clarify this section of its rules to confirm that originating access is an essential component of retail toll service. In any case, for purposes of this Settlement Agreement, the Commission should specify that originating access is an essential component of retail toll service.

**IV. The Wording of the Settlement Agreement Should Be Clarified As Necessary**

During the hearings in this proceeding, it became evident that the wording of the Settlement Agreement and Price Cap Plan was either in error or unclear in certain places. DOD/FEA encourages Qwest and the Commission Staff to agree to clarifying revisions in these instances.

In particular DOD/FEA urges the following revisions to Attachment A of the Settlement Agreement:

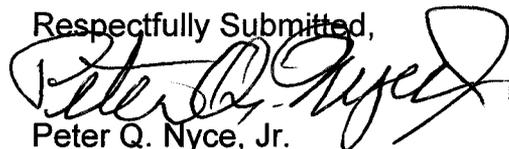
<b>Section</b>	<b>Shown As</b>	<b>Should Be</b>
2b vi	The formula for the Price Index for Basket 1 is:	The formula for the Price <b>Cap</b> Index for Basket 1 is:

2b vi	Section (6) below details the data that Qwest shall provide to enable calculation and monitoring of the cap.	Section (5) below details the data that Qwest shall provide to enable calculation and monitoring of the cap.
2c vi	Price increases for services in this Basket require 30 day notice to the Commission by submission to Staff, and 30 days notice to consumers.	Price <b>changes</b> for services in this Basket require 30 day notice to the Commission by submission to Staff, and 30 days notice to consumers.
3g	A.A.C. R14-1-1310	A.A.C. R-14-2-1310
4e ii	The mere repackaging of existing Basket 1 services does not qualify the existing services to be "new services."	The mere repackaging of existing Basket 1 services does not <b>create</b> a "new service" or "new service package" for purposes of the Price Cap Plan.

**V. Conclusion**

WHEREFORE, the premises considered, the United States Department of Defense and All Other Federal Executive Agencies urge the Commission to approve the Settlement Agreement between the Commission Staff and Qwest dated October 20, 2000, with the clarifications recommended herein.

Respectfully Submitted,



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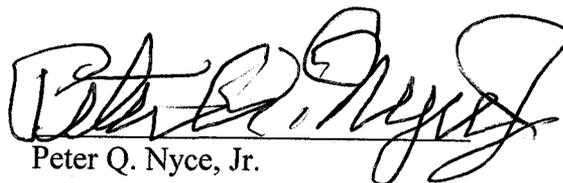
All Other Federal Executive  
Agencies

Dated this 15<sup>th</sup> day of December 2000.

CERTIFICATE OF SERVICE

I, Peter Q. Nyce, Jr., certify that I have this day caused the Brief, on behalf of the Department of Defense and All Other Federal Executive Agencies, to be served on all known parties by sending a copy by either Federal Express or by regular U.S. Mail delivery to those on the "Service List" attached hereto.

Executed December 15, 2000, at Arlington Virginia.

A handwritten signature in black ink, appearing to read "Peter Q. Nyce, Jr.", written over a horizontal line. The signature is stylized and cursive.

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