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BEFORE THE ARIZONA CORPORATION COMMISSION

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AZ CORP COMMISSION
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IN THE MATTER OF THE INVESTIGATION)
OF THE COST OF TELECOMMUNICATIONS)
ACCESS)
_____)

DOCKET NO. T-00000D-00-0672

AT&T BRIEF ON
PROCEDURAL ISSUES

Pursuant to the Administrative Law Judge's direction at the October 14, 2003, prehearing conference, AT&T Communications of the Mountain States, Inc. ("AT&T"), provides the following brief on two procedural issues: (1) whether the Commission must undertake a fair value determination in the context of reducing access charges in this proceeding; and (2) whether the Commission should adopt a schedule that bifurcates investigation of Qwest Corporation ("Qwest") access charges from independent companies ("ICOs") charges. As discussed more fully below, the Commission can avoid the necessity of undertaking a fair value determination by requiring that access charge reductions are implemented on a revenue neutral basis. The Commission should bifurcate the proceeding and establish a schedule that would enable Commission determinations for Qwest by June 2004 and the ICOs by December 2004; if the Commission does not bifurcate the proceeding, the Commission should adopt a schedule that would enable resolution of all disputed issues for all companies by the end of 2004.

Arizona Corporation Commission

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DISCUSSION

1. The Commission Need Not Undertake a Fair Value Determination in this Proceeding.

The Arizona Constitution, as interpreted by the state courts, requires the Commission to determine the fair value of a utility's property within the state when discharging the Commission's duty to prescribe just and reasonable rates for utility service. *E.g., Scates v. Arizona Corp. Comm'n*, 118 Ariz. 531, 578 P.2d 612 (Ct. App. 1978). The Commission engaged in such an analysis when it established the current rate caps for Qwest and the current rates for each of the ICOs. Arizona courts have held that a rate change that increases or decreases the utility's overall revenues requires a new fair value assessment to determine whether the change "result[s] in a rate of return greater or lesser than that established in the [prior] rate hearing." *Id.* at 534, 578 P.2d at 615. The need for such a determination, however, does not arise in the context of revenue neutral rate adjustments because the revenues the company generates from its adjusted rates remains unchanged. Indeed, the court in *Scates* expressly observed that the increase the Commission improperly approved in that case was accompanied by "no concomitant reduction in the charges for other services." *Id.*

The Commission thus can avoid the necessity of engaging in a fair value determination in this proceeding by requiring access charge reductions on a revenue-neutral basis. The Commission can undertake such a revenue neutral approach by authorizing carriers to offset ordered access charge reductions with concomitant increases in their existing rates (or rate caps, in the case of Qwest) or with the establishment of one or more new rate elements. A revenue neutral approach would require that the Commission investigation into access charges include issues arising out of the selection of which rates could be increased or new rate elements created, but these additional issues would be far less complex than undertaking a fair value determination

for each access service provider.

The alternative would be to undertake some form of subsequent fair value determination for each company if the Commission has ordered the company to reduce its access charges, which would impose a significant and unwarranted delay in the Commission's access reform efforts.¹ Pursuit of such an alternative, moreover, would virtually necessitate bifurcation of this proceeding. The Arizona Supreme Court has determined with respect to a fair value determination that "when a monopoly exists, the rate-of-return method is proper," but in a competitive environment, the Commission "has broad discretion . . . to determine the weight to be given this factor in any particular case." *US WEST Communications, Inc. v. ACC*, 201 Ariz. 242, 246, 34 P.2d 351, 355 (Sup. Ct. 2001). Qwest has consistently asserted in other proceedings that such an environment exists in its service territory, while the ICOs have never made such a claim. If Qwest makes that same assertion in this proceeding and the Commission agrees, a fair value determination for Qwest would be very different than a fair value determination for the ICOs, and those determinations should be made in separate proceedings.²

2. The Commission Should Bifurcate This Proceeding and Should Establish a Schedule That Resolves the Disputed Issues Expeditiously.

AT&T supports Staff's proposal to bifurcate this proceeding. While the general subject matter of access charge reform is the same for both Qwest and the ICOs, the issues raised are substantially different. Qwest has acknowledged the need to reduce its intrastate access charges, and access charges represent a significant but nevertheless small minority of Qwest's intrastate revenues. ICOs, on the other hand, dispute the need for access charge reform and obtain most of

¹ The Commission has the authority to determine if rates are just and reasonable. A.R.S. § 40-203. It can order the level of just and reasonable rates. If a reduction or increase in rates is necessary, it can order the company to file new rates in compliance with its order. However, before the rates filed by a monopoly LEC to comply with the order can become effective, a fair value determination is necessary.

² At the procedural conference held on October 14, 2003, Qwest asserted a *Scates* analysis is required. AT&T can only assume that Qwest believes it is still a monopoly. TR 44 - 47 (Oct. 14, 2003).

their intrastate revenues through access charges. Access reform for the ICOs thus will involve many more – and more complex – issues than reducing Qwest's access charges. Investigating access charge reform for all of these companies simultaneously, therefore, will delay Qwest access charge reductions and further complicate review of ICO access charge issues.

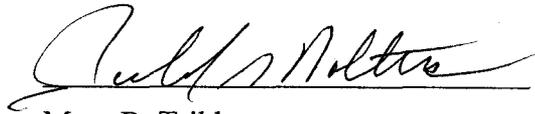
AT&T previously proposed a schedule for a bifurcated proceeding. That proposal contemplates a Commission determination on access charge reform for Qwest by June 2004 and for the ICOs by December 2004. AT&T remains committed to this schedule and to assisting the Commission in its efforts to reach an efficient and expeditious resolution of this proceeding, and bifurcation provides the maximum opportunity for such a resolution. If the Commission decides not to bifurcate this proceeding, however, AT&T urges the Commission to adopt a schedule that would contemplate a Commission resolution of the entire case by the end of 2004.

CONCLUSION

The Commission should conduct this investigation as a revenue neutral access charge reform proceeding, which would eliminate the need to make a fair value determination. The Commission should also bifurcate this proceeding into separate phases for Qwest and for the ICOs and establish schedules that would permit a Commission order by June 2004 for Qwest and December 2004 for the ICOs. If the Commission decides not to bifurcate the proceeding, the Commission should establish a schedule that would permit a Commission order resolving all issues in this proceeding by the end of 2004.

Dated this 31st day of October, 2003.

**AT&T COMMUNICATIONS OF THE
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A handwritten signature in cursive script, appearing to read "Richard S. Wolters", is written over a horizontal line.

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(Docket No. T-00000D-00-0672)

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