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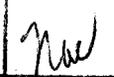
March 15, 2001

VIA HAND DELIVERY

Arizona Corporation Commission
DOCKETED

MAR 15 2001

Docket Control
Arizona Corporation Commission
1200 West Washington
Phoenix, AZ 85007

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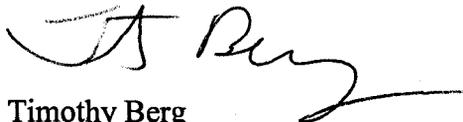
Re: Midvale Rate Case, Docket No. T-0235A-00-0512

To Whom it May Concern:

Enclosed for filing in the above matter are an original and ten copies of the Direct Testimony of Starla R. Rook on behalf of Qwest Corporation. If you have any questions, please do not hesitate to call me.

Sincerely,

FENNEMORE CRAIG


Timothy Berg

TB/dp
Enclosure

cc: All parties of record

BEFORE THE ARIZONA CORPORATION COMMISSION

WILLIAM A. MUNDELL

CHAIRMAN

JIM IRVIN

COMMISSIONER

MARC SPITZER

COMMISSIONER

IN THE MATTER OF MIDVALE)
TELEPHONE EXCHANGE, INC.'S)
APPLICATION FOR AUTHORITY TO)
INCREASE RATES AND FOR)
DISBURSEMENTS FROM THE ARIZONA)
USF)

DOCKET NO. T-02532A-00-0512

DIRECT TESTIMONY OF

STARLA R. ROOK

QWEST CORPORATION

Contains Confidential and Proprietary Information

(Redacted Version)

MARCH 15, 2001

TESTIMONY INDEX

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1 **Q. PLEASE STATE YOUR NAME, OCCUPATION, AND BUSINESS**
2 **ADDRESS.**

3
4 A. My name is Starla R. Rook. I am employed by Qwest Corporation
5 (Qwest) as Manager –Policy and Law. My business address is 5090 N.
6 40th Street, Room 425, Phoenix, AZ, 85018.

7
8 **Q. PLEASE REVIEW YOUR WORK EXPERIENCE, EDUCATION, AND**
9 **PRESENT RESPONSIBILITIES.**

10
11 A. I have been continuously employed by Qwest and its predecessor
12 companies, U S WEST and Northwestern Bell, since 1974. I have held a
13 number of management positions in various departments, including
14 Engineering, Regulatory, Retail Markets, and most recently, Policy and
15 Law. I have a certificate in Program Management from Denver University.
16 My current responsibilities include developing testimony, conducting
17 research, responding to interrogatories, and assisting in pre-hearing
18 preparation. The primary focus of my work for the past four years has
19 been on gathering data and facts on IntraLATA Toll¹, Operator Services,
20 Directory Assistance, and Basic Exchange competition within the former
21 U S WEST fourteen state operating region, performing analysis on the
22 information, and integrating in-depth competitive intelligence into pre-filed
23 testimony.

24
25 **Q. HAVE YOU TESTIFIED IN ARIZONA PREVIOUSLY?**
26

¹ Throughout this testimony, the term "toll" is used interchangeably with the term "long distance."

1 A. No, I have not; however, I have been actively involved in the preparation
2 of written testimony in Docket No. T-1051B-99-0105, Qwest's rate case
3 proceeding.
4

5 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**
6

7 A. My testimony will respond to the proposal put forth by Midvale Telephone
8 Exchange, Inc. (Midvale) in this proceeding for authority to expand the
9 local calling areas between Midvale's Cascabel exchange to Qwest's
10 Benson and San Manuel exchanges.²
11

12 **Q. DOES QWEST SUPPORT THE EXPANSION OF LOCAL CALLING**
13 **AREAS SUBMITTED BY MIDVALE IN THIS DOCKET?**
14

15 A. No, it does not. Qwest believes that substantial call volumes and a
16 mutual community of interest must be demonstrated prior to establishment
17 of an extended area service (EAS) route. Otherwise, individuals who,
18 though required to pay for the service, will make little or no use of it, while
19 others, who make substantial use of the service, will pay little for it. An
20 analysis performed by Qwest illustrates that only a few Qwest customers
21 call Cascabel each month. Midvale's proposal will provide little or no
22 benefit to Qwest customers, yet Qwest customers will be asked to bear
23 the financial burden of the proposed calling area expansion.
24

25 In addition, Qwest is concerned about the precedence established, should
26 the Arizona Corporation Commission (Commission) allow the creation of
27 overlapping local calling areas such as Midvale has proposed. In other

² Direct Testimony of Don C. Reading, Midvale Telephone Exchange, Page 22.

1 states where overlapping calling areas have been implemented,
2 entrepreneurs have illegally "bridged" calls between the local calling
3 routes to bypass legitimate toll and access charges. The potential for
4 illegal EAS bridging becomes even greater once the sale of certain Qwest
5 exchanges to Citizens Utilities Rural Company (Citizens) is finalized and
6 optional two-way local calling is established between the San Manuel and
7 Tucson exchanges. EAS bridging is in direct violation of Qwest's tariffs
8 and deprives Qwest of legitimate and substantial sources of revenue.

9
10 For these reasons, Qwest is opposed to Midvale's proposal and
11 recommends it be denied.

12 I. PROCEDURAL HISTORY

13 Q. WHAT IS EAS?

14
15
16
17 A. EAS is a service that allows customers in one local calling area to call
18 customers in another local calling area for a flat monthly charge without
19 regard to number or duration of calls. The amount customers pay for EAS
20 does not vary with their usage of the service. If EAS is not in place,
21 customers calling from one local calling area to another local calling area
22 do so using toll service or dedicated facilities. The charge for toll service
23 may vary depending on the number and duration of calls to the other local
24 calling area, or on the time of day the call is placed.

25 26 Q. WHAT FACTORS HAVE HISTORICALLY BEEN CONSIDERED WHEN 27 EVALUATING WHETHER EAS SHOULD BE PERMITTED BETWEEN 28 LOCAL CALLING AREAS?

1

2 A. In Docket No. E-1051-93-183, Qwest's 1993 rate case, factors such as
3 public input, call volume and direction, socio-economic linkages, and
4 contiguity were analyzed to determine whether there was sufficient
5 community of interest to warrant EAS expansion in several exchanges.³

6

7 **Q. DID THE COMMISSION SPECIFY HOW THE LOST REVENUE**
8 **ASSOCIATED WITH EAS EXPANSIONS PROPOSED IN DOCKET NO.**
9 **E-1051-93-183 SHOULD BE RECOVERED?**

10

11 A. Yes. The Commission, in issuing its decision in the case, indicated that
12 foregone revenue should be recovered through the rate design of the rate
13 case.⁴ The Commission also indicated that in future cases, communities
14 desiring to be added to an EAS route "may have to pay their own share of
15 that additional foregone toll revenue, instead of requiring all of
16 U S WEST's customers to pay."⁵

17

18 **Q. DO ARIZONA RULES PROVIDE GUIDELINES TO BE USED IN**
19 **DETERMINING IF ESTABLISHMENT OF EAS BETWEEN LOCAL**
20 **CALLING AREAS IS JUSTIFIED?**

21

22 A. No. Following resolution of Qwest's 1993 rate case, the Commission
23 hosted an industry workshop to explore issues surrounding EAS in

³ Docket No. E-1051-93-183, 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, Decision No. 58927, January 3, 1995, Page 112.

⁴ *ID.*, Page 115.

⁵ *ID.*

1 Arizona.⁶ Participants included representatives from the Commission,
2 including Commissioner Weeks and Mr. Bob Gray, MCI, AT&T, Sprint,
3 and Qwest. The general consensus at the conclusion of the workshop
4 was that the EAS areas established in Qwest's 1993 rate case were far-
5 reaching enough that future EAS expansion would not be necessary for
6 some time. Consequently, a formal rulemaking proceeding was not
7 initiated and there are currently no rules which address the factors to be
8 considered when establishing EAS areas in Arizona.

9
10 **Q. DOES QWEST RECOMMEND THAT SUCH RULES BE**
11 **ESTABLISHED?**

12
13 **A.** Yes, especially if the Commission is now reconsidering its stance
14 regarding EAS. Adoption of rules to be applied uniformly to all
15 telecommunications providers in the state will ensure that future EAS
16 proposals are in the public interest. Guidelines addressing standardized
17 criteria to determine whether a community of interest exists, EAS costing
18 methodology, and cost recovery mechanisms have become increasingly
19 necessary as telecommunications competition has escalated in the state.
20 Local exchange companies are continually searching for ways to enhance
21 their value proposition to consumers. One avenue to accomplish this is
22 through expansion of local calling areas. EAS requests will also become
23 more prevalent as smaller communities are incorporated into larger metro
24 areas. Qwest recommends the Commission initiate a rulemaking
25 proceeding to address EAS rules.

26
27 **II. COMMUNITY OF INTEREST**

⁶ The workshop was held on July 12, 1995.

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Q. DOES MIDVALE CONTEND THAT A COMMUNITY OF INTEREST EXISTS BETWEEN ITS CASCABEL EXCHANGE AND THE QWEST EXCHANGES OF BENSON AND SAN MANUEL?

A. Yes. Dr. Reading, in his testimony for Midvale, indicates that Benson is the commercial center for Cascabel and that usage studies performed by Midvale demonstrate that Cascabel customers make 8.5 calls per line per month to Benson and 2.5 calls per month to San Manuel.⁷ Mr. Lane Williams, also testifying for Midvale, expressed that Cascabel customers must now pay a toll charge to call essential service providers such as schools, businesses, medical facilities, etc.⁸

Q. DOES QWEST AGREE WITH MIDVALE THAT CALL VOLUMES FROM CASCABEL TO THE QWEST EXCHANGES OF BENSON AND SAN MANUEL ARE SIGNIFICANT ENOUGH TO WARRANT EAS?

A. No. While there appears to be notable call volumes from Cascabel to Benson, based upon the data in Dr. Reading's testimony described above, the same cannot be said for the Cascabel to San Manuel route. Two and a half calls per month from one exchange to another cannot reasonably be considered significant.

Q. DID MIDVALE SOLICIT DATA FROM QWEST TO DETERMINE WHETHER A COMMUNITY OF INTEREST EXISTS FROM THE QWEST EXCHANGES IN QUESTION TO CASCABEL?

⁷ Don C. Reading Direct Testimony, Page 22.

1 A. No.

2

3 **Q. DID MIDVALE PRESENT ANY DATA TO THE COMMISSION RELATIVE**
4 **TO THE IMPACT ITS EAS PROPOSAL MIGHT HAVE ON QWEST AND**
5 **ITS CUSTOMERS?**

6

7 A. No.

8

9 **Q. HAS QWEST PERFORMED AN ANALYSIS OF THE CALL VOLUMES**
10 **FROM THE IMPACTED QWEST EXCHANGES TO THE MIDVALE**
11 **EXCHANGE?**

12

13 A. Yes. Qwest has analyzed call volumes from its Benson and San Manuel
14 exchanges to Cascabel to determine the level of interest among Qwest
15 customers. This analysis is summarized on Confidential Exhibit SRR-1.
16 Call volumes from Benson and San Manuel exchanges to Midvale's
17 Cascabel exchange were extremely low during the study period, indicating
18 that customers in these Qwest exchanges make very few calls to the
19 Midvale exchange.⁹ As indicated in Confidential Exhibit SRR-1, fewer
20 than 2% of Qwest customers in the Benson and San Manuel exchanges
21 called Cascabel in the months studied. These call usage patterns indicate
22 no demand for expansion of the local calling area from the Qwest
23 exchanges to the Midvale exchange. From Qwest customers'
24 perspective, based on the study data, EAS to Cascabel would be an
25 unnecessary and unwanted service. If forced to pay for it, Qwest

⁸ Mr. Lane Williams Direct Testimony, Page 4.

⁹ Normally, Qwest's analysis of EAS proposals includes a review of how many customers make two or more calls per month to the petitioned exchange in a given study period. In the case of

1 customers would in essence be subsidizing another company's customers
2 while receiving little or no benefit from the service. Qwest does not
3 believe this to be sound public policy. Hence, it is Qwest's
4 recommendation that Midvale's proposal be denied.

5
6 **III. ILLEGAL EAS BRIDGING**

7
8 **Q. PLEASE DESCRIBE WHAT IS MEANT BY ILLEGAL EAS BRIDGING.**

9
10 **A.** A company engaged in EAS bridging illegally uses a combination of a line,
11 call forwarding services and possibly its own equipment to complete calls
12 between two or more overlapping EAS areas without incurring access
13 and/or toll charges. Thus, the company essentially builds a "bridge"
14 between EAS areas to avoid toll charges.

15
16 **Q. SHOULD THE POTENTIAL FOR EAS BRIDGING BE CONSIDERED BY**
17 **THE COMMISSION IN DETERMINING WHETHER REQUESTS FOR**
18 **EAS SHOULD BE APPROVED?**

19
20 **A.** Yes. Unfortunately, EAS bridging is a form of illegal arbitrage that is
21 difficult to detect and, once detected, difficult to eliminate. For example,
22 an EAS bridging case in Colorado in which the Colorado Public Utilities
23 Commission, individual commissioners, and U S WEST were defendants,
24 took almost four years to resolve. Ultimately, the case was escalated to
25 the state Supreme Court, who ruled in favor of the defendants.¹⁰ Exhibit
26 SRR-2 contains a copy of the Colorado Supreme Court Decision. To

Midvale's request, however, call volumes were so low as to require Qwest to base its analysis on the number of customers making at least *one* call per month.

¹⁰ Supreme Court, State of Colorado, No. 965A417 and 965A418, April 13, 1998.

1 avoid such activity occurring in Arizona, the Commission should include in
2 any evaluation of a proposed EAS route the potential for illegal EAS
3 bridging.

4
5 **Q. PLEASE EXPLAIN IN MORE DETAIL HOW PARTIES MAY TAKE**
6 **ADVANTAGE OF OVERLAPPING EAS AREAS TO AVOID TOLL AND**
7 **ACCESS CHARGES.**

8
9 A. Normally, when a customer wishes to call beyond his or her local calling
10 area, the call is handled by a toll provider. The end user is billed toll
11 charges for the call and the toll provider is billed switched access charges.
12 Overlapping local calling areas allow companies to illegally bridge local
13 calls so that the end user avoids paying toll charges and the bridger
14 avoids paying switched access charges. Using the Midvale request as an
15 example, the local calling areas of Benson and San Manuel will overlap
16 into Cascabel if the proposal is approved. Midvale's plan will result in
17 local calling between San Manuel and Cascabel and Cascabel and
18 Benson. However, toll charges will continue to apply for calls between
19 Benson and San Manuel. This is demonstrated on Exhibit SRR-3. An
20 EAS bridger could subscribe to local flat rated access lines in Cascabel,
21 and use computer equipment and/or call forwarding services to forward
22 calls between Benson and San Manuel, allowing customers in those
23 exchanges to bypass toll charges. This scenario is depicted on Exhibit
24 SRR-4.

25
26 **Q. IS THERE ANOTHER FACTOR RELATING TO THE POTENTIAL FOR**
27 **TOLL ARBITRAGE THAT THE COMMISSION SHOULD CONSIDER**
28 **WHEN EVALUATING MIDVALE'S EAS PROPOSAL?**

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A. Yes. Qwest is in the process of selling the Benson exchange and the Mammoth wire center in the San Manuel exchange to Citizens.¹¹ As part of the Joint Stipulation entered into between Qwest, Citizens, and the Commission Staff associated with the sale (attached as Exhibit SRR-5), Qwest and Citizens agreed to implement optional two-way local calling between the San Manuel exchange and the Tucson metropolitan calling area.¹² If Midvale's immediate EAS request is approved, calls between San Manuel and Cascabel will also be local. Once these two separate actions are completed, parties located in Benson could illegally bypass toll charges for calls to Tucson or any of the exchanges included in Tucson's local calling area¹³ by subscribing to an EAS bridging service located in Cascabel and San Manuel. The EAS bridger could receive calls from Benson, transfer them to Cascabel, transfer them to San Manuel, and then on to Tucson. In that way, all legs of the call will be local (Benson to Cascabel, Cascabel to San Manuel, and San Manuel to Tucson) and no toll charges will be incurred. This is depicted on Exhibit SRR-4. The potential for toll arbitrage in conjunction with provisions in the Qwest/Citizens sale of exchange agreement should also be carefully considered by the Commission when evaluating Midvale's request for EAS expansion.

¹¹ Docket Nos. T-01051B-99-0737 and T-01954B-99-0737, In the Matter of the Joint Application of Qwest Corporation and Citizens Utilities Rural Company, Inc. for Approval of the Transfer of Assets in Certain Telephone Wire Centers to Citizens Rural and the Deletion of Those Wire Centers From Qwest's Service Territory.

¹² Docket Nos. T-01051B-99-0737 and T-01954B-99-0737, Joint Stipulation, August 8, 2000, Page 8.

¹³ Tucson's local calling area includes Coronado, Green Valley, Marana, Robles, Tubac, and Vail.

1 **Q. WHAT IS THE POSSIBLE IMPACT ON TELECOMMUNICATIONS**
2 **COMPANIES AND THEIR CUSTOMERS IF OVERLAPPING EAS**
3 **AREAS ARE APPROVED AND EAS BRIDGING OCCURS?**
4

5 **A. Legitimate telecommunications companies will lose revenues, as usage-**
6 **based toll and switched access services are replaced with flat-rated local**
7 **access and call forwarding services. The effect of the resulting revenue**
8 **shortfall may mean higher rates for consumers. This was substantiated**
9 **by the Washington Utilities and Transportation Commission in issuing its**
10 **Order against an illegal EAS bridger in that state:**

11

12 The Commission also agrees with the Public Utilities
13 Commission of Utah in a case where it evaluated the legality
14 of EAS bridging and set forth strong policy reasons against
15 EAS bridging:

16

17 "This is not a case of small, virtuous Davids being set upon
18 by a powerful, evil Goliath out to crush legitimate
19 competition. These respondents are offering no innovation
20 in service or technology. This is a case of these
21 respondents setting out to exploit a legal anomaly which was
22 created by this Commission in an effort to promote equity
23 between telephone service providers and customers. These
24 respondents are turning the Commission's effort to promote
25 equity on its head. For their own profit, they are enabling
26 some USWC (U S WEST) customers to realize savings to
27 which they are not entitled. In the process, these
28 respondents are depriving USWC of revenues which it would
29 collect otherwise, and they are competing unfairly with
30 authorized resellers of MTS [message toll service or long
31 distance] service who abide by the applicable USWC tariffs.
32 They also do not contribute revenues which would otherwise
33 go to the Universal Service Fund, thus potentially saddling
34 telephone service subscribers in outlying areas of the state
35 with higher costs than they would incur otherwise.
36 Respondents' service is, in short, contrary to the public
37 interest." U S WEST Communications, Inc. v. Bridge

1 Communications, Inc., Docket No. 93-049-20, Utah Public
2 Utilities Commission (August 19, 1994).¹⁴
3

4 In addition, illegal EAS bridging causes call volumes which would
5 otherwise be transported over the toll network to instead be handled by
6 local trunks and switches which may not be sized to handle the increased
7 traffic. The increased local call volumes could jeopardize the integrity of
8 the local network, resulting in busy line conditions for end users.
9

10 **Q. PLEASE PROVIDE DETAILS OF QWEST'S EXPERIENCE WITH**
11 **ILLEGAL EAS BRIDGING IN OTHER STATES.**
12

13 A. Qwest encountered a non-profit organization in Washington whose
14 members paid an \$8.00 initiation fee and \$8.00 monthly dues for which
15 they were allowed to use a private telecommunications system operated
16 for their exclusive use. Access to the system was limited to 30 calls per
17 month. Some members subscribed to Qwest services that allowed them
18 to transfer calls and "donate" their lines to the non-profit corporation,
19 where they were connected to the private system. The organization
20 utilized computer equipment which enabled calls to be transferred
21 statewide. The calls were of a distance as to qualify as toll calls, but
22 because of the use of overlapping EAS areas and the call transfer
23 function, these calls were completed without payment of toll charges by
24 subscribers or access charges by the non-profit organization. The
25 Washington Utilities and Transportation Commission initiated an
26 investigation into the organization's activities, determined that it was
27 engaged in unlawful EAS bridging, and ordered it to cease and desist

¹⁴ Washington Utilities and Transportation Commission, In the Matter of Determining the Proper Classification of United & Informed Citizen Advocates Network, Docket No. UT-971515, Final

1 from conducting such activity.¹⁵ The Washington Commission Order is
2 attached as Exhibit SRR-6.

3
4 The Utah case cited previously by the Washington Commission resulted
5 from a complaint Qwest filed with the Utah Public Service Commission
6 against two illegal EAS bridgers who were offering service in overlapping
7 EAS areas. Subscribers to the service dialed a local number, entered a
8 Personal Identification Number, then dialed a telephone number outside
9 of the local calling area. For this service, subscribers were charged \$.25
10 per call, regardless of the length of the call. To provision the service, the
11 EAS bridgers purchased business access lines with call transfer
12 functionality from Qwest. The Utah Commission found the EAS bridgers
13 to be "illicit resellers of U S WEST's service," operating in violation of
14 U S WEST's tariffs, and authorized U S WEST to disconnect service. The
15 Order issued by the Utah Commission is attached as Exhibit SRR-7.

16
17 In Colorado, Qwest filed suit against three companies providing illegal
18 EAS bridging services in Qwest's service area. The illegal EAS bridgers
19 ultimately took their case to the Colorado Supreme Court, alleging that
20 they were not providing "interexchange telecommunications services,"
21 despite a Colorado Public Utilities Commission ruling to the contrary.
22 They contended they should not be required to purchase services from
23 Qwest's Access Service Tariff. The Supreme Court upheld the PUC's
24 ruling and ordered the companies to comply with all applicable tariffs,

Cease and Desist Order, February 9, 1999.

¹⁵ Docket No. UT-971515, In the Matter of Determining the Proper Classification of United & Informed Citizen Advocates Network, Commission Decision and Final Cease and Desist Order, February 9, 1999.

1 specifically, the Access Service Tariff.¹⁶ (See Exhibit SRR-2 for the
2 Colorado Supreme Court's Decision.)
3

4 **Q. IS EAS BRIDGING AS YOU'VE DESCRIBED IT IN VIOLATION OF**
5 **QWEST'S ARIZONA TARIFFS?**
6

7 **A. Yes. Language in Qwest's Exchange and Network Services Tariff,**
8 **Section 2.2.1 C. 4. states:**
9

10 A customer shall not provide switched voice or data
11 communications between local exchange areas,
12 including the bridging of Extended Area Service
13 (EAS) zones, using underlying services from this
14 Tariff or the Exchange and Network Services Catalog.
15 Providers of interexchange service that furnish
16 service between local calling areas, must purchase
17 services from the Access Service Tariff for their use in
18 furnishing their authorized intrastate
19 telecommunications services to end user customers.
20

21 In addition, Section 6.1.2. D. 2. b. of the Competitive Exchange and
22 Network Services Administrative Guidelines defines fraudulent use of toll
23 service as:
24

25 The obtaining, or attempting to obtain, or assisting
26 another to obtain or to attempt to obtain MTS, by
27 rearranging, tampering with, or making connection
28 with any facilities of the Company, or by any trick,
29 scheme, false representation, or false credit device,
30 or by or through any other fraudulent means or device
31 whatsoever, with intent to avoid the payment, in
32 whole or in part, of the regular charges for such
33 service.

¹⁶ Supreme Court, State of Colorado, No. 96SA417 and 96SA418, April 13, 1998.

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Qwest's Access Services Tariff also contains provisions designed to prohibit arbitrage such as that employed by illegal EAS bridgers:

Providers of interexchange service that furnish service between Local Calling Areas must purchase services from this Tariff for their use in furnishing their authorized intrastate telecommunications services to end user customers and for operational purposes directly related to the furnishing of such services.
(Section 1.1)

While tariff protections exist, it is very difficult to identify illegal EAS bridging, as it requires a knowledge of how the customer is using the local access line and proof that the intent is to bypass toll and switched access charges. Consequently, it is far better to avoid the opportunity for illegal EAS bridging by not allowing overlapping local calling areas than to try to rectify the problem through Commission and Court intervention after it has occurred.

Q. HAVE PREVIOUS ACTIONS BY THIS COMMISSION PROHIBITED ILLEGAL EAS BRIDGING?

A. Yes. The Commission has avoided establishing overlapping local calling areas, thereby eliminating the possibility of illegal EAS bridging. However, as the number of EAS requests is likely to increase, it is important that the Commission be aware of the potential for illegal EAS bridging when evaluating whether proposals are in the best interest of Arizona consumers.

IV. CONCLUSION

1

2 **Q. PLEASE SUMMARIZE YOUR TESTIMONY**

3

4 A. Qwest recommends that a separate rulemaking be initiated to address the
5 need for standardized criteria to be applied uniformly to all
6 telecommunications providers when determining whether the expansion of
7 local calling areas is in the public interest. Midvale has not demonstrated
8 that a community of interest exists between its Cascabel exchange and
9 the Qwest exchange of San Manuel. Furthermore, a study of Qwest call
10 volumes to Cascabel indicates that fewer than 2% of Qwest customers in
11 the Benson and San Manuel exchanges make more than one call to
12 Cascabel per month. The calling volumes clearly show there is simply no
13 advantage to Qwest customers in Midvale's proposal.

14

15 In addition, Qwest urges the Commission to carefully consider the
16 potential for illegal EAS bridging and toll arbitrage presented by this and
17 future EAS proposals. Midvale's proposal will result in a calling structure
18 which has, in other states, proven advantageous to those who illegally
19 desire to bypass toll and access charges by bridging overlapping local
20 calling areas. Illegal EAS bridging requires significant Company and
21 Commission resources to uncover and arrest and has resulted in millions
22 of dollars of lost toll and access revenue for Qwest in other states where it
23 has occurred. Based on this experience, Qwest has found that it is far
24 better to avoid any and all possibilities for EAS bridging than to try to
25 correct the situation later. Actions taken by the Commission in this case
26 will impact future applications and as such, should be carefully considered
27 in terms of the precedence being set.

28

1 For the above-stated reasons, Qwest recommends the Commission deny
2 Midvale's EAS proposal.

3

4 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

5 **A. Yes, it does.**

BEFORE THE ARIZONA CORPORATION COMMISSION

WILLIAM A. MUNDELL
CHAIRMAN
JIM IRVIN
COMMISSIONER
MARC SPITZER
COMMISSIONER

IN THE MATTER OF MIDVALE TELEPHONE)
EXCHANGE, INC.'S APPLICATION FOR)
AUTHORITY TO INCREASE RATES AND)
FOR DISBURSEMENT FROM THE ARIZONA)
UNIVERSAL SERVICE FUND)
STATE OF ARIZONA)
COUNTY OF MARICOPA)

DOCKET NO. T-02532A-00-0512

AFFIDAVIT OF
STARLA R. ROOK

Starla R. Rook, of lawful age being first duly sworn, deposes and states:

1. My name is Starla R. Rook. I am Manager – Policy and Law of Qwest Corporation in Phoenix, Arizona. I have caused to be filed written testimony and exhibits in support of Qwest Corporation in Docket No. T-02532A-00-0512.
2. I hereby swear and affirm that my answers contained in the attached testimony to the questions therein propounded are true and correct to the best of my knowledge and belief.

Further affiant sayeth not.

Starla R. Rook
Starla R. Rook

SUBSCRIBED AND SWORN to before me this 13th day of March, 2001.

Cheryl E. Najjar
Notary Public residing at
City, State Phoenix, Arizona

My Commission Expires:



BEFORE THE ARIZONA CORPORATION COMMISSION

WILLIAM A. MUNDELL

CHAIRMAN

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MARC SPITZER

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APPLICATION FOR AUTHORITY TO)
INCREASE RATES AND FOR)
DISBURSEMENTS FROM THE ARIZONA)
USF)**

DOCKET NO. T-02532A-00-0512

EXHIBITS OF

STARLA R. ROOK

QWEST CORPORATION

MARCH 15, 2001

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EXHIBIT 1

Proprietary and Confidential

(Redacted Version)

EXHIBIT 2

SUPREME COURT, STATE OF COLORADO
No. 96SA417 and 96SA418

96SA417
AVICOMM, INC.,
a Colorado Corporation,

Plaintiff-Appellant,

v.

THE COLORADO PUBLIC UTILITIES COMMISSION,
COMMISSIONER CHRISTINE E.M. ALVAREZ,
COMMISSIONER VINCENT MAJKOWSKI,
COMMISSIONER ROBERT HICKS, and
US WEST COMMUNICATIONS, INC.,

Defendants-Appellees.

and

AGATE MUTUAL TELEPHONE COMPANY; BIG SANDY
TELECOMMUNICATIONS, INC.; BIJOU TELEPHONE
CO-OP ASSOCIATION, INC.; COLUMBINE TELEPHONE
COMPANY; DELTA COUNTY TELE-COM, INC.;
EASTERN SLOPE RURAL TELEPHONE ASSOCIATION,
INC.; NUCLA-NATURITA TELEPHONE COMPANY;
NUNN TELEPHONE COMPANY; PHILLIPS COUNTY
TELEPHONE COMPANY; PLAINS COOPERATIVE
TELEPHONE ASSOCIATION, INC.; STRASBURG
TELEPHONE COMPANY; SUNFLOWER TELEPHONE
COMPANY, INC.; WIGGINS TELEPHONE ASSOCIATION,
("AGATE, et al."); FARMERS TELEPHONE COMPANY;
HAXTUN TELEPHONE COMPANY; PEETZ COOPERATIVE
TELEPHONE COMPANY; PINE DRIVE TELEPHONE
COMPANY; RICO TELEPHONE COMPANY; ROGGEN
TELEPHONE COOPERATIVE ASSOCIATION; STONEHAM
COOPERATIVE TELEPHONE CORPORATION; UNIVERSAL
TELEPHONE COMPANY OF COLORADO; WILLARD
TELEPHONE COMPANY, ("FARMERS et al."); and
EL PASO TELEPHONE COMPANY,

Intervenors-Appellees.

96SA418
MOUNTAIN SOLUTIONS LTD., INC., a Colorado corporation;
and DENVER DIRECT DIAL, L.L.C.,

Plaintiffs-Appellants,

v.

THE COLORADO PUBLIC UTILITIES COMMISSION,

COMMISSIONER CHRISTINE E.M. ALVAREZ,
COMMISSIONER VINCENT MAJKOWSKI,
COMMISSIONER ROBERT HICKS, and
US WEST COMMUNICATIONS, INC.,

Defendants-Appellees.

and

AGATE MUTUAL TELEPHONE COMPANY; BIG SANDY
TELECOMMUNICATIONS, INC.; BIJOU TELEPHONE
CO-OP ASSOCIATION, INC.; COLUMBINE TELEPHONE
COMPANY; DELTA COUNTY TELE-COM, INC.;
EASTERN SLOPE RURAL TELEPHONE ASSOCIATION,
INC.; NUCLA-NATURITA TELEPHONE COMPANY;
NUNN TELEPHONE COMPANY; PHILLIPS COUNTY
TELEPHONE COMPANY; PLAINS COOPERATIVE
TELEPHONE ASSOCIATION, INC.; STRASBURG
TELEPHONE COMPANY; SUNFLOWER TELEPHONE
COMPANY, INC.; WIGGINS TELEPHONE ASSOCIATION,
("AGATE, et al."); FARMERS TELEPHONE COMPANY;
HAXTUN TELEPHONE COMPANY; PEETZ COOPERATIVE
TELEPHONE COMPANY; PINE DRIVE TELEPHONE
COMPANY; RICO TELEPHONE COMPANY; ROGGEN
TELEPHONE COOPERATIVE ASSOCIATION; STONEHAM
COOPERATIVE TELEPHONE CORPORATION; UNIVERSAL
TELEPHONE COMPANY OF COLORADO; WILLARD
TELEPHONE COMPANY, ("FARMERS et al."); and
EL PASO TELEPHONE COMPANY,

Intervenors-Appellees.

Appeal from the District Court, City and County of Denver
Honorable Nancy E. Rice, Judge

EN BANC

JUDGMENT AFFIRMED

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JUSTICE MULLARKEY delivered the Opinion of the Court.
JUSTICE SCOTT dissents.

The district court consolidated AviComm, Utilities Commission, No. 96CV341 (Denver Dist. Ct. Sept. 26, 1996), and Mountain Solutions Ltd. v. Public Utilities Commission, No. 96CV240 (Denver Dist. Ct. Sept. 26, 1996) to determine whether appellants Mountain Solutions Ltd., Inc. and Denver Direct Dial, L.L.C. (collectively, the "Providers") should be required to purchase telephone services from U S West's Access Service Tariff or be allowed to continue to purchase from U S West's Exchange and Network Services Tariff. The appellants appealed the district court's ruling affirming the decision of the Public Utilities Commission (PUC) that Providers provided "interexchange telecommunications services" as defined by section 40-15-102(12), 17 C.R.S. (1993), and must purchase service from the Access Service Tariff. We have jurisdiction over this appeal pursuant to section 40-6-115(5), 11 C.R.S. (1997). We now affirm the judgment of the district court.

I.

For telephone purposes, Colorado is divided into geographic regions called "local calling areas."¹ Within those local calling areas, local exchange carriers (LECs) such as U S West,

¹ See Rule 2.33 of the Commission's Rules on Telephone Service Providers and Telephone Utilities, 4 CCR 723-2 (1998). Local calling areas are approved by the PUC pursuant to section 40-15-206, 17 C.R.S. (1993).

provide unlimited local calling service for a
When a customer wishes to call beyond his or her local calling area, the call is generally handled by an interexchange carrier (IXC). These interexchange calls are billed at a per-minute charge which the customer pays to the IXC. In turn, the IXC compensates the LEC at the originating and terminating end of the call through payment of "access charges." These access charges are a source of revenue to the LECs which helps defray the cost of providing local exchange service, and are taken into account by the PUC in setting rates.

The Providers in this case sell a service which allows a subscriber to place intrastate telephone calls outside that subscriber's local calling area without incurring long-distance toll charges. This service is possible when two local calling areas partially overlap and a Provider's office is located within the area of overlap. For example, Longmont and Boulder are in the same local calling area. Boulder and Denver are also in the same local calling area, but Denver and Longmont are not. Assume X lives in Longmont and wishes to call Y who lives in Denver. If X calls Y directly, X has made an interexchange call and pays a per-minute charge. If X is a subscriber of a Provider, however, X places a local call to the Provider located in Boulder which

² See 4 CCR 723-2-2.33 (1998); § 40-15-102(3) 17 C.R.S. (1993).

uses its computer equipment to forward X's call. Provider patches together two local phone calls to make what would otherwise be a toll call. X pays a flat rate to the Provider which is less than the toll rate would be. The Providers charge their customers a flat, monthly rate for this "call transfer service" because no long-distance charge is incurred. The call transfer service is made possible through the use of the Providers' own computers in conjunction with certain purchased U S West services under U S West's Exchange and Network Services Tariff. Thus, the Providers enable their subscribers to make interexchange calls without incurring any long-distance charges.

On October 28, 1994, the Providers filed an Application for Declaratory Order with the PUC pursuant to Rule 60 of the PUC's Rules of Practice and Procedure. See 4 CCR 723-1-60 (1996). The Providers sought, inter alia, a declaration that the Providers did not provide "interexchange telecommunications services" pursuant to section 40-15-102(12) and thus were not required to purchase services from U S West's Access Service Tariff. Numerous parties intervened including U S West, IXCs, several small LECs, and AviComm, Inc. (AviComm), a company that provides a similar service to that of the Providers' call transfer service.

This matter was referred to an administrative law judge (ALJ), and the Providers and the appellees moved for summary

judgment. The ALJ, on summary judgment, concluded
Providers provide interexchange telecommunications services or
the functional equivalent of such services and, as a result, were
required to purchase switched access from U S West pursuant to
the Access Service Tariff. The ALJ reasoned that if he were to
rule otherwise, section 40-15-102 would be in conflict with the
anti-discrimination provisions of sections 40-15-105 and 40-3-
106(1)(a), 17 C.R.S. (1993).

The PUC adopted these recommendations and held that the
Providers were in violation of the Exchange and Network Services
Tariff because they resold to customers services which could not
be resold by the terms of the tariff. The PUC stated that the
Providers could no longer purchase services from the Exchange and
Network Services Tariff because allowing them to do so would
result in illegal preferences or discrimination. The PUC
construed the phrase, "priced based upon usage," in the
definition of "interexchange telecommunications services" in
section 40-15-102(12) to be merely descriptive and not language
which exempted the Providers from the definition. Therefore, the
PUC stated, the Providers could be required to purchase services
from U S West's Access Service Tariff because they provided
"interexchange telecommunications services" as defined by statute
or the functional equivalent thereof. The PUC concluded by
holding that this matter was an adjudication and not a rule-

making procedure. The Providers appealed and the Commission affirmed the determinations of the PUC.³

II.

Before we reach the substantive issue in this appeal, we must address three preliminary matters raised by the parties: (1) whether the Federal Telecommunication Act of 1996 preempts state law; (2) whether summary judgment was improperly granted; and (3) whether the PUC engaged in improper rule-making.

A.

The Providers contend that the Federal Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (1996 Act), applies in this case and preempts any tariff that is contrary to the 1996 Act. The 1996 Act places on local exchange carriers the "duty not to prohibit, and not to impose unreasonable or discriminatory conditions or limitations on, the resale of its telecommunications services." 47 U.S.C.A. § 251(b)(1) (1991 & Supp. 1997).

Absent clear legislative intent to the contrary, statutes are given prospective application only. See Bennett v. New

³ Utilities commissions in other states have reached the same result as the PUC. See Idaho Local Exch. Cos. v. Upper Valley Communications, Inc., Case No. GNR-T-94-1, Order No. 25885, 1995 WL 82345 (Idaho PUC Feb. 3, 1995); U S West Communications, Inc. v. Bridge Communications, Inc., Docket No. 93-049-20, 1994 WL 570650 (Utah PSC Aug. 19, 1994); In re U.S. Metrolink Corp., 103 P.U.R. 4th 194 (Wash. U.T.C. 1989; see also In the Matter of a General Investigation of Digilink, No. 12.392-U (Kan. Corp. Comm'n Mar. 27, 1995).

Jersey, 470 U.S. 632, 639 (1985); Smith v. Colc Gas Co., 794 F. Supp. 1035, 1038 (D. Colo. 1992); 2 J. Sutherland, Statutes and Statutory Construction § 41.04 (5th ed. 1993). The 1996 Act was enacted long after the 1994 commencement of this proceeding, and as a result, the PUC did not consider the 1996 Act. We hold that the 1996 Act is not applicable to this case.

B.

The Providers argue that the PUC erred in granting summary judgment because disputed issues of material fact existed, namely, whether the Providers "transmit" information as is required to be deemed a telecommunications service. Section 40-15-102(29) defines "telecommunications service" as "the electronic or optical transmission of information between separate points by prearranged means." The Providers contend that the equipment and facilities used for the actual transmission of information belong exclusively to U S West and the record does not support the PUC's determination as a matter of law that the Providers transmit information. This argument is without merit.

Summary judgment is a drastic remedy and should only be granted if there is a clear showing that no genuine issue as to any material fact exists and the moving party is entitled to judgment as a matter of law. See C.R.C.P. 56; Greenwood Trust Co. v. Conley, 938 P.2d 1141, 1149 (Colo. 1997). The moving

party has the initial burden to show that there
issue of material fact. See Greenwood Trust, 938 P.2d at 1149.
Once the moving party has met its initial burden, the burden
shifts to the nonmoving party to establish that there is a
triable issue of fact. See id. The nonmoving party is entitled
to all favorable inferences that may be drawn from the undisputed
facts, and all doubts as to whether a triable issue of fact
exists must be resolved against the moving party. See Bayou Land
Co. v. Talley, 924 P.2d 136, 151 (Colo. 1996). When a trial
court is presented with cross-motions for summary judgment, the
court must consider each motion separately, review the record,
and determine whether a genuine dispute as to any fact material
to that motion exists. See Churchey v. Adolph Coors Co., 759
P.2d 1336, 1340 (Colo. 1988); AF Property Partnership v.
Department of Revenue, 852 P.2d 1267, 1270 (Colo. App. 1992). The
fact that both parties moved for summary judgment does not
decrease either party's burden of proof. See Churchey, 759 P.2d
at 1340.

Therefore, we must consider appellees' motions for summary
judgment separately and all doubts must be resolved in favor of
the Providers. See Bayou Land, 924 P.2d at 151. The Providers
acknowledge that the call transfer service is not possible
without the use of their equipment. We agree with the ALJ's
conclusion which was adopted by the PUC:

It is clear that appellants provide a service that
permits their subscribers to originate and terminate

calls between calling areas. These calls toll calls. Although U S West's network originate and terminate the calls, U S West cannot provide the connection between exchanges. There must be some intervention by [the Providers] which they provide through their [premises'] equipment and software. As such, there is transmission of information by electronic means between separate points, even if the transmission is within [a Provider's] office. Without the intervention of [the Providers], such calls could not be electronically transmitted between the calling areas.

We defer to the findings of the PUC and hold that the Providers transmit information and provide "telecommunications service" pursuant to section 40-15-102(29). There is no triable issue of fact.

C.

AviComm raises a preliminary jurisdictional issue. It argues that the PUC proceeding was a rule-making procedure conducted in violation of the requirements prescribed by Colorado law for agency rule-making. We disagree.

The proceeding at issue here was clearly adjudicatory, not rule-making, and we acknowledge that different statutory requirements apply to adjudication and rule-making under the Administrative Procedure Act. See); §§ 24-4-102 to -103, 7 C.R.S. (1997); City of Aurora v. Public Utils. Comm'n, 785 P.2d 1280, 1286-87 (Colo. 1990). An adjudicative proceeding involves a determination of rights, duties, or obligations of identifiable parties by applying existing legal standards to facts developed at a hearing conducted for the purpose of resolving the

particular interests in question. See Douglas

Comm'rs v. Public Utils. Comm'n, 829 P.2d 1303, 1307-08 (Colo.

1992); City of Aurora, 785 P.2d at 1287. In contrast, a "rule" is "the whole or any part of every agency statement of general applicability and future effect implementing, interpreting, or declaring law or policy or setting forth the procedure or practice requirements of an agency." § 24-4-102(15). If a proceeding is rule-making, then, the agency must follow the notice, publication, and content requirements detailed in section 24-4-103.

We have recognized the reality that "agency proceedings often require application of both rule-making and adjudicatory authority because of the nature of the subject matter, the issues to be resolved, or the interests of parties or intervenors." Mountain States, 816 P.2d at 284. In order to determine whether the proceeding constitutes rule-making, we look to the actual conduct and effect of the particular proceeding, as well as to the purposes for which the proceeding was brought. See id.

Here, the PUC applied existing law to the facts of this case and the decision applied to identifiable parties in a declaratory action brought by the Providers. We realize that the PUC's decision may affect other parties like AviComm which have operations similar to those of the Providers' call transfer service. However, the fact that this decision may have collateral effects upon other providers similarly situated to the

Providers in this case does not transform an act into a rule-making proceeding. "As is often the case in adjudications by the judicial branch, collateral effects to third parties result from adjudicatory proceedings." Douglas County, 829 P.2d at 1307.

AviComm cites Mountain States, 816 P.2d 278, and Home Builders Association of Metropolitan Denver v. Public Utilities Commission, 720 P.2d 552 (Colo. 1986), in support of its position. In both cases, this court invalidated PUC adjudicatory decisions because we found that the matters involved rule-making and the PUC did not follow proper rule-making procedures. In Mountain States, the PUC initiated the proceeding to determine which telecommunication products and services should be subject to the Intrastate Telecommunications Services Act. See Mountain States, 816 P.2d at 284-85. In Home Builders, the PUC adopted a new formula applicable to future permanent customers which amended an existing rule. See Home Builders, 720 P.2d at 561.

However, both of these cases are readily distinguishable from the case at hand. Unlike the proceeding in Mountain States, this proceeding was initiated by the Providers, rather than the PUC, through their request for a declaratory order, and AviComm voluntarily intervened in this action. Also the PUC in this case did not amend an existing rule, but rather, applied existing statutory standards. Administrative agencies like the PUC have a certain amount of discretion to exercise their authority through

either adjudication or rule-making. See Charne 9.2d 62, 66 (Colo. 1989) (stating that an agency may make policy through adjudication or rule-making, but that the agency's discretion is limited). This case falls within that area of discretion. Absent the Providers' filing of a declaratory action, the PUC could have instituted its own declaratory proceeding, see Mountain States, 816 P.2d at 285, or chosen to act through rule-making. Given that this action was filed and there was no on-going rule-making proceeding involving this topic, the PUC acted properly in proceeding to resolve the case before it. The PUC was not required to dismiss or hold in abeyance the Providers' declaratory action while it initiated a rule-making proceeding. The PUC acted within the bounds of its discretion and we will not overturn its decision for failure to treat this matter as rule-making.

III.

A.

Before considering the substantive issue raised by the Providers, we will summarize briefly the principles that guide our analysis. Like the district court, our review of a PUC decision is limited to determining whether the PUC has regularly pursued its authority, whether its decision is just and reasonable, and whether its conclusions are in accordance with the evidence. See § 40-6-115(3), 17 C.R.S. (1993); Silverado Communication Corp. v. Public Utils. Comm'n, 893 P.2d 1316, 1319

(Colo. 1995). In this case, there are no disputes and we are called upon to decide only issues of law. In interpreting the relevant statutes and rules, we give due deference to the PUC's interpretation because "[t]he PUC is uniquely qualified through expertise derived from many years of regulating the telecommunications industry to resolve any ambiguities that became apparent in applying the statutory criteria to particular telecommunications services." Colorado Office of Consumer Counsel v. Mountain States Tel. and Tel. Co., 816 P.2d 278, 287 (Colo. 1991) (Lohr, J., dissenting); see also Integrated Network Servs., Inc. v. Public Utils. Comm'n, 875 P.2d 1373, 1377 (Colo. 1994).

Several well established concepts of statutory construction also come into play in this case. In interpreting a statute, we must give effect to the intent of the lawmaking body, see Gambler's Express Inc. v. Public Utils. Comm'n, 868 P.2d 405, 410 (Colo. 1994), and there is a presumption that the General Assembly intends a just and reasonable result, see § 2-4-201(1)(c), 1 C.R.S. (1997); Colorado-Ute Elec. v. Public Utils. Comm'n, 760 P.2d 627, 635 (Colo. 1988). Thus, a statutory interpretation that defeats the legislative intent or leads to an absurd result will not be followed. See Conte v. Meyer, 882 P.2d 962, 965 (Colo. 1994). A statute must be read and considered as a whole and should be construed to give consistent, harmonious, and sensible effect to all of its parts. See Gambler's Express,

868 P.2d at 410. Finally, although we must give the statute's plain and ordinary meaning, see Colorado Office of Consumer Counsel v. Public Utils. Comm'n, 752 P.2d 1049, 1052 (Colo. 1988), the intention of the legislature will prevail over a literal interpretation of the statute that leads to an absurd result, see Rodriguez v. Schurr, 914 P.2d 921, 925 (Colo. 1996); People v. Bowman, 812 P.2d 725, 728 (Colo. App. 1991). With this background in mind, we turn to the substantive issue raised by the Providers.

B.

The Providers contend that they do not provide "interexchange telecommunications services" pursuant to section 40-15-102(12) and thus, are not required to purchase services from U S West's Access Service Tariff. We reject this argument.

Tariffs are the means by which utilities record and publish their rates along with all policies relating to the rates. See § 40-3-103, 17 C.R.S. (1993); U S West Communications, Inc. v. City of Longmont, 948 P.2d 509, 516 (Colo. 1997). Tariffs are legally binding, see Longmont, 948 P.2d at 517,⁴ and the proper

⁴ In Longmont, we held that a tariff was not a "statute" for the purposes of abrogating the common law rule requiring utility companies to pay for relocation costs that was stated in City & County of Denver v. Mountain States Telephone & Telegraph Co., 754 P.2d 1172 (Colo. 1988). See Longmont, 948 P.2d at 518. However, we noted as a general proposition that tariffs are legally binding. See id. at 517.

application of rates and tariffs is within the authority of the PUC. See § 40-3-102, 17 C.R.S. (1993); Silverado, 893 P.2d at 1320.

In this case, there are two tariffs at issue: 1) the Exchange and Network Services Tariff, Colorado P.U.C. No. 8 (Exchange Tariff), which provides for flat-rate local telephone services; and 2) the Access Service Tariff, Colorado P.U.C. No. 16 (Access Tariff), which provides for regulated or usage-based rates that are generally more expensive than flat-rate service. The Providers currently buy their flat-rate services from U S West pursuant to the Exchange Tariff.

Generally, an IXC operating within U S West's service area can connect to the IXC's subscribers only by purchasing service pursuant to U S West's Access Tariff under rate terms that are usage-sensitive. The Access Tariff furnishes "switched access services" to businesses that supply "interexchange telecommunications services." See Access Tariff. Section 40-15-102(28) defines "switched access" as "the services or facilities furnished by a local exchange company to interexchange providers which allow them to use the basic exchange network for origination or termination of interexchange telecommunications services." Section 40-15-102(12) of the Intrastate Telecommunications Services Act, see §§ 40-15-101 to -404, 17 C.R.S. (1993) (the Act), states:

"Interexchange telecommunications services" means telephone services, not included in basic local

exchange service, and which are priced based upon usage.

The Providers contend that they do not provide "interexchange telecommunications services" pursuant to section 40-15-102(12) because they charge a flat rate for their services, and do not price their services "based upon usage."

The PUC rejected the Providers' argument. It determined that the price "based upon usage" language of the statute was not an essential element defining interexchange telecommunications services, but rather, that the term was descriptive in nature. According to the PUC, the interexchange telecommunications services available in 1987 when the statute was drafted were priced based on usage and the statutory language simply reflected that fact. Under the PUC's reasoning, the key question is whether the telephone service offered by the Providers is "not included in basic local exchange service." Here, there is no dispute that the Providers' service is "not included in basic local exchange service." But for a Provider's ability to patch together two local telephone calls by locating its business in the overlap zone between two local calling areas, the completed telephone call would be beyond the caller's local exchange. For these reasons, the PUC found that the Providers were engaged in supplying interexchange telecommunications services.

None of the parties has pointed us to any legislative history regarding section 40-15-102(12) and our own research has

disclosed nothing relevant. This provision was article was repealed and reenacted in 1987. See ch. 313, sec. 1, § 40-15-102, 1987 Colo. Sess. Laws 1476, 1477-79.

Whether interexchange services in 1987 were priced based on usage clearly is a matter within the PUC's expertise, and this court will defer to the agency's expertise on the 1987 pricing practice. Further, we are persuaded by the logic of the PUC's conclusion that the statutory reference to pricing based on usage is intended to be descriptive rather than an essential element of the statutory definition.

To reach the opposite conclusion and to construe flat-rate pricing as dispositive would lead to absurd results. As we will demonstrate below, this is true for two reasons. First, any such pricing requirement could be easily circumvented as the Providers have done here. Second, the Providers' proposed interpretation would conflict with other relevant statutory provisions.

With respect to the first point, we note that the Providers are able to price their service at a flat rate only because they are violating the terms of the Exchange Tariff. The Exchange Tariff includes several restrictions on use of the business service including a restriction limiting use to certain parties: the customer, the customer's immediate family, the customer's employees and representatives, a communications common carrier in the provision of overseas data message service, customers who share local exchange service, joint users, and telephone

answering service. See Exchange Tariff § 2.2.:

found, and the Providers do not dispute, that the Providers' customers are general subscribers who do not fall within any of the listed categories. Additionally, the Providers violate the Exchange Tariff's prohibition on the resale of the flat-rate trunk-lines. Exchange Tariff section 2.2.5 states that the service "shall not be used for performing any part of the work of transmitting, delivering, or collecting any message where any toll or consideration has been or is to be paid any party other than [U S West]." (Emphasis added.) The PUC found, and the Providers do not dispute, that the Providers' call transfer service constitutes a prohibited resale of services to the Providers' customers. See Integrated Network Servs., 875 P.2d at 1381-82 (holding resellers are subject to measured, rather than flat, rates). Thus, if the Providers are correct that the method of pricing is dispositive, they cannot meet their own test because they cannot lawfully charge a flat rate for their services.

Second, as stated above, if we were to accept the Providers' argument, absurd results would follow including logical inconsistencies between the definitions in the statute. "Interexchange provider" is defined as "a person who provides telecommunications services between exchange areas" and "telecommunications service" is "the electronic or optical transmission of information between separate points by

prearranged means." § 40-15-102(11), (29). Because Providers transmit information between exchange areas, Providers are clearly "interexchange providers of telecommunications services." If we were to agree with the Providers' argument that they do not provide "interexchange telecommunications services," the resulting absurdity is that the Providers would be "interexchange providers of telecommunications services," while not providing "interexchange telecommunications services."

Moreover, allowing the Providers to continue purchasing from the U S West Exchange Tariff rather than the Access Tariff would raise the specter of discrimination among IXCs contrary to sections 40-15-105(1)⁵ and 40-3-106(1)(a)⁶, 17 C.R.S. (1993).

⁵ Section 40-15-105(1) provides:

(1) No local exchange provider shall, as to its pricing and provision of access, make or grant any preference or advantage to any person providing telecommunications service between exchanges nor subject any such person to, nor itself take advantage of, any prejudice or competitive disadvantage for providing access to the local exchange network. Access charges by a local exchange provider shall be cost-based, as determined by the commission, but shall not exceed its average price by rate element and by type of access in effect in the state of Colorado on July 1, 1987.

⁶ Section 40-3-106(1)(a) provides:

(1)(a) Except when operating under paragraph (b) of this subsection (1) or pursuant to article 3.4 of this title, no public utility, as to rates, charges, service, or facilities, or in any other respect, shall make or grant any preference or advantage to any corporation or person or subject any corporation or person to any prejudice or disadvantage. No public utility shall establish or maintain any unreasonable

(continued...)

Both sections prohibit U S West from granting a special advantage as to its services.⁷

The Providers assert that U S West provides three identical services to the Providers' call transfer service and those services are not provided pursuant to the Access Tariff. The three services are Foreign Exchange Service (FES), Emergency Foreign Exchange Service (EFES), and Market Expansion Line Service (MEL). FES and EFES are offered by U S West through its Private Line Transport Services Tariff, Colorado P.U.C. No. 14 sections 5.3.8, 5.3.9, while MEL is available through the Exchange Tariff section 5.4.4. The Providers originally contended before the PUC that the ALJ's decision would have unintended negative consequences on these three services, but this argument has been abandoned on appeal.

(...continued)

difference as to rates, charges, service, facilities, or in any respect, either between localities or as between any class of service. The commission has the power to determine any question of fact arising under this section.

⁷ Additionally, the PUC stated that the Providers may also be fraudulently using U S West's services, see Exchange Tariff, section 2.2.9.A.5, and may be avoiding contributing to the High Cost Fund, see § 40-15-208, 17 C.R.S. (1993). The PUC also found that the Providers violate section 40-15-206, 17 C.R.S. (1993), because the Providers' service expands its subscribers' local calling areas without PUC approval. Because of our holding, we need not address these findings.

The PUC, however, found that these three are not comparable to the Providers' service. There is no evidence in the record to support the Providers' contention of comparability and the parties rely solely on U S West tariffs appended to the appellate briefs to explain how the three U S West services operate. Interpretation of the tariffs is a matter within the PUC's expertise, and we have no basis to overturn the PUC's finding on comparability. Moreover, because of the very nature of tariffs, the inclusion of MEL, FES, and EFES in the tariffs means that subscribers to these services pay rates which properly compensate U S West for its costs. Thus, regardless of whatever technological similarities may exist among the three U S West services and the Providers' service, the critical difference is that the Providers' service does not adequately compensate U S West for its costs because the Providers do not use the Access Tariff. For these reasons, we agree with the PUC that the call transfer service offered by the Providers is not comparable to MEL, FES, and EFES.

Finally, the Providers' argument is inconsistent with the legislative declaration of the Act which states that one of its purposes is "guaranteeing the affordability of basic telephone service" while fostering free market competition. See § 40-15-101, 17 C.R.S. (1993). Access charges are a source of revenue which helps defray the cost of providing local exchange service. Allowing the Providers to avoid paying their fair share of access

costs ultimately would raise the rates of all s
local exchange service.

In summary, we hold that in accordance with the applicable tariffs and statutes, the Providers provide "interexchange telecommunications services" within the meaning of the statute and cannot continue to purchase access from the Exchange Tariff. Allowing the Providers to continue to purchase from the Exchange Tariff would lead to logical inconsistencies between definitions and violations of Colorado law. We agree with the district court which stated that to hold otherwise would "exalt form over substance by suggesting that the billing procedure for a service, rather than the service itself, should determine the nature of the service."

IV.

For these reasons, we uphold the PUC's determination to deny the relief requested by the Providers in their Application for Declaratory Order. As a result, the Providers must comply with all applicable tariffs, specifically the Access Service Tariff. Accordingly, the judgment of the district court is affirmed.

JUSTICE SCOTT dissents.

Avicomm v. PUC, No. 96SA417
Mountain Solutions v. PUC, No. 96SA418

JUSTICE SCOTT dissenting:

I agree with the majority that in following "concepts of statutory construction . . . we must give effect to the intent of the lawmaking body." Maj. op. at 16. However, the "lawmaking body" in this case is the General Assembly and not the Public Utility Commission (PUC), whose "powers are not unlimited." Consumer Counsel v. Mountain States Tel., 816 P.2d 278, 283 (Colo. 1991). The legislative enactment, section 40-15-102(12), 17 C.R.S. (1993), limits the PUC's authority. Therefore, in my view, the only proper venue to alter section 40-15-102(12) so as to strike out the "based on usage" clause from the definition, is the General Assembly and not the PUC or this court. Thus, I do not join the judgment of the majority.

While I share the majority's view that the PUC was not required to conduct a rulemaking proceeding in order to resolve the issues raised by Avicomm, Inc., Mountain Solutions, Ltd., Inc., and Denver Direct Dial, LLC (Collectively, the "Providers"), I believe the Providers' practice of "bridging" local exchange service areas does not constitute an offering of "interexchange telecommunications service" within the plain meaning of section 40-15-102(12). In addition, I would require the PUC to consider the effect of the resale provisions of the

**Telecommunications Act of 1996 on the legality
Exchange and Network Services Tariff.**

Accordingly, I would reverse and remand this matter to the PUC for further proceedings.

I.

By using services purchased under the Exchange and Network Services Tariff to switch traffic that crosses local exchange area boundaries, the Providers avoid paying access charges to US West.¹ However, the fact that the practice of "bridging" local exchange areas is obviously intended to allow the Providers to exploit a statutory loophole in order to circumvent the PUC's access charge rules is not relevant to the resolution of this case.

In interpreting a statute, we attempt to determine what the General Assembly intended in adopting the statutory language under review. See City of Westminster v. Dogan Constr. Co., 930 P.2d 585, 590 (Colo. 1997). Where the terms used by the General Assembly are clear, though, consideration of extrinsic "indicia of legislative intent" is inappropriate, and the "[w]ords should

¹ These access charges are designed to allocate the costs associated with building, maintaining, and operating US West's network between consumers who make calls within their own local exchange service area to consumers who place calls across local exchange area boundaries. The access charge regime is based on the assumption that calls within a single local exchange service area will be subject to flat-rate pricing while calls that cross local area boundaries will be priced on a per-use basis.

be given effect according to their plain and ord

Id.

Our task is not to determine whether the General Assembly would have included the Providers' services within the definition of "interexchange telecommunications services" established by section 40-15-102(12) if it had considered the possibility that such services might be offered on a flat-rate basis. Instead, we must decide whether the definition actually incorporated into the statute is broad enough to include the Providers' services. I submit that the definition, which provides that "interexchange telecommunications services" are "priced based upon usage," plainly does not include any service not priced based upon usage.

The majority avoids the plain meaning of the words in section 40-15-102(12) by resort to the principle that statutes should not be construed in such a way as to produce "absurd" results. See maj. op. at 16. The fact that a citizen can avoid the reach of the PUC's regulatory authority, however, does not make the statutory meaning "absurd." For example, individuals and businesses often structure their affairs in such a way as to avoid the obligation to pay assessments imposed by the tax code, but the courts do not rewrite the tax statutes in order to ensure that revenue collections meet assumed legislative expectations.²

² The analogy to tax planning is closer than it may appear, because the access charges are in effect a "tax" on certain kinds of calls, i.e., calls that cross local exchange area boundaries,
(continued. . .)

These efforts are neither legally nor morally if a citizen's actions permitted by the statute are inconsistent with the purpose of the legislation, the legislature, and not this court, must act to amend the tax laws. As Learned Hand observed half a century ago: "[T]here is nothing sinister in so arranging one's affairs as to keep taxes as low as possible. Everyone does so, rich or poor; and all do right, for nobody owes any public duty to pay more than the law demands: taxes are enforced exactions, not voluntary contributions. To demand more in the name of morals is mere cant." Commissioner v. Newman, 159 F.2d 848, 850-51 (2d Cir. 1947).

Here, while it may be difficult to accept, the law and its reach are not necessarily coterminous with morality, or even the "logic of the PUC's conclusion." Maj. op. at 20.

The majority contends that the plain meaning of the words used in section 40-15-102(12) is "inconsistent" with other definitions in the telecommunications statute. Section 40-15-102(11) defines "interexchange provider" as a "person who provides telecommunications services between exchange areas," and section 40-15-102(29) says "telecommunications service" is "the electronic or optical transmission of information between separate points by prearranged means." The majority reasons that

(. . .continued)

designed to subsidize others kinds of calls, i.e., calls within a single calling area.

under these definitions, the Providers are "interexchange providers of telecommunications service."

I see two problems with this reasoning. First, if the meaning of the phrase "interexchange telecommunications services" can be inferred by reference to the definitions of "interexchange provider" and "telecommunications service," then section 40-15-102(12) is surplusage, a conclusion to be avoided under basic principles of statutory construction. See Bennett Bear Creek Farm Water and Sanitation Dist. v. City and County of Denver, 928 P.2d 1254, 1262 (Colo. 1996). Second, the words and phrases used in statutes are often terms of art. We should not intervene to amend the statute by judicial fiat simply because the General Assembly has given a term a special--and perhaps even counterintuitive--definition.

In planning their business strategies, regulated business enterprises should be entitled to rely on the plain meaning of the words used in the statutes governing their activities. In light of the unambiguous definition established by section 40-15-102(12), I would hold that call transfer services are not "interexchange telecommunications services."³

³ The cases cited by the majority to show that other states concur in its analysis, see maj. op. at 9 n.3, are not on point. For example, in Idaho Local Exchange Companies v. Upper Valley Communications, Inc., Case No. GNR-T-94-1, Order No. 25885, 1995 WL 82345 (Idaho PUC Feb. 3, 1995), the service provider charged customers for each call, putting the service within the statutory definition of interexchange service, which expressly included a "per-unit" pricing requirement. The other cases cited, US West (continued. . .)

Unfortunately, by our judgment today, we r
regulated by the PUC not only to comply with the plain meaning of
the statute's defined terms, but to anticipate the "logic of the
PUC[]" without notice, even when, as here, that logic is not
consistent with the plain language adopted by the General
Assembly.'

II.

The majority observes that "the Providers are able to price
their service at a flat rate only because they are violating the
terms of the Exchange Tariff." Maj. op at 20. The majority,
however, simply assumes that the restrictions in the tariff are
valid while refusing to consider the implications of the

(. . .continued)

Communications, Inc. v. Bridge Communications, Inc., Docket No. 93-049-20, 1994 WL 570650 (Utah PSC Aug. 19, 1994), and In re U.S. Metrolink Corp., 103 P.U.R. 4th 194 (Wash. U.T.C. 1989), do not appear to have interpreted any similar statutory definition.

The PUC's approach to interpreting section 40-15-102(12), is reminiscent of a famous colloquy on the meaning of language:

"When I use a word," Humpty Dumpty said in a rather scornful tone, "it means just what I choose it to mean--neither more nor less."

"The question is," said Alice, "whether you can make words mean different things."

"The question is," said Humpty Dumpty, "which is to be master--that's all They've a temper, some of them--particularly verbs, they're the proudest--adjectives, you can do anything with, but not verbs--however, I can manage the whole lot!"

Lewis Carroll, *Through the Looking Glass* 198 (Julian Messner 1982). In this case, PUC becomes the master of the statute, managing the whole lot in ways contrary to the plain language.

Telecommunications Act of 1996, Pub. L. No. 104-1
(1996).

Section 251(b)(1) of the Act provides that a local exchange carrier may not "prohibit . . . [or] impose unreasonable or discriminatory conditions or limitations on . . . the resale of its telecommunications services." 47 U.S.C. § 251(b)(1). On its face, this provision appears to prohibit US West from forbidding resale of the services offered under its Exchange and Network Services Tariff. Under the 1996 Act, resale restrictions are presumptively unreasonable whether they are contained in a resale agreement or in a tariff filed with the PUC. See In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd. 15499 at ¶ 939 (FCC Aug. 8, 1996); vacated sub nom. Iowa Utils. Bd. v. Federal Communications Comm'n, 120 F.3d 753 (8th Cir. 1997), cert. granted, 118 S. Ct. 879 (Jan. 26, 1998).

It is by no means apparent to me that the duty imposed by section 251(b)(1) is limited to situations where a reseller seeks to provide only basic local services as opposed to competitive services, as US West suggests. In any event, I think the PUC should examine this issue in the first instance. If the resale restrictions are allowed, the PUC should come forward with a principled legal basis for distinguishing legitimate limits allowed by the 1996 Act from unreasonable and discriminatory

conditions forbidden by the statute. Otherwise seek to provide other types of telecommunications service may be frustrated in their efforts to resell tariffed offerings.

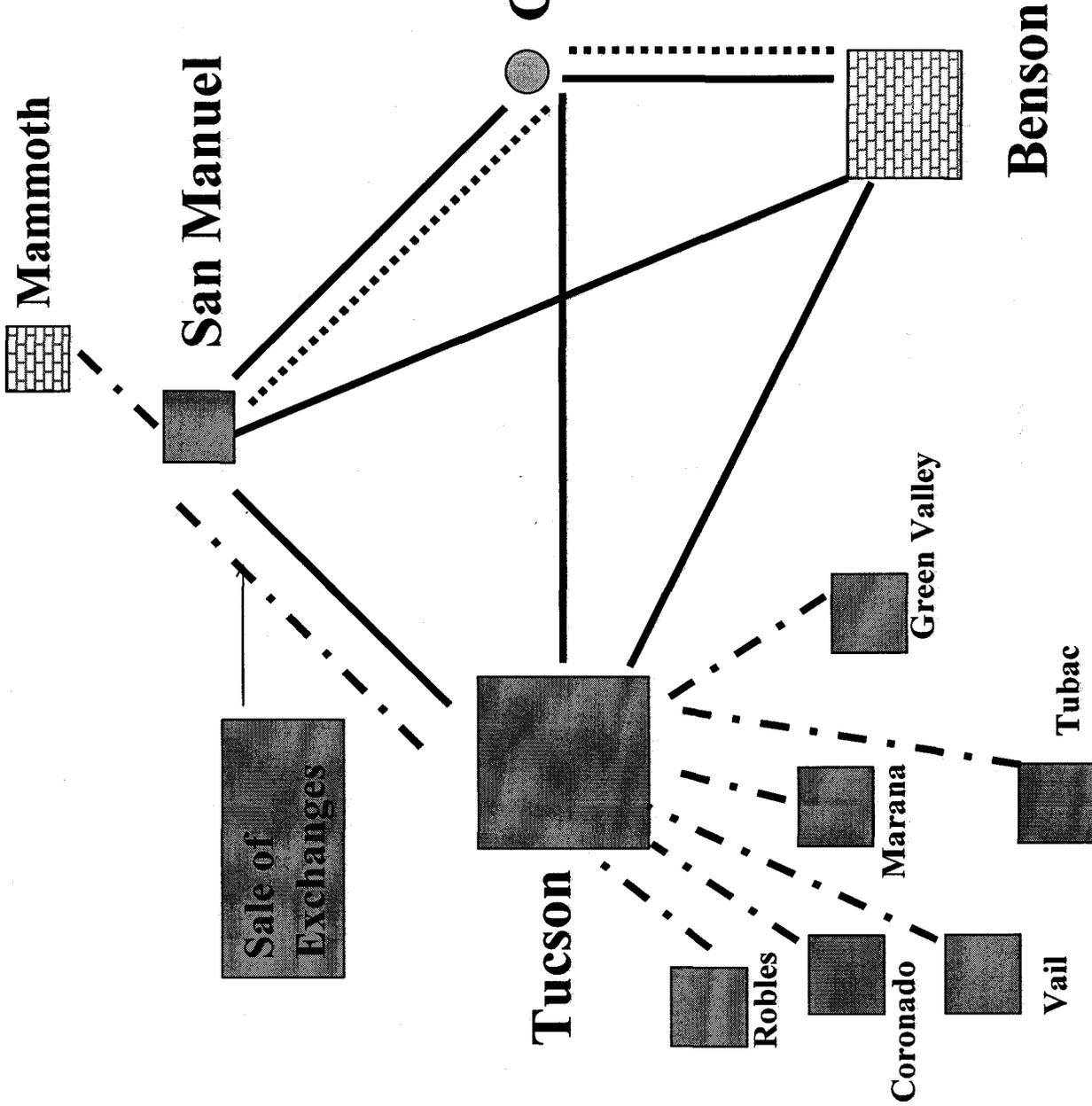
The PUC's decision in this case was mailed on January 10, 1996, less than a month before the 1996 Act became law. Although the PUC was free to issue its decision without regard to the imminent enactment of a federal statute with potentially preemptive consequences, see Arapahoe County Public Airport Authority v. Centennial Express Airlines, Inc., No. 97SC123 slip op. (Colo. Apr. 13, 1998), I would remand for consideration of the effect of federal law in the context of further proceedings conducted for the purpose of applying what I see as the correct definition of "interexchange telecommunications services."⁵

III.

Accordingly, because the plain language of the statute serves not only to give the regulated notice but also to limit the authority of the regulator, I respectfully dissent.

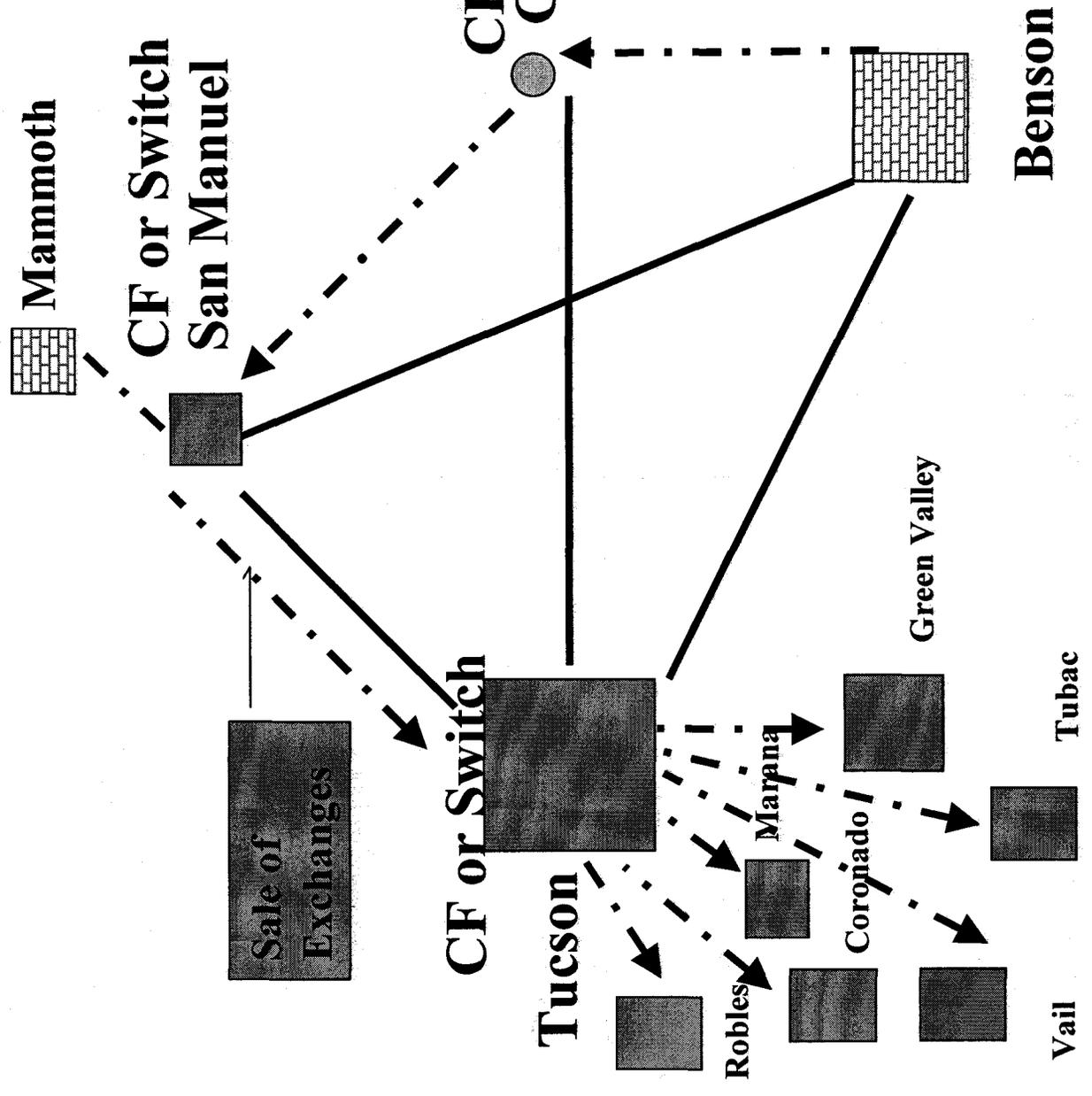
⁵ The majority correctly notes that the 1996 Act has a purely prospective application, but the issue to be decided concerns ongoing, i.e., prospective, conduct by both the Providers and US West.

EXHIBIT 3



KEY	
○	Midvale
■	Qwest
▤	Qwest/Citizens
—	L.D.
- - -	Local
.....	Proposed EAS

EXHIBIT 4



KEY	
	Midvale
	Qwest
	Qwest/Citizens
	L.D.
	Local
	Proposed EAS

EXHIBIT 5

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BEFORE THE ARIZONA CORPORATION COMMISSION

CARL J. KUNASEK
CHAIRMAN
JIM IRVIN
COMMISSIONER
WILLIAM MUNDELL
COMMISSIONER

IN THE MATTER OF THE JOINT
APPLICATION OF QWEST CORPORATION
AND CITIZENS UTILITIES RURAL
COMPANY, INC. FOR APPROVAL OF THE
TRANSFER OF ASSETS IN CERTAIN
TELEPHONE WIRE CENTERS TO
CITIZENS RURAL AND THE DELETION OF
THOSE WIRE CENTERS FROM QWEST'S
SERVICE TERRITORY.

DOCKET NO. T-01051B-99-0737
T-01954B-99-0737

JOINT STIPULATION

This JOINT STIPULATION is entered into this 8th day of August, 2000, by and between the Arizona Corporation Commission Utilities Division Staff ("Staff"), Citizens Utilities Rural Company ("Citizens Rural"),¹ and QWEST Corporation, formerly known as U S WEST Communications, Inc. ("QWEST"). The Staff, Citizens Rural, and QWEST are collectively referred to herein as the "Parties".

RECITALS

On December 22, 1999, QWEST and Citizens Rural filed a Joint Application with the Arizona Corporation Commission seeking approval of the sale of certain telephone properties in Arizona and the transfer of the Certificates of Convenience and Necessity ("CC&N") from QWEST to Citizens Rural. The Arizona wire centers are:

¹ A subsidiary of Citizens Communications Company ("Citizens").

1	Ashfork	Grand Canyon	Patagonia	Whitlow
2	Benson	Hayden	Pima	Wickenburg
3	Bisbee	Joseph City	Safford	Willcox
4	Circle City	Kearny	Somerton	Williams
5	Douglas	Mammoth	St. David	Winslow
6	Dudleyville	Maricopa	Stanfield	Yarnell
7	Elgin	Miami	Superior	Yuma Main
8	Fortuna	Mt. Lemmon	Tombstone	Yuma Southeast
9	Gila Bend	Page	Tonto Creek	
10	Globe	Palominas	Wellton	

11 Maps of these serving areas are on file with the Commission.
12 Upon regulatory approval, Citizens Rural will acquire a total of approximately
13 154,000 access lines served by these 38 wire centers.

14 The following parties have intervened in this docket: the
15 Residential Utility Consumer Office ("RUCO"), GCB Communications; Arizona
16 Dialtone; Arizona Consumer Council; City of Yuma; Greater Yuma Economic
17 Development Corporation; Arizona Utility Investors, Inc.; Southern Gila
18 County Economic Development Corporation; Marvin Lustiger; and
19 Communication Workers of America.

20 QWEST and Citizens Rural's application included written
21 testimony and exhibits of Maureen Arnold and Phil Grate on behalf of QWEST,
22 and F. Wayne Lafferty and C. Dale Register on behalf of Citizens Rural. After
23 the application was filed, Staff and RUCO conducted extensive discovery
24 regarding the proposed transfer of exchanges, requesting and receiving
25 information from both QWEST and Citizens Rural. On March 25, 2000, the
26

1 following parties filed written responsive testimonies:

- 2 Staff: Linda A. Jaress, Richard L. Boyles, and
- 3 Robert G. Gray
- 4 RUCO: Marylee Diaz Cortez
- 5 Arizona Dialtone: Thomas W. Bade
- 6 Yuma: Martha M. Dempsey; Debra L. Kosmata-
- 7 Nidiffer; and Laura S. Neinast.

8 Staff and RUCO recommended that the application be approved,
 9 subject to certain conditions. Arizona Dialtone and Yuma did not object to
 10 the transfer, but did seek certain assurances. After filing its testimony,
 11 Citizens and Arizona Dialtone executed a letter agreement (attached hereto
 12 as Exhibit A) that resolved all issues between them. On June 21, 2000,
 13 Citizens and QWEST filed rebuttal testimony responding to the prefiled
 14 testimony of Staff and RUCO.

15 The Parties have engaged in settlement discussions to attempt to
 16 resolve all open issues between them. Based on these discussions, the
 17 parties have entered into this Joint Stipulation to expedite the Commission's
 18 approval of the Joint Application in Docket Nos. T-01954B-99-0737 and T-
 19 01051B-99-00737, subject to the conditions set forth below.

20 **AGREEMENT**

21 1. **Rates and Charges**

22 Citizens Rural will adopt all of QWEST's intrastate rates and
 23 charges in effect on the date of this Joint Stipulation for each of the wire
 24 centers it is acquiring from QWEST. These rates and charges are not subject
 25 to change with the resolution of the current QWEST rate case. These
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1 intrastate rates and charges will remain in effect until such time as Citizens
2 Rural receives authorization from the Commission to increase or decrease
3 them. If Citizens Rural obtains additional revenues from the Federal
4 Universal Service Fund related to the wire centers it is acquiring from
5 QWEST, the rates and charges adopted by Citizens Rural will be interim and
6 subject to refund in the next rate case, effective on the date Citizens Rural
7 becomes entitled to the additional Federal Universal Service Fund revenues.

8 **2. Rate Filing**

9 Within 18 months of the closing of the transfer of the wire
10 centers from QWEST to Citizens Rural, Citizens Communications will file an
11 application that will allow the Commission to examine existing rates -
12 including the appropriate level of Arizona USF support -- for the existing
13 Citizens Rural exchanges, the Citizens Rural exchanges acquired from GTE
14 California,² the Citizens Rural exchanges acquired from QWEST in this Docket
15 and for Citizens Telecommunications Company of the White Mountains'
16 exchanges. Citizens has indicated that it intends to file its rate application
17 with the expectation of consolidating its various telephone rates. This
18 agreement does not bind the parties to support a consolidated filing and
19 leaves the parties free to adopt any position whatsoever regarding
20 consolidation of rates.

21 **3. Availability of Services and Filing of Tariffs**

22 Citizens Rural will provide the same products and services to
23 customers in each of the wire centers that QWEST currently provides to its
24 customers. Both QWEST and Citizens Rural assert that the provision of public
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26 ² Docket Nos. T-01954B-99-0511 and T-01846B-00-0511, approved by Commission Decision
No. 62648, dated June 13, 2000.

1 safety services such as 911 will continue to be provided in the same manner,
2 and without interruption, to all customers in the affected exchanges. Citizens
3 Rural will file new intrastate tariffs with the Commission, which mirror
4 QWEST's tariffs currently on file at the Commission, which will be subject to
5 Staff review and approval.

6 **4. Service Quality**

7 In the acquired wire centers, Citizens Rural will adopt and be
8 subject to QWEST's Service Quality Plan Tariff, except that Subsection
9 2.6.1.E will not apply until twelve (12) months after closing.

10 **5. Investment in the Acquired Wire Centers**

11 In the four years following Commission approval of the Joint
12 Stipulation, Citizens Rural commits to investing \$109 million in the acquired
13 wire centers. These investments include, but are not limited to, outside plant
14 cable reinforcements, trunking and interoffice route relief, SS7 equipment
15 and features, switch upgrades and expansions, interoffice transmission
16 equipment, dial-up Internet and DSL equipment, and various support assets.

17 In November 2001, and in each November for the next four years
18 (through November 2005), Citizens Rural will submit to the Staff a record of
19 investments to date and its planned investments for the next year. The
20 submission will detail system-wide investments and specific investments by
21 wire center, and will discuss and reconcile planned investments, versus actual
22 investments since the previous year.

23 **6. Specific Investment Projects**

24 In the Wickenburg and Safford wire centers Citizens Rural will,
25 within one year after closing, replace the existing interoffice facilities with
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1 fiber optic facilities to relieve interoffice congestion. The intent of these
2 replacements is to furnish high-speed data transmission services to and from
3 the two wire centers.

4 In addition, Citizens will open a public office in the Greater Yuma
5 Area within one year after closing. The public office will permit customers to
6 pay their bills, place service orders and have access to a local manager.

7 **7. Removal of Bridged Tap and Load Coil Encumbrances**

8 Within four years after closing, Citizens Rural will remove bridged
9 tap and load coils from all loops under 18 kilofeet within the transfer area,
10 where such encumbrances detrimentally affect the provision of DSL or other
11 data transmission services. In those exchanges where DSL service is offered,
12 Citizens will condition any local loop shorter than 18 kilofeet within 30 days of
13 receiving a bona fide request. As part of the submission required in
14 paragraph 5, above, Citizens Rural will describe its progress toward this goal.

15 **8. DSL Survey**

16 Citizens Rural will deploy DSL in the Yuma exchange within one
17 year after closing and in the Safford exchange within 4 years of closing.
18 Citizens Rural will survey customers outside these exchanges as to interest in
19 purchasing DSL within twelve months after closing and provide these services
20 when economically feasible by the end of 2005. Citizens Rural will report the
21 results of its surveys and its conclusions concerning additional deployment as
22 part of its rate filing described in Paragraph 2, above.

23 **9. QWEST Investment**

24 QWEST will use a total \$56 million from the Transfer within three
25 years after this transaction closes (no less than 1/3 of this amount to be used
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1 within the first year after this transaction closes, and no less than 2/3 of this
2 amount to be used within the first two years after this transaction closes) to
3 upgrade plant and equipment to enhance the quality of service for QWEST's
4 remaining Arizona consumers. This commitment shall be incremental to
5 planned investment levels for each year and in addition to QWEST's
6 commitment of a minimum of \$402 million per year in its Arizona exchanges
7 as set forth in Decision 62672 in Docket No. T-1051B-99-0497. QWEST will
8 upgrade cross-boxes, terminal boxes and replace defective feeder or
9 distribution cable and/or undertake other service quality improvement
10 programs. QWEST will prioritize improvements in any year primarily based
11 upon the number of trouble reports it receives. This investment shall not be
12 included in rate base in the next QWEST rate case, so that in the next
13 QWEST rate case, the net intrastate rate base will be reduced by \$56 million.
14 The adjustment is a one time adjustment that will be made only in the next
15 rate case.

16 QWEST will continue its usual level of plant improvements and
17 maintenance activity as determined by QWEST in the Transferred Wire
18 Centers until the final closing of the transfer and the assumption by Citizens
19 of responsibility for the Transferred Wire Centers. At the time of closing, held
20 orders, as defined by Corporation Commission Rule R14-2-505(A)(3), shall
21 be in the no penalty range in aggregate for the 38 sales wire centers, per
22 2.6.1.E of the Arizona Service Quality Plan Tariff, based on the total number
23 of lines in the sales wire centers at the time of closing.

24 QWEST will replace the existing 1200 pair lead pulp cable (the
25 "cable") that runs between the Bisbee Central Office and 126 Naco Highway
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PHX/TBERG/1092075.1/67817.201

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1 with fiber optic cables. QWEST will use its best efforts to have all customers
2 currently served by the cable moved to the new fiber cable by December 31,
3 2000. If the move is not completed by the date of the closing, Citizens will
4 complete the move.

5 **10. Treatment of Gain on Sale**

6 In consideration of all elements of this Agreement, Staff agrees
7 that the gain realized by QWEST from the sales transaction with Citizens shall
8 be recorded below the line for regulatory purposes.

9 **11. Transition Costs**

10 Citizens Rural will account for all costs specifically attributable to
11 and required by the transition of ownership, such as rehoming exchanges.
12 The Parties will defer the issue of whether it is appropriate to recover these
13 costs to Citizens Rural's next rate case, or any future proceeding where this
14 issue may be relevant.

15 **12. Local Calling Plans for San Manuel and Whitlow Exchanges**

16 Citizens Rural and QWEST will implement optional two-way local
17 calling between the Whitlow exchange and the Phoenix metropolitan calling
18 area and between the San Manuel exchange and the Tucson metropolitan
19 calling area within twelve months after consummation of the sale. The rate
20 charged for such optional service shall not be less than its total service long-
21 run incremental cost. Additional cost and pricing issues will be addressed in
22 rate proceedings for Citizens Rural and QWEST.

23 **13. Interconnection Agreements**

24 Citizens Rural will abide by the terms and conditions of QWEST's
25 existing interconnection and inter-carrier agreements until it is able to
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1 renegotiate new agreements with the affected providers. All interconnection
2 and inter-carrier agreements between Citizens Rural and telecommunications
3 services providers in the acquired wire centers will be submitted to the
4 Commission for approval as required by law or regulation.

5 **14. Eligible Telecommunications Carrier Status**

6 In order to be designated an Eligible Telecommunications Carrier
7 ("ETC") in the QWEST wire centers it is acquiring, Citizens Rural will: (A) offer
8 the services that are supported by Federal universal service support
9 mechanisms under section 254(c), either using its own facilities or a
10 combination of its own facilities and resale of another carrier's services
11 (including the services offered by another eligible telecommunications
12 carrier); and (B) advertise the availability of such services and the charges
13 therefore using media of general distribution. Citizens Rural should be
14 entitled to any waivers or requested extensions of waivers currently in effect
15 or pending for QWEST for the full term of the waiver or requested extension.
16 Citizens Rural will also offer Lifeline and Link Up Service on the same terms
17 and conditions as currently available to QWEST subscribers in each of the
18 wire centers it will be acquiring and it will advertise the availability of Lifeline
19 and Link Up service as required under federal and state law.

20 **15. Publication of Directories**

21 Citizens Rural's Directory Services Company will provide white
22 and yellow page directories in the wire centers acquired from QWEST similar
23 to those directories that are currently provided by QWEST.

24 **16. Acquisition Adjustment**

25 In this proceeding, Citizens Rural has not requested that the
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1 Commission establish the ratemaking treatment for the difference between
2 the book value of the properties purchased from QWEST and the purchase
3 price paid. While Citizens Rural intends to record the consideration paid over
4 the book value of the net assets acquired from QWEST in accordance with
5 FCC Part 32 Accounting Rules, Citizens Rural agrees that the recognition of
6 such premium for regulatory purposes, including but not limited to,
7 ratemaking or fair value rate base determination purposes, shall not be
8 allowed without the prior authorization of the Commission. Citizens Rural
9 acknowledges that the Staff generally opposes the recovery of such an
10 acquisition premium in rates, but that the Staff has agreed to defer the issue
11 to Citizens Rural's next rate case, or until such time, if ever, as Citizens Rural
12 seeks recovery of such acquisition adjustment.

13 **17. Deferred Taxes and Investment Tax Credits**

14 Staff has not analyzed whether any deferred income taxes and/or
15 income tax credits will exist on the date of closing which should be deducted
16 from rate base or refunded to ratepayers. The Parties will defer the issue of
17 the existence, quantification and treatment of any deferred income taxes
18 and/or investment tax credits to Citizen Rural's next rate case proceeding, or
19 to any future Citizens proceeding where this issue may be relevant. Within
20 two months after closing, QWEST will provide to the other Parties an
21 accounting of the balances in these accounts.

22 **18. Study Area Waiver**

23 Citizens Rural and QWEST intend to petition the Federal
24 Communications Commission ("FCC") for a study area waiver. Citizens Rural
25 will provide the Staff with a draft copy of such petition prior to filing for its
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1 review, together with a statement of impacts. If the draft is acceptable, Staff
2 will ask the Hearing Officer to include a provision in the proposed order that
3 the Commission does not object to the FCC granting any required Part 36
4 study area waivers based on this transaction, or to any reconfiguration of
5 study area boundaries for the sale wire centers. Staff will further support
6 inclusion of this provision in the Commission's final order.

7 **19. Notice to Customers**

8 Citizens Rural and QWEST will notify customers by bill insert or
9 separate mailing of the changes in ownership once the Commission approves
10 the transaction. The Notice will inform customers, among other things, (1)
11 that existing rates will not change, (2) that Citizens Rural will assume the
12 responsibility of QWEST as intraLATA carrier and (3) of a phone number
13 where customers can call to have any questions they may have answered.
14 Citizens Rural and QWEST will submit their proposed Notice to the Staff for
15 review and approval prior to mailing.

16 The parties agree to waive any Primary Interexchange Carrier
17 ("PIC") change charges associated with the transfer of Qwest's intraLATA
18 customer base to Citizens in the affected exchanges, or other interexchange
19 carrier, as long as the customer transfer to a new intraLATA carrier of choice
20 is within 60 days after the transfer and the new intraLATA carrier of choice
21 has not otherwise paid, or would not in the ordinary course pay, the PIC
22 change charge.

23 **20. Notice to Commission**

24 Citizens Rural and QWEST will file with the Commission, a joint
25 written notice of the closing of the transaction within five days of formal
26

1 closing. Citizens Rural and QWEST will also provide the Commission with
2 written notice of all other approvals or authorizations required for
3 consummation of the transfer.

4 **21. Reseller Discounts**

5 Citizens Rural will abide by the terms of the letter agreement with
6 Arizona Dialtone, attached as Exhibit A.

7 **GENERAL TERMS AND CONDITIONS**

8 **22. Conditions Precedent**

9 The terms and conditions of this Stipulation are not effective
10 unless and until the Commission approves this Stipulation without material
11 modification and the sale of the wire centers closes. Each provision of this
12 Joint Stipulation is in consideration and support of all the other provisions,
13 and expressly conditioned upon acceptance by the Commission without
14 change.

15 **23. Effect of Commission's Failure to Approve**

16 If the Commission fails to adopt this Joint Stipulation according to
17 its terms by September 30, 2000, or it is otherwise disapproved by any court
18 of competent jurisdiction, this Joint Stipulation is deemed to be withdrawn
19 and of no further force or effect and the Parties will be free to pursue their
20 respective positions in these proceedings without prejudice. Each party may
21 file any application, testimony and price schedule it chooses, cross-examine
22 witnesses and, in general, put on such case as it deems appropriate in any
23 proceeding that would have been affected by this Stipulation.

24 **24. Compromise**

25 This Stipulation represents a compromise in the positions of the
26

1 Parties. By executing this Stipulation no party acknowledges the validity or
2 invalidity of any particular method, theory or principle of regulation, and no
3 party agrees that any principle, method or theory of regulation employed in
4 arriving at this Stipulation is appropriate for resolving any issue in any other
5 proceeding. There are no findings of fact or conclusions of law implicit in this
6 Stipulation other than those stated herein.

7
8 **25. Privileged and Confidential Negotiations**

9 All negotiations relating to this Stipulation are privileged and
10 confidential, and no party is bound by any position asserted in the
11 negotiations, except to the extent expressly stated in this Stipulation. As
12 such, evidence of conduct or statements made in the negotiation of this
13 Stipulation are not admissible as evidence in any proceeding before the
14 Commission or a court.

15 **26. Stipulation in the Public Interest**

16 This Stipulation is in the public interest and that all of its terms
17 and conditions are fair, just and reasonable.

18 **27. Complete Agreement**

19 This Stipulation and Agreement represents the complete
20 agreement of the Parties. There are no other understandings or
21 commitments other than those specifically set forth herein. The Parties
22 acknowledge that this Stipulation and Agreement resolve all issues that were,
23 or could have been, raised in these proceedings and is a complete and total
24 stipulation between these parties.

25 **28. No Precedent**

26 The facts and circumstances of these dockets are unique and that

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the resolution of issues reflected in this Stipulation do not constitute a precedent that may be cited, referenced or otherwise relied upon by any party in any future proceeding before this Commission or in any other regulatory or judicial proceeding. Except as otherwise specifically agreed upon in this Stipulation, nothing contained herein will constitute a settled regulatory practice for the purpose of any other proceeding.

29. Support and Defend

Each party will support and defend this stipulation, this sales transaction, and the relief sought by the applicants in their joint application before the Commission and in any forum where it may be at issue.

30. Limit on Subsequent Actions

No party will maintain any cause of action before the Commission, or any court, contending that approval of the sale of the wire centers by the Commission should be vacated, withdrawn, or rescinded in any manner, based upon any alleged subsequent breach of any material term or condition of this Stipulation by either Citizens or QWEST. No other limitation is intended to exist upon the lawful jurisdiction of the Commission to address the issues set forth in this Stipulation.

31. Confidentiality

Citizens and QWEST reserve the opportunity to request confidential treatment for any information filed pursuant to the terms of the Stipulation.

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DATED as of the date first written above.

QWEST CORPORATION

By: Wayne A. [Signature]

Its: Vice President - Arizona

CITIZENS UTILITIES RURAL COMPANY

By: Craig A. [Signature]

Its: Assoc. Gen. Counsel

**ARIZONA CORPORATION COMMISSION
UTILITIES DIVISION STAFF**

By: ^{for} Barbara Wyraske [Signature]

Its: ASSISTANT DIRECTOR

MORRILL & ARONSON P.L.C.
ATTORNEYS AT LAW

K. LAYNE MORRILL
MARTIN A. ARONSON
JOHN T. MOSHIER
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WIRELESS DIRECT LINE
(602) 650-4124

FILE NUMBER
36340-0111

June 5, 2000

VIA FAX AND FIRST CLASS MAIL

Craig J. Marks, Esq.
Associate General Counsel
Citizens Utilities Company
2901 North Central Avenue
Suite 1660
Phoenix, AZ 85012

Re: **TRANSFER OF SERVICE AREAS FROM USWEST TO CITIZENS**
ACC Docket No. T-01051B-99-0737

Dear Craig:

This letter is to document terms of a settlement between Citizens Utilities Rural Company, Inc., and Arizona Dialtone, Inc. and GCB Communications, Inc. concerning issues of the existing Interconnection Agreements and wholesale discounts in the USWest areas that are being acquired by Citizens. The parties have reached agreement on an appropriate level of wholesale discounts that will adequately address their respective concerns in the subject ACC Docket. The terms of the agreement are as follows:

Citizens and Arizona Dialtone will enter into a new single Interconnection Agreement covering all of Citizens' areas in Arizona. The new Interconnection Agreement will have a term of two years and will contain the same terms as are in the existing Interconnection Agreements except that the percentage wholesale discount rates for PAL and Business lines will be as follows: 16% in the White Mountains and Navajo areas, and 16.5% in the Citizens Rural areas and the new areas being acquired from US West. Citizens will draft the new Interconnection Agreement and provide copies to Arizona Dialtone by June 19, 2000, for review and execution. In return, GCB and Arizona Dialtone agree to withdraw their intervention in the above captioned matter.

10/10/2000 10:00 AM WEST/Mark.E. [unclear]

and GTE
(AM)

Exhibit A

Craig J. Marks, Esq.
June 5, 2000
Page 2

If I have properly stated the terms, please acknowledge Citizens' assent to this agreement by signing the enclosed copy of this letter in the space provided below and return it to me. Upon receipt of your signed copy of this letter, we will proceed to carry out the terms.

Thank you for your attention to this matter. I was unable to reach you by telephone before leaving for my vacation, but I will be back in the office on June 15, 2000. If you have any questions or concerns do not hesitate to contact me.

Very truly yours,

MORRILL & ARONSON, P.L.C.



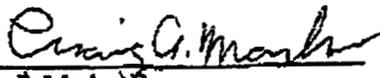
William D. Cleaveland

WDC/lm

cc: Mr. Thomas Bade

ACCEPTANCE OF TERMS:

Citizens Utilities Company

By 
Craig J. Marks, Esq.
Associate General Counsel

6/6/00
Date

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EXHIBIT 6

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION
COMMISSION

In the Matter of Determining the) DOCKET NO. UT-971515
Proper Classification of:)
UNITED & INFORMED CITIZEN) FOURTH SUPPLEMENTAL ORDER
ADVOCATES NETWORK)

COMMISSION DECISION AND
FINAL CEASE AND DESIST ORDER

.....)
SUMMARY

PROCEEDINGS: On October 28, 1997, the Washington Utilities and Transportation Commission (Commission) instituted this proceeding to determine whether United & Informed Citizens Advocates Network (U & I CAN) conducts business as a telecommunications company subject to Commission regulation, or performs any act requiring registration or approval by the Commission without securing authorization. A prehearing conference was held on November 18, 1997. A motion by U & I CAN to disqualify Marjorie R. Schaer as Administrative Law Judge was heard and denied. Requests by U S WEST Communications, Inc. (U S WEST) and GTE Northwest (GTE) to intervene were granted. A prehearing conference order by Judge Schaer was entered on December 5, 1997. That order reflected the decisions made orally at the prehearing conference, and set out a schedule for the proceeding. A protective order was entered by the Commission on December 5, 1997.

On December 11, 1997, U & I CAN filed objections to the Prehearing Conference Order. U & I CAN requested that the Commission overturn that Order in part, and disqualify Judge Schaer. The Commission denied the request in an order entered January 23, 1998. The parties pre-filed testimony and exhibits in accordance with the schedule in the prehearing conference order.

On May 19, 1998, a hearing was conducted. Judge Schaer declined to reconsider U & I CAN's motions previously ruled upon, including the request for disqualification. U & I CAN's motions to stay proceedings and dismiss for lack of jurisdiction were denied. U & I CAN was granted a continuing objection to the admission of any evidence or testimony in this case, did not present testimony or other evidence, and did not conduct any cross-examination of witnesses. Testimony and exhibits on behalf of the other parties were admitted, and form the factual basis for this order. At the conclusion of the hearing the parties waived entry of an initial order.

COMMISSION: The Commission has jurisdiction to determine whether U & I CAN is engaged in any activity without complying with the statutory requirements of RCW Title

80. Furthermore, the Commission has a public interest in regulating extended-area-service (EAS) bridging.

U & I CAN is a company owning, operating, or managing facilities used to provide telecommunications for sale to the general public. U & I CAN is a telecommunications company as defined by RCW 80.04.010, and it must register with the Commission prior to providing service as required by RCW 80.36.350. U & I CAN, and its principals, must cease and desist from offering telecommunications services in the state of Washington unless and until they are properly registered with the Commission. It is appropriate for the Commission to enter a final order in this matter.

PARTIES: U & I CAN appeared represented by J. Byron Holcomb, attorney, Bainbridge Island. Shannon E. Smith, Assistant Attorney General, Olympia, appeared for the Washington Utilities and Transportation Commission and its staff (Commission Staff). U S WEST, represented by Peter Butler, attorney, Seattle, and GTE, represented by Timothy J. O'Connell, attorney, Everett, appeared and sought intervention by motions, which were granted.

MEMORANDUM

I. BACKGROUND

A. Proceedings

On October 28, 1997, the Washington Utilities and Transportation Commission (Commission) instituted this proceeding to determine whether U & I CAN conducts business as a telecommunications company subject to Commission regulation, or performs any act requiring registration or approval by the Commission, without securing authorization. The Commission scheduled a prehearing conference in accordance with WAC 480-09-460 for November 18, 1997. At the prehearing conference, Administrative Law Judge Marjorie R. Schaer heard U & I CAN's oral motion to disqualify her as presiding officer. The motion was denied orally at the prehearing conference. U & I CAN's motion to stay proceedings to enable it to obtain administrative review of the decision was also denied. Petitions by U S WEST and GTE to intervene filed pursuant to WAC 480-09-430 were granted, over U & I CAN's objection. These decisions were subsequently confirmed by written order.[1]

A protective order was issued by the Commission on the same day.[2] The order was specially crafted to protect member lists, membership information, membership usage, call detail, and similar information. TR 27.

On December 11, 1997, U & I CAN filed objections to the Prehearing Conference Order. U & I CAN requested that the Commission overturn that Order, in part, and disqualify Judge Schaer. Commission Staff, GTE, and U S WEST filed responses on January 6, 1998. The Commission affirmed the prehearing order.[3]

On May 19, 1998, the hearing was conducted. Mr. Holcomb, counsel for U & I CAN, stated that he was making a "special appearance" to challenge the Commission's jurisdiction and to object to any evidence offered or admitted in this proceeding.[4] Judge Schaer declined to reconsider U & I CAN's motions previously ruled upon, including the request for disqualification. U & I CAN's motions to stay proceedings, and dismiss for lack of jurisdiction were denied. U & I CAN was granted a continuing objection to the admission of any evidence or testimony in this case, did not present testimony or other evidence, and did not conduct any cross-examination of witnesses.

At the conclusion of the hearing the parties waived entry of an initial order. Commission Staff, U S WEST, and GTE filed post-hearing briefs on or about August 7, 1998.

B. Facts

U & I CAN did not present any witnesses in this proceeding. U & I CAN presented a motion to dismiss this proceeding for lack of jurisdiction. Attached to the motion were two incomplete documents, which were admitted as Exhibit 1. On the basis of these documents, U&I CAN claims it is a non-profit corporation. It has never provided a complete copy of its articles of incorporation, or of the corporate minutes reflecting the adoption of its bylaws. U&I CAN was asked by the Administrative Law Judge to provide this information. It agreed on the record to do so, but did not. The record is not sufficient to determine whether U & I CAN is a non-profit corporation, or an unincorporated entity. No proof of non-profit corporate status was sustained.

U&I CAN's operations constitute what typically is known as "EAS bridging." An extended-area-service (EAS) area is a region in which all calls placed from a location in that region to another in that region are non-toll, i.e., the call does not incur access and/or toll charges. Phone calls placed in an EAS to a location, outside an EAS, however, incur access and or toll charges. EAS bridging provides the ability to call from one exchange to another exchange without incurring a toll charge. RCW 80.36.850. See also, Ex. T-7 at 3. As explained by US West witness Joseph T. Thayer:

An EAS bridger is one who illegally uses a combination of customized call management services and his or her own equipment to complete calls between two overlapping EAS regions without incurring access and/or toll charges. Thus he or she has effectively built a "bridge" between EAS regions to avoid toll charges.

Id. at 3-4, ll. 19-10, 1-2.

The Commission has determined that U&I CAN unlawfully bridges EAS. United & Informed Citizen Advocates Network, a non-profit Washington Corporation v. Pacific Northwest Bell Telephone Co. d/b/a US West Communications, Inc., Third Supp. Order, Commission Decision and Order Granting Interlocutory Review of Order; Affirming Second Order, Docket No. UT-960659, at 8, 11-13 (Feb. 5, 1998). EAS bridgers deprive

local exchange companies, such as U S WEST and GTE, of a legitimate and substantial source of revenue. U S WEST and GTE offer local toll calling in their service territories, including the portions of those territories where U & I CAN also provides telecommunications service.

U & I CAN operates its telecommunications system by using call-forwarding features it (or its members on its behalf) purchases from the local exchange company. U & I CAN uses a personal computer containing a voice mail card. When the computer receives a call, the voice mail card will "flash hook" and redial. Ex. T-2 at 3. The software in the computer answers calls and requests the calling party to identify the party being called. Id. To complete the EAS bridge, the voice mail card in U&I CAN's computer transmits a series of three tones to the calling party. In response, the calling party enters his or her personal identification number. The computer gives another audible tone, at which signal, the calling party then enters the telephone number of the party being called. The computer transmits a final series of tones to the calling party, who is then connected with the party being called. Ex. T-2 at 4; see also Ex. 8 at 2-3.

U S WEST tested the call volume on the access lines used by U & I CAN and determined that the usage on these numbers indicates bridging. 4,024 calls during a twenty-six day period were recorded for one of the numbers. This would equal approximately 154 calls per day if the calls originated at a residence, or 251 calls per day if a business. Ex. T-2 at 6.

U&I CAN claims it has no customers, only members. U&I CAN members currently pay a one-time initiation fee of \$8.00, and then pay monthly membership dues of \$8.00. Exs. T-2 at 5; T-7 at 5. The members pay this flat, monthly fee to access the system up to 30 times per month. If a member exceeds the 30 calls, U&I CAN assesses a second flat fee of \$8.00. Id, at 7.

II. RELEVANT STATUTES AND REGULATIONS

A. RCW 80.04.010. Key terms are defined:

"Private telecommunications system" means a telecommunications system controlled by a person or entity for the sole and exclusive use of such person, entity, or affiliate thereof. "Private telecommunications system" does not include a system offered for hire, sale, or resale to the general public.

"Telecommunications company" includes every corporation, company, association, joint stock association, partnership and person, their lessees, trustees or receivers appointed by any court whatsoever, and every city or town owning, operating or managing any facilities used to provide telecommunications for hire, sale, or resale to the general public within this state.

"Facilities" means lines, conduits, ducts, poles, wires, cables, cross-arms, receivers, transmitters, instruments, machines, appliances, instrumentalities and all devices, real estate, easements, apparatus, property and routes used, operated, owned or controlled by any telecommunications company to facilitate the provision of telecommunications service.

"Telecommunications" is the transmission of information by wire, radio, optical cable, electromagnetic, or other similar means. As used in this definition, "information" means knowledge or intelligence represented by any form of writing, signs, signals, pictures, sounds, or any other symbols.

B. RCW 80.04.015:

Whether or not any person or corporation is conducting business subject to regulation under this title, or has performed or is performing any act requiring registration or approval of the commission without securing such registration or approval, shall be a question of fact to be determined by the commission. Whenever the commission believes that any person or corporation is engaged in any activity without first complying with the requirements of this title, it may institute a special proceeding requiring such person or corporation to appear before the commission at a location convenient for witnesses and the production of evidence and produce information, books, records, accounts, and other memoranda, and give testimony under oath as to the activities being conducted. The commission may consider any and all facts that may indicate the true nature and extent of the operations or acts and may subpoena such witnesses and documents as it deems necessary.

After investigation, the commission is authorized and directed to issue the necessary order or orders declaring the activities to be subject to, or not subject to, the provisions of this title. In the event the activities are found to be subject to the provisions of this title, the commission shall issue such orders as may be necessary to require all parties involved in the activities to comply with this title, and with respect to services found to be reasonably available from alternative sources, to issue orders to cease and desist from providing jurisdictional services pending full compliance.

C. RCW 80.36.350:

Each telecommunications company not operating under tariff in Washington on January 1, 1985, shall register with the commission before beginning operations in this state.

D. RCW 80.36.850:

"Extended area service" means the ability to call from one exchange to another exchange without incurring a toll charge.

III. ISSUES PRESENTED

- A. Does the Commission Have Jurisdiction to Determine Whether U & I CAN Is Engaged in Any Regulated Activity Without Complying with Statutory Requirements?
- B. Does The Commission Have A Public Interest in Regulating EAS Bridging?
- C. Is U & I CAN a Telecommunications Company?

IV. COMMISSION DISCUSSION AND DECISION

- A. Does the Commission Have Jurisdiction to Determine Whether U & I CAN Is Engaged in Any Regulated Activity Without Complying with Statutory Requirements?

At the hearing on May 19, 1998, the Administrative Law Judge denied U & I CAN's motion to dismiss this proceeding. This decision deserves review and discussion by the Commission. U & I CAN argues that the Commission lacks jurisdiction on five grounds: 1) U & I CAN is a non-profit corporation; 2) U & I CAN does not conduct business; 3) U & I CAN's Articles of Incorporation and By-laws do not authorize it to provide services to the general public; 4) the Commission determined in Docket No. UT-960659 that U & I CAN has no lines or access lines of its own; and 5) U & I CAN is a membership organization.

RCW 80.04.015 provides that whenever the Commission believes that any person or corporation is engaged in any activity without complying with statutory requirements, it may institute a special proceeding. The statute applies equally to U & I CAN whether it is a corporation (which it has not proven) or is only a company run by individuals. The inquiry to be made in that proceeding is a question of fact: is the activity of the entity the provision of telecommunications service. The definition of "telecommunications company" in RCW 80.04.010 also applies to every corporation or company. The fact that U & I CAN may be a non-profit corporation is not determinative of whether its activities include provision of telecommunications services and, thus, make it subject to the jurisdiction of the Commission. U & I CAN's organizational status does not justify any failure to comply with statutory requirements, and cannot be invoked to defeat review of its activities by the Commission.

U & I CAN's argument that it is not organized to conduct business as a telecommunications company, ergo it does not provide telecommunications, is flawed. The Commission's jurisdiction is based upon the conduct of U & I CAN, not its organizational purpose.

RCW 80.04.015 is consistent with the Washington State Constitution, Article XII, Section 19. Article XII, Section 19, establishes the right of legal entities to organize for the purpose of conducting business as telecommunications companies, subject to

legislative control. U & I CAN misinterprets the State Constitution by claiming that the legislature's authority to regulate legal entities is determined by self-serving statements of an organization's purpose. RCW 80.04.015 authorizes the Commission to regulate entities based upon their conduct. This authority is consistent with the legislature's constitutional authority to control entities expressly organized for the purpose of providing telecommunications.

U & I CAN's argument that the Commission lacks jurisdiction because the U & I CAN Articles of Incorporation and bylaws do not authorize U & I CAN to provide telecommunications services to the general public is tantamount to a claim that U & I CAN is incapable of performing an unauthorized activity. Even when specifically asked by the administrative law judge to provide enough information for a determination to be made of whether U & I CAN is actually a non-profit corporation, such information was promised, but not provided. The Commission cannot determine on this record whether U & I CAN is, in fact, a non-profit corporation. Because the Commission inquiry is the same for either a corporation or a company, and is a factual inquiry based upon the conduct on that entity, the Commission can act in this matter without knowing which kind of business is before it.

U & I CAN also argues that the Commission is not empowered to order a company to register as a telephone company, when such an order would violate its articles and bylaws. This argument mischaracterizes the scope of this proceeding. There is a critical distinction between compelling an entity to commit an unauthorized act, and requiring an entity to comply with state law. Whether or not U & I CAN has committed an ultra vires act is not the focus of this proceeding. If providing telecommunications services would be an ultra vires activity then it may mean that U & I CAN should stop providing those services, but it is not factual evidence that U & I CAN is not providing those services. This case has been initiated to determine whether U & I CAN conducts activities that require prior registration or approval of the Commission. The jurisdiction of the Commission is established by law, not by private consent.

U & I CAN's argument that the Commission lacks jurisdiction because of a prior determination that it did not have standing to bring a complaint against U S WEST Communications, Inc. (U S WEST) is without merit. In Docket No. UT-960659 the Commission found that U & I CAN did not have standing to bring claims against U S WEST because it did not have a direct customer relationship which would impose duties upon U S WEST.[5] The telephone lines which were the subject of that case were held in U & I CAN individual subscriber's names. The issue in this case is whether U & I CAN owns, operates, or manages any facilities to provide telecommunications. RCW 80.04.010 broadly defines "facilities" to include instruments, machines, appliances, and all devices or apparatus. The Commission's prior determination that U & I CAN is not a customer of U S WEST has no bearing on this case.

Finally, U & I CAN argues that it provides only restricted access to telecommunications services to its members, and does not provide telecommunications to the general public for hire, sale, or resale. This claim addresses a question of fact to be determined by the Commission. U & I CAN's argument is not germane to its challenge to the Commission's jurisdiction in this matter. Whether U & I CAN membership is available to the general public is an issue of material fact; U & I CAN is not entitled to summary disposition as a matter of law.

COMMISSION DECISION: The Commission has jurisdiction to determine whether U & I CAN is engaged in any regulated activity without complying with the statutory requirements of RCW Title 80.

B. Does The Commission Have A Public Interest in Regulating EAS Bridging?

The Commission Staff argues that U & I CAN's service is affected with the public interest because it has, or could have, a significant effect on the public switched telephone network in a manner that harms the public interest. U & I CAN's system is designed to allow users to bypass toll charges through EAS bridging. The Commission agrees with the Commission Staff that EAS bridging affects the public interest.

The Commission previously has held that EAS bridging is contrary to the public interest:

We understand that many of MetroLink's customers have achieved substantial savings in toll charges. However, those savings represent reduced revenues to the the carriers providing access. By approving the US West tariff revision, we will continue to uphold our policy that all network users should pay their fair share of costs associated with their use. Approving this tariff means that costs caused by users who avoid toll charges will not be passed along to all customers in the form of higher local rates.

The Commission believes that approving this settlement is consistent with the public interest. It is consistent with our policies that the integrity of the telecommunications network be maintained for all customers and that costs be borne by those who cause them.

GTE Northwest, Inc. v. Pacific Northwest Bell Telephone Co., Docket No. U-881719-F, 113 PUR4th, 431, 433 (May 1, 1990).

The Commission also agrees with the Public Utilities Commission of Utah in a case where it evaluated the legality of EAS bridging and set forth strong policy reasons against EAS bridging:

This is not a case of small, virtuous Davids being set upon by a powerful, evil Goliath out to crush legitimate competition. These respondents are offering no innovation in service or technology. This is a case of these respondents setting out to exploit a legal anomaly

which was created by this Commission in an effort to promote equity between telephone service providers and customers. These respondents are turning the Commission's effort to promote equity on its head. For their own profit, they are enabling some USWC customers to realize savings to which they are not entitled. In the process, these respondents are depriving USWC of revenues which it would collect otherwise, and they are competing unfairly with authorized resellers of MTS [message toll service or long distance] service who abide by the applicable USWC tariffs. They also do not contribute revenues which would otherwise go to the Universal Service Fund, thus potentially saddling telephone service subscribers in outlying areas of the state with higher costs than they would incur otherwise. Respondents' service is, in short, contrary to the public interest.

US West Communications, Inc. v. Bridge Communications, Inc., Docket No. 93-049-20, Utah Public Utilities Commission (August 19, 1994).

In fact, the Commission has determined in a separate proceeding involving U & I CAN that it is illegal in Washington to provide Extended Area Service (EAS) without payment of access charges. United & Informed Citizen Advocates Network, a non-profit Washington Corporation v. Pacific Northwest Bell Telephone Co. d/b/a US West Communications, Inc., Third Supp. Order, Commission Decision and Order Granting Interlocutory Review of Order; Affirming Second Order, Docket No. UT-960659, at 8, 11-13 (February 5, 1998).

COMMISSION DECISION: Because the public has an interest in whether EAS bridgers should be allowed to operate, U&I CAN should be subject to regulation by the Commission.

C. Is U & I CAN a Telecommunications Company?

The definition of a telecommunications company in RCW 80.04.010 serves as a checklist to determine whether U & I CAN engages in any activity requiring registration or approval by the Commission.

A telecommunications company includes:

- every corporation, company, association, joint stock association, partnership and person,
- owning, operating or managing any facilities used to provide telecommunications
- for hire, sale, or resale
- to the general public.

1. Is U & I CAN a corporation or company?

U & I CAN's Certificate of Incorporation and undated By-laws demonstrate U & I CAN's putative corporate status. Ex. 1. U & I CAN's claim that it is a non-profit entity is not supported by the evidence in this case. Despite its agreement to produce relevant documents after a bench request for the information, U & I CAN failed to submit additional corporate records and has not established its formal corporate status in this proceeding. U & I CAN did not present any testimony regarding its compliance with the statutory requirements for a non-profit corporation, nor did it present a witness who could respond to questions on its corporate status. The documents in Exhibit 1, without more, are not sufficient to establish non-profit status. The documents are incomplete; no corporate minutes, federal tax returns, charitable trust registration with the Secretary of State, evidence that profits of the firm are not distributed to individuals, or other indicia of an ongoing non-profit corporate entity were presented.

U & I CAN claims in its motion that it has no customers, only members. Again, no testimony from U & I CAN is available on this point. Not only did U & I CAN present no testimony or exhibits, U & I CAN also refused to respond to data requests from U S WEST and GTE. If further proceedings are held in this matter, U & I CAN has been ordered to respond to those data requests. U & I CAN "members" currently pay a one-time initiation fee of \$8.00 and then pay monthly membership dues of \$8.00. Ex. T-7 at 5. The members pay this flat, monthly fee to access the system 30 times per month. If a member exceeds the 30 calls, U & I CAN assesses additional fees of \$8.00 per each group of calls. Id., at 7. The only limitation on membership is sponsorship by an existing U & I CAN member. U & I CAN pays its members \$6.00 for each new member sponsored. Ex. 9. The U & I CAN newsletter contains advertising for other businesses. Ex. 9.

COMMISSION DECISION: U & I CAN is a "company" within the meaning of RCW 80.04.010. U & I CAN sells memberships. Its members are customers in the same sense that any service sector business has customers. U & I CAN incurs expenses, utilizes a pricing structure for its services, generates revenues, markets its services, and publishes advertising for other businesses in its newsletter publication.

U & I CAN's nomenclature does not control the Commission's factual investigation. The finding that U&I CAN is a company is based upon the true nature and extent of U & I CAN's operations.

2. Does U & I CAN provide telecommunications?

U & I CAN's operations constitute what typically is known as "EAS bridging." EAS, or extended area service, provides the ability to call from one exchange to another exchange without incurring a toll charge. RCW 80.36.850. See also, Ex. T-7 at 3. An EAS bridger uses a combination of customized call management services and his or her own

equipment to complete calls between two overlapping EAS regions without incurring access and/or toll charges. Thus, he or she has effectively built a "bridge" between EAS regions to avoid legitimately owed toll charges. Id. at 3-4.

U & I CAN operates its telecommunications system by using call-forwarding features it or members strategically placed in an EAS region purchase from the local exchange company. U & I CAN then places a facility, a personal computer containing a voice mail card, at the location. When the computer receives a call, the voice mail card will "flash hook" and redial. Ex. T-2 at 3. The software in the computer answers calls and requests the calling party to identify the party being called. Id. To complete the EAS bridge, the voice mail card in U & I CAN's computer transmits a series of three tones to the calling party, the calling party then enters his or her personal identification number, the calling party is given another audible tone, and then enters the telephone number of the party being called. The calling party hears a final series of tones, and is connected with the party being called. Ex. T-2 at 4; See also Ex. 8 at 2-3.

COMMISSION DECISION: RCW 80.04.010 defines "telecommunications" as the transmission of information by wire, optical cable, or other similar means. As used in that definition, "information" means knowledge or intelligence represented by any form of signals, or sounds. EAS bridging requires transmission and a series of audible signals in order to function; thus, U & I CAN performs telecommunications.

3. Does U & I CAN Own, Operate or Manage Facilities Used to Provide Telecommunications?

U & I CAN owns computers equipped with voice cards that transfer calls. Ex. 3. The Commission Staff argues that the personal computers and the voice cards are "facilities," as they are broadly defined in RCW 80.04.010, supra, p. 4. In addition to owning the personal computers, U & I CAN also manages the use of call transfer features that U & I CAN or its members purchase from the local exchange company. Ex. T-2 at 3.

U S WEST argues that U & I CAN's computers equipped with flash hook and redial capabilities satisfy the definition of facilities. The computers are a "machine" which facilitates the provision of telecommunications service. U S WEST states that the Commission previously found that a similar device ("Telexpand") constituted a telecommunications facility:

The Telexpand is a facility as defined by statute. MetroLink operates the Telexpand. When a MetroLink customer places a call via the Telexpand, the machine forwards the requested number to the U S WEST central office. That signal is a "transmission of information by wire" which meets the statutory definition of "telecommunications." MetroLink provides the service "for hire, sale and resale." MetroLink's Telexpand service thus fits squarely within the definition of a telecommunications company set forth in RCW 80.04.010. The statute requires that the "facilities" be owned, operated or managed

by the telecommunications company but does not require ownership of the wire or other means of transmission.[6]

The Commission agrees with U S WEST that there is no discernible difference between the facilities used by MetroLink and the facilities used by U & I CAN. The Commission found that MetroLink operated a telecommunications service.

COMMISSION DECISION: The call forwarding or transfer services provided by U & I CAN are "telecommunications" as broadly defined in RCW 80.04.010, supra, p. 4. U & I CAN owns, operates or manages facilities used to provide telecommunications. U & I CAN operates a telecommunications service.

4. Does U & I CAN Provide Telecommunications for Hire, Sale, or Resale?

U & I CAN requires its members to pay both an initiation fee and a flat monthly fee for its service. This flat monthly fee is expressed in terms of the number of times a member accesses the telecommunications system in a given month. A member is allowed to access the system 30 times per month. Ex. T-5. If a member accesses the system more than 30 times, the member will be charged an additional \$8.00 fee for that month. Ex. T-5 at 7. U & I CAN monitors the number of times each member uses the system. Ex. 6.

U & I CAN offers a two-step pricing plan for the purchase of services by members. U & I CAN membership is a month-to-month arrangement. The primary benefit of membership is the cost-saving access to U & I CAN's EAS bridging service.

COMMISSION DECISION: The obligation of members to pay for telecommunications services provided by U & I CAN constitutes sales transactions. U & I CAN provides telecommunications for sale.

5. Does U & I CAN Provide Telecommunications to the General Public?

U & I CAN argues that its members do not comprise the general public, and places great weight on the requirement that new members be sponsored by an existing member. Ex. 9, Attachment 2.

The Commission Staff notes that U & I CAN's members do not all reside in the same building, nor do they work in the same business complex, and argues that, therefore, they do not share the commonality of location required for private shared telecommunication services under RCW 80.04.010. (See Ex. 6). Nor does U & I CAN operate a private telecommunications system because its telecommunications service is not used exclusively by U & I CAN but, instead, is used by the various members for their personal benefit. The Commission Staff also notes that the public service laws do not distinguish U & I CAN members from the general public, and concludes that U & I CAN's members are the general public.

U S WEST argues that U & I CAN's own literature describes its open and non-discriminatory membership policy. (See Ex. T-2). U S WEST also points out that members do not have vested or ownership interests in U & I CAN.

COMMISSION DECISION: Joining in U & I CAN requires only that a potential member be sponsored by another member who has "a like mind and that they will be active in [U&I CAN's] advocations," and that the members participate in a poll regarding their opinions on an assigned "issue of the month." Ex. 1 and 6. However, the true nature of the like mind shared by U & I CAN members appears to be to lower telecommunications expenses. This common interest in illegally paying lower phone rates does not, in and of itself, constitute a sufficient community to support classification as a private telecommunications system. This interest in cost-cutting is common among members of the general public, even though most members are willing to follow legitimate paths for their toll calls.

U&I CAN relies upon member sponsorships as a marketing tool, and it pays its members for each new member sponsored. Member sponsorship is no more than an incentive and mechanism for validating and tracking payments to its existing members for marketing U & I CAN's telecommunications service. Membership is conditioned upon making monthly payments. U & I CAN members subscribe to its telecommunications service.

In the MetroLink case, the Commission faced a nearly identical situation regarding a company that was bridging EAS boundaries in order to provide toll service without incurring toll charges. Second Supp. Order, In the Matter of Determining the Proper Classification of U.S. MetroLink Corp., Docket No. U-88-2370-J (May 1, 1989).[7] In MetroLink, the Commission determined that MetroLink did in fact provide service to the public, despite the fact that it provided services to its "association members." See First Supp. Order at p. 4-5. The Commission found:

[W]hat MetroLink actually does is essentially identical to the operations of numerous regulated toll providers in the state of Washington. Simply stated, MetroLink holds itself out to the public to interconnect access lines provided by local exchange companies and thereby provide[s] interexchange services commonly known as toll. The various organizational structures and arrangements utilized by MetroLink to maintain the appearance of something other than what it is demonstrate only the ingenuity of those who seek to avoid regulation.

MetroLink, Second Supp. Order at p. 3.

U & I CAN provides telecommunications to the general public.

6. Does U & I CAN Operate as a Telecommunications Company?

The Commission is authorized to determine whether U & I CAN is operating as a telecommunications company. RCW 80.04.015. Toll call service between telephone exchanges is reasonably available from other providers, including U S WEST and GTE, who are parties to this proceeding. U & I CAN is a company owning, operating, or managing facilities used to provide telecommunications for sale to the general public. The Commission is authorized to order U & I CAN to cease and desist from providing jurisdictional services pending full compliance with the public service laws in Title 80 RCW. Id.

COMMISSION DECISION: U & I CAN is conducting business as a telecommunications company and the Commission should classify U & I CAN as a telecommunications company. U & I CAN must register with the Commission prior to providing service. RCW 80.36.350. The activities of U & I CAN are subject to the provisions of Title 80 RCW. U & I CAN should be ordered to cease and desist from operating its telecommunications facilities and providing telecommunications service until it has fully complied with the provisions of Title 80 RCW. Because the corporate status of U & I CAN has not been established on this record, this cease and desist order should apply to both the putative corporation and its principals.

FINDINGS OF FACT

1. The Washington Utilities and Transportation Commission (Commission) is an agency of the State of Washington, vested by statute with the authority to regulate rates, rules, regulations, practices, accounts, securities and transfers of public services companies, including telecommunications companies.
2. United & Informed Citizens Advocates Network (U & I CAN) is a Washington company. U & I CAN recruits members from the general public, who are required to pay an initiation fee and monthly dues. There are no restrictions on membership other than sponsorship by a current U & I CAN member. In return for the payment of fees, members are sold thirty (30) "accesses" per month to U & I CAN 's facilities used to provide telecommunications services. If more than 30 accesses are made, additional fees are charged for each group of 30 accesses. U & I CAN offers a two-step pricing plan for the purchase of services by members. U & I CAN membership is a month-to-month arrangement. The primary benefit of membership is the cost-saving access to U & I CAN's EAS bridging service. The obligation of members to pay for telecommunications services provided by U & I CAN constitutes sales transactions. U & I CAN provides telecommunications for sale.
3. U & I CAN claims that it is a non-profit corporation. U & I CAN's incomplete Articles' of Incorporation and undated bylaws demonstrate U & I CAN's putative corporate status. Ex. 1. U & I CAN's claim that it is a non-profit entity is not supported by the evidence in this case. Despite its agreement to produce a complete copy of its articles of incorporation, and a copy of that portion of the corporate minutes which

document adoption of the document claimed to be its bylaws, after a bench request for the information, U & I CAN did not submit the information requested. U & I CAN has not established its non-profit corporate status in this proceeding. The putative corporate status of U & I CAN does not affect any of the Commission's factual findings regarding the effect of the actions carried out by the company which establish, as a matter of fact, that U & I CAN owns telecommunications facilities, and uses those facilities to provide telecommunications services to the general public in the state of Washington. The findings would apply equally to a corporation or to an unincorporated business.

4. RCW 80.04.010 broadly defines "facilities" to include instruments, machines, appliances, and all devices or apparatus. U & I CAN's facilities consist of computers equipped with voice cards having hook flash and redial features. When the computer receives a call, the voice mail card will hook flash and redial. Ex. T-2 at 3. The software in the computer answers calls and requests the calling party to identify the party being called. Id. To complete the Extended-Area-Service (EAS) bridge, the voice-mail card in U & I CAN's computer transmits a series of three tones to the calling party, the calling party then enters his or her personal identification number, the calling party is given another audible tone, and then enters the telephone number of the party being called. The calling party hears a final series of tones, and is connected with the party being called. Ex. T-2 at 4; see also Ex. 8 at 2-3. These computers are connected to the public switched network through the use of access lines provided for U & I CAN's use by members whose premises are located in EAS areas.

These access lines with call forwarding features are provided by local exchange companies, including U S WEST and GTE.

By combining its computers with the access lines, U & I CAN is able to transfer an unlimited number of calls over EAS boundaries without paying toll or access charges.

U & I CAN's operations thus constitute what typically is known as "EAS bridging." EAS, or extended area service, provides the ability to call from one exchange to another exchange without incurring a toll charge. RCW 80.04.010 defines "telecommunications" as the transmission of information by wire, optical cable, or other similar means. As used in that definition, "information" means knowledge or intelligence represented by any form of signals, or sounds. EAS bridging requires transmission and a series of audible signals in order to function. U & I CAN performs telecommunications.

5. RCW 80.04.015 provides that whenever the Commission believes that any person or corporation is engaged in any activity without complying with statutory requirements, it may institute a special proceeding. The instant case is such a proceeding. The statute applies equally to U & I CAN whether it is a corporation (which it has not proven, and is specifically not found to be) or is only a company run by individuals.

6. The definition of "telecommunications company" in RCW 80.04.010 applies to every corporation or company. RCW 80.04.015 is consistent with the Washington State

Constitution, Article XII, Section 19. Article XII, Section 19, establishes the right of legal entities to organize for the purpose of conducting business as telecommunications companies, subject to legislative control. RCW 80.04.015 authorizes the Commission to regulate entities based upon their conduct.

7. U & I CAN conducts activities that require prior registration or approval of the Commission.

8. U & I CAN's service is affected with the public interest because it has, or could have, a significant effect on the public switched telephone network in a manner that harms the public interest. U & I CAN's system is designed to allow users to bypass toll charges through EAS bridging. Costs caused by users who avoid toll charges will be passed along to all customers in the form of higher local rates.

9. U & I CAN is attempting to exploit a legal anomaly which was created by the legislature in an effort to promote equity between telephone service providers and customers. RCW 80.36.855. U & I CAN is depriving U S WEST and GTE of revenues which they would collect otherwise, and it is competing unfairly with authorized resellers of long distance service who abide by the applicable tariffs.

10. The Commission determined in a separate proceeding involving U & I CAN that it is illegal in Washington to bridge EAS territories without payment of access charges.

11. U & I CAN claims it has no customers, only members. U & I CAN "members" currently pay a one-time initiation fee of \$8.00, and then pay monthly membership dues of \$8.00. Exs. T-7 at 5. The members pay this flat, monthly fee to purchase access to the system 30 times per month. If the member exceeds the 30 calls purchased, U & I CAN assesses additional fees of \$8.00 per each additional group of 30 calls. Id., at 7. The only limitation on membership is sponsorship by an existing U & I CAN member. U & I CAN pays its members \$6.00 for each new member sponsored. Ex. 9. The U & I CAN newsletter contains advertising for other businesses. Ex. 9. U & I CAN is a "company" within the meaning of RCW 80.04.010. U & I CAN sells memberships. Its members are customers in the same sense that any service sector business has customers. U & I CAN incurs expenses, utilizes a pricing structure for its services, generates revenues, markets its services, and publishes advertising for other businesses in its newsletter publication. Member sponsorship is no more than an incentive and mechanism for validating and tracking payments to its existing members for marketing U & I CAN's telecommunications service. Membership is conditioned upon making monthly payments. U & I CAN members subscribe to its telecommunications service.

12. U & I CAN's members do not all reside in the same building, nor do they work in the same business complex and, therefore, they do not share the commonality of location required for private shared telecommunication services under RCW 80.04.010.

13. U & I CAN does not operate a private telecommunications system because its telecommunications service is not used exclusively by U & I CAN but, instead, is used by the various members for their personal benefit.

14. The only common goal or "like mind" shown on the record to be shared by U & I CAN members is a quest to lower telecommunications expenses. This common interest in illegally paying lower phone rates does not, in and of itself, constitute a sufficient community to support classification as a private telecommunications system. What U & I CAN actually does is essentially identical to the operations of numerous regulated toll providers in the state of Washington. Simply stated, U & I CAN holds itself out to the public to interconnect access lines provided by local exchange companies and thereby provides interexchange services commonly known as toll. The various organizational structures and arrangements utilized by U & I CAN to maintain the appearance of something other than what it is demonstrate only the ingenuity of its attempt to avoid regulation. U & I CAN provides telecommunications to the general public.

15. U & I CAN is conducting business as a telecommunications company, and it must register with the Commission prior to providing service. RCW 80.36.350. The activities of U & I CAN are subject to the provisions of Title 80 RCW. All parties involved in the activities should be ordered to comply with Title 80 RCW. U & I CAN should be classified as a telecommunications company.

16. U & I CAN should be ordered to cease and desist from operating its telecommunications facilities and providing telecommunications service until it has fully complied with the provisions of Title 80 RCW. Because the corporate status of U & I CAN has not been established on this record, this cease and desist order should apply to both the putative corporation and its principals.

CONCLUSIONS OF LAW

1. The Washington Utilities and Transportation Commission has jurisdiction over the subject matter of this proceeding and the parties thereto.

2. U & I CAN is classified as a telecommunications company as defined by RCW 80.04.010, and must register with the Commission pursuant to RCW 80.36.350. U & I CAN is not exempt from regulation pursuant to RCW 80.36.370 (2).

3. U & I CAN, and its principals, should cease and desist from offering or providing telecommunications services in the state of Washington unless and until it registers as a telecommunications company with the Commission.

4. It is appropriate for the Commission to enter a final order in this matter.

ORDER

THE COMMISSION ORDERS That:

1. The respondent, U & I CAN, is classified as a telecommunications company within the state of Washington.
2. U & I CAN and its principals are directed by this order to cease and desist from conducting activities requiring authority from this Commission without first having obtained such authority.
3. The Commission retains jurisdiction over the parties and subject matter of this proceeding to effect the terms of this order.

DATED at Olympia, Washington, and effective this 9th day of February 1999.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

ANNE LEVINSON, Chairwoman

RICHARD HEMSTAD, Commissioner

WILLIAM R. GILLIS, Commissioner

NOTICE TO PARTIES:

This is a final order of the Commission. In addition to judicial review, administrative relief may be available through a petition for reconsideration, filed within 10 days of the service of this order pursuant to RCW 34.05.470 and WAC 480-09-810, or a petition for rehearing pursuant to RCW 80.04.200 or RCW 81.04.200 and WAC 480-09-820(1).

ENDNOTES:

- [1] First Supplemental Order - Prehearing Conference Order, Docket No. UT-971515 (December 5, 1997) (Prehearing Conference Order).
- [2] Second Supplemental Order - Protective Order, Docket No. UT-971515 (December 5, 1997).
- [3] Third Supplemental Order - Order Denying Objection to First Supplemental Order - Prehearing Conference Order, Docket No. UT-971515 (January 23, 1998).
- [4] Mr. Holcomb made a general appearance on behalf of U & I CAN at the prehearing conference.
- [5] Washington Corporation v. Pacific Northwest Bell Telephone Co. d/b/a US West Communications, Inc., Third Supp. Order, Commission Decision and Order Granting Interlocutory Review of Order; Affirming Second Order, Docket No. UT-960659, at pp.6-7 (February 5, 1998).
- [6] In the Matter of Determining the Proper Classification of U.S. MetroLink Corp., Cause No. U-88-2370-J, First Supplemental Order, at p. 19 (February 7, 1989).
- [7] U&I CAN's operations are nearly identical to MetroLink's. MetroLink's operations are described in the First Supplemental Order, In the Matter of Determining the Proper Classification of U.S. MetroLink Corp., Supra.

EXHIBIT 7

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- BEFORE THE PUBLIC SERVICE COMMISSION OF ~~ARIZONA~~ ^{UTAH} 1994

U S WEST INC.
LAW DEPARTMENT
SEATTLE

DOCKET NO. 93-049-20

In the Matter of the Complaint of)
U S WEST COMMUNICATIONS, INC.,)
Against BRIDGE COMMUNICATIONS,)
INC., and AMERICAN LONG DISTANCE)
COMMUNICATIONS SERVICES, INC.)

REPORT AND ORDER

ISSUED: August 19, 1994

SYNOPSIS

In a complaint brought by a telephone corporation against two customers for resale of telephone service in violation of filed tariff, the Commission held that respondents were a legally distinguishable class from other customers taking the same services, by virtue of respondents' role as a paid conduit for distribution of those services to parties not otherwise entitled thereto, and hence proceedings against respondents were not invidiously discriminatory, nor did the proceedings jeopardize the interests of other customers, rendering a rulemaking proceeding neither mandatory nor advisable; the Commission found that respondents' distribution constituted a resale within the meaning of the applicable tariff provisions, and since resale of the services at issue were prohibited by the tariff, the complainant was authorized to withdraw service.

Appearances:

Molly K. Hastings	For	US West Communications, Inc., Complainant
David R. Irvine	"	Bridge Communications, Inc., Respondent
R. Paul Van Dam	"	American Long Distance Communications Services, Inc., Respondent
Michael Ginsberg, Assis- tant Attorney General	"	Division of Public Util- ities, Utah Department of Commerce, Intervenor

COMMUNICATIONS

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PROCEDURAL HISTORY

This matter was initiated by complaint filed September 24, 1993. After protracted pre-hearing maneuvering, including motions to dismiss denied by the Commission, the matter came on regularly for hearing the twentieth day of April, 1994. Evidence was offered and received, and thereafter the parties submitted post-hearing memoranda. The Administrative Law Judge, having been fully advised in the premises, now enters the following Report, containing proposed Findings of Fact, Conclusions of Law, and the Order based thereon.

FINDINGS OF FACT

1. US West Communications, Inc., (hereafter "USWC"), complainant herein, is a telephone corporation certificated by this Commission. Bridge Communications, Inc., (hereafter "Bridge"), respondent herein, is a corporation not certificated by this Commission whose activities are complained of. American Long Distance Communications Services, Inc., (hereafter "ALD"), respondent herein, is likewise a corporation whose activities are complained of. The Division of Public Utilities, (hereafter "DPU"), intervenor herein, is an agency of Utah State Government charged, *inter alia*, with tariff enforcement.
2. In the course of telecommunications regulation, this

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Commission has established a number of Extended Area Service ("EAS") regions throughout Utah. The defining property of EAS telephone service is that it enables the subscriber to dial outside the service area of the subscriber's local central telephone office (but within a defined geographic region) without incurring Message Telecommunication Service (MTS), commonly known as "toll," charges. Within EAS regions, subscription to EAS service is a mandatory flat-rated part of basic telephone charges.¹

3. One EAS region includes most of Salt Lake County and north into central Davis County. A second region includes Ogden and south into central Davis County. This creates an overlapping area in Davis County in which subscribers are included in both EAS regions and can, accordingly, dial north or south, to Ogden or Salt Lake City, without incurring toll charges.²
4. The purpose for establishing the EAS regions was to balance the interests of customers wishing a monthly flat rate charge for frequent calls within their perceived local calling area and USWC's interest in a fair return

¹Transcript at 61.

²Pre-filed testimony of James B. Farr at 4-5.

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on its service.³

5. Both Respondents have situated their businesses within the overlapping EAS region in Davis County. They have subscribed to USWC's business services (subscribing for multiple lines), including a feature that enables them to re-route incoming calls to another destination within their EAS region.⁴
6. Both respondents offer a service to their customers whereby the respective customers can dial in-to respondents' respective facilities, and, after furnishing a Personal Identification Number (PIN), which Respondents' equipment verifies automatically, can then dial a number outside the respective customers' EAS region.⁵ Respondents' equipment then uses USWC's transfer feature to complete the call. Respondents each charge their customers a flat rate of 25 cents per call,⁶ regardless of length of time, for this service. For the customer, the effect is to avoid otherwise applicable

³In effect, EAS subscribers get a volume discount on certain calls otherwise subject to toll charges. Those who make little use of EAS are, in effect, subsidizing those who make average or heavy use.

⁴Hearing Exhibit 10.

⁵Pre-filed testimony of James B. Farr, at 4.

⁶Pre-filed testimony of James B. Farr at 5.

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toll charges.'

7. Any subscriber in the overlapping EAS region may achieve a similar result through the use of a call forwarding or similar feature; a hypothetical subscriber, for example, may forward his or her calls to an Ogden number and receive a call there placed by a hypothetical caller in Salt Lake City. The Salt Lake caller, of course, may not even know that he or she is getting the benefit of avoiding the otherwise applicable toll charges. In the example, the hypothetical caller dials a Davis County number within the caller's EAS region--the caller's intent is not to call an Ogden number, let alone avoid toll charges.
8. Since, in the previous example, the call originates as an ordinary call within the caller's EAS, and the transfer is likewise within the callee's EAS,⁸ USWC's equipment will not pick up anything untoward; there is no way to track abuse of the system. In Respondents' case, this is how they avoid getting charged toll for their customers' calls.'

⁷Pre-filed testimony of James B. Farr at 3.

⁸Transcript at 69-70.

⁹Id.

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9. Both Respondents assert that they offer voice mail service, a service unregulated by this Commission, in addition to the call transfer service described above. For reasons discussed below, we deem the voice mail issue irrelevant to the resolution of this matter, and, accordingly, make no finding in regard thereto.¹⁰
10. Bridge's expert witness offered that the call transfer service was in some way inferior to USWC's regular toll service in that the call completion rate was lower; that rate must not be too bad, or respondents could not sustain their business¹¹--and would not be resisting so desperately surrendering the call transfer service. We find that the service is sufficiently close to USWC's MTS service as to be interchangeable.
11. Respondent Bridge has asserted vociferously that the technical details of how Bridge's and USWC's equipment interact is crucial to the resolution of this matter. Bridge has never offered any specifics as to how or why

¹⁰However, we cannot resist noting the anomaly that despite Respondents' claims that they are primarily voice mail providers, they have not settled this matter, as they easily could, by ceasing to offer the call transfer service.

¹¹Particularly since Respondents charge their flat rate for uncompleted calls, including busy signals.

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this is so,¹² and we have not become aware of any such reasons in the course of the proceedings. For reasons discussed below, we deem any such issue irrelevant to the resolution of this matter, and we make no findings thereon.¹³

CONCLUSIONS OF LAW

The Commission has party and subject matter jurisdiction.

CLAIM OF DISCRIMINATION

Respondents have filed several motions to dismiss during the course of these proceedings; they have asserted that the reasons for denying the same have never been adequately set forth. We shall make one more attempt.

Though respondents have presented variations on the theme, their basic premise is that respondents' call transfer service offered to third parties does not differentiate respondents from any other central Davis County subscriber having the ability to forward or transfer calls. From this premise, they argue that all other so-enabled Davis County subscribers will be affected by these proceedings, and that, accordingly, the proceedings should be converted into rulemaking, or we should serve all transfer-enabled

¹²Not even in its post-hearing memoranda.

¹³In any event, nothing in Bridge's expert's training or background appears to qualify him to speak to such issues, and in the absence of any credible evidence, we would be unable to make a finding, even if we thought the issue important.

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subscribers and name them parties.¹⁴ The latter course would, of course, render further proceedings impossible as a practical matter. We reject respondents' argument on two grounds.

First, we reject absolutely respondents' contention that their activities do not differentiate them from other Davis County subscribers with a transfer capability. A little set theory may illustrate the point.

A set is simply a collection of entities (members) sharing certain common, defining characteristics or properties. Consider first the set of all telephone subscribers in central Davis County: the defining characteristics of the members of this set are connected to USWC's system and the ability, by virtue of location within two EAS regions, to call toll-free within both regions. This is our "universal set."

Within sets there may exist subsets. Subset members have all the defining characteristics of members of the larger set (superset) but possess certain additional defining characteristics which distinguish them from other members of the superset.

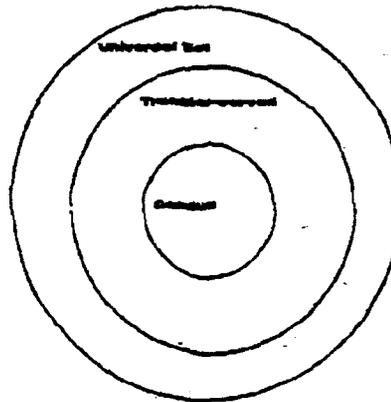
Within our universal set there are, for our purposes, two subsets: subscribers having transfer capability (which we will call "transfer-served"), and the transfer-served who provide third parties the benefit of their service for compensation (which we

¹⁴Otherwise, contend respondents, we are guilty of invidious discrimination against them.

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will call "conduits"). Conduits constitute a subset of the transfer-served subset (and a sub-subset of the universal set). We can illustrate graphically as in the figure above.



Invidious legal discrimination can occur only regarding like entities. Respondents' argument thus boils down to a claim that they do not constitute, for legal purposes, a subset distinguishable from other transfer-served central Davis County subscribers. The main point they raise in support of this claim is that other commercial establishments so located may benefit financially from the transfer capability. This is true, as far as it goes. Customers of a transfer-served firm, for example, might place calls, otherwise subject to toll charges, to sales people.

There is, however, a crucial difference. However much such establishments may save in overhead by the use of the transfer capability, their cash flow is in no way dependent on that capability. The overhead benefit is incidental to conducting a non-communication related (or at least a non-regulated communication-related) business. The transfer capability is being used for the concern's own benefit, and the benefit to other

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parties, if any, is incidental. It is the concern's own telephone service and traffic being facilitated, not that of outside parties. Further, such concerns control where the traffic will be transferred--they direct the call's ultimate destination; they do not simply turn their capability over to outside parties to use as they will for their own traffic and to choose their own destination for the call. The non-conduit concerns are simply using their own service, for which they have paid, for their own purposes, and in the manner envisaged by the tariff; they are not directly generating income from that service. In short, respondents act as conduits, and they get paid for that role. The other transfer-served customers, commercial or residential, do not.

We conclude these differences are more than sufficient to negate any claim of invidious discrimination. Respondents constitute a subset readily distinguishable from the supersets of the transfer-served and the universal set. Thus the interests of members of those supersets are not at issue in these proceedings, and there is no reason for them to participate, nor is there any reason to convert these proceedings into rulemaking.

We conclude that the characteristics so distinguishing respondents have legal significance which justifies these proceedings.

Respondents' final argument on the discrimination issue should be addressed: as we understand it, since there may be

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other, undiscovered, concerns doing the same thing as respondents, we cannot proceed until all such concerns have been served.

This is analogous to arguing that no burglars can be prosecuted until all have been rounded up. The argument is preposterous. If we were knowingly to pick and choose which firms could operate as do respondents, and which could not, the claim of discrimination would have validity; but because neither we nor USWC can presently ferret out all who may be abusing the system clandestinely, we are not precluded from proceeding against those heretofore discovered.¹⁵ If others surface, they can be made the subject of appropriate proceedings and accorded the due process to which they are entitled. This Commission can make law by the use of *stare decisis*¹⁶ as well as by rulemaking.

Respondents' motions to dismiss should be denied, and we will herein affirm our previous denials of the same.

TARIFF INTERPRETATION

The only issue in these proceedings, and the one respondents have striven mightily to avoid through continued tactics of confusion, delay, and obfuscation, is the interpretation

¹⁵Respondents were asked during discovery to furnish the names of other like concerns; Bridge finally provided one bare name and address at the hearing. We deem that insufficient to sustain any claim of discrimination.

¹⁶Salt Lake Citizens Congress, et al., v. Mountain States Telephone and Telegraph Company, dba Mountain Bell, et al., 866 P.2d 1245 (Utah 1992).

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of USWC's tariff, to wit: is respondents' use of their service from USWC permitted under USWC's tariff? The resolution of that depends on resolving the issue of whether they are resellers within the meaning of the tariff.

The relevant provisions are two sections of the Utah Exchange and Network Services Tariff,¹⁷ the first of which, Section 2.2.5, provides:

Resale/Sharing of service is allowed pursuant to the terms of Section 5.10 of this Tariff.

The second provision is Section 5.10 A.2 of the same tariff which provides:

Access to the Network furnished to the customer of record providing Resale/Sharing services, is limited to the following Type and Classes of Service.

- a. Measured Rate Resale/Sharing Access Trunks as defined in [section] 5.10.1 following and Network Access Registers.
- b. Flat Rate Resale/Sharing Access Trunks as defined in [section] 5.10.1 following and network access registers. (Emphasis added.)

The access trunks referred to are limited to

¹⁷This tariff governs what may be loosely termed local residential and commercial telephone service. It includes access to the long-distance network. A separate tariff, the Access Service Tariff, governs resale of MTS service. Respondents can subscribe to this tariff, but then they would have to pay applicable USWC charges and contribute to the Universal Service Fund. Their business is profitable precisely because they provide the equivalent of long distance service to their customers while avoiding the costs of competing authorized MTS resellers such as MCI and Sprint.

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resale/sharing areas comprised of single buildings, parts of buildings, or specifically delineated (with legal description furnished to USWC) geographic area in which the customer provides exchange service.¹⁸ The resellers are authorized only to serve customers located within the resale/sharing area (Section 5.10.A.15). Clearly respondents are not providing this type of exchange service--they provide only the toll-avoidance service, which is the equivalent of long distance service which would otherwise be subject to MTS charges, and they have certainly not established any resale/sharing area.

Respondents profess great puzzlement and confusion concerning these tariff provisions. We don't believe the perplexity is warranted.

Respondents first profess an inability to find in the tariff any prohibition of their activities. An elementary syllogism may elucidate: Only resale/sharing trunk service is authorized for resale; respondents are not providing that type of service; QED respondents' service is not authorized for resale. True, Section 2.2.5 does not use the word "only," but the phrase

¹⁸The provision is for the benefit of office and apartment complexes, and like entities, wishing to provide their own internal service for occupants. It implies that the entire resale/sharing area is wired together to provide a local telephone service. Transcript at 107-108. Obviously this in no way describes respondents' operation.

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"is limited to" in Section 5.10 certainly provides a synonym.¹⁹

Respondents' second line of defense is the contention that even if resale is prohibited, they are not resellers. They advance two branches to the argument. First, they assert, they have nothing to resell--they are mere subscribers to USWC's service. We cannot agree. They have two items as their stock in trade: an advantageous EAS location and transfer capability. Their activity involves transferring the benefit of both to other parties for compensation. Both are USWC's tariffed services, so respondents have something to sell which they receive from USWC-- and nothing else.²⁰

Respondents' second contention is that the term "reseller" in this context is some arcane term of art requiring an elaborate definition. Respondents offer no such definition, and we do not perceive the need for one.

¹⁹Even absent the phrase in section 5.10, the clear import of the language in section 2.2.5 is to prohibit resale of any services not delineated in section 5.10. Particularly in a context such as this, there is no reason to list a limited collection of services for resale if all are for resale. In terms of set theory, there is no reason to delineate a subset if it is co-extensive with the superset. Or, in terms of statutory construction, "*inclusio unius est exclusio alterius*" (to include one implies exclusion of the other) Black's Law Dictionary 4th Ed. 906.

²⁰We disregard respondents' claimed voice mail service. They have not claimed the two services cannot be separated, and we have no reason to believe separation is impossible. If indeed respondents' primary business is voice mail, they can settle this matter easily by dropping the call transfer service.

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We digress briefly here. Bridge asserts that the Administrative Law Judge unduly narrowed the issues in this matter. Bridge claims that one issue improperly excluded was that of the mechanics (perhaps more accurately "electronics") of the interaction between Bridge's and USWC's equipment. Presumably one reason to explore this matter was to establish the need for a more elaborate definition of reseller.

We do not see that the relevant tariff provisions are at all dependent on the details of equipment interaction.²¹ Even if we thought the technical workings of the equipment had some relevance, Bridge's only witness in this regard was David L. Wilner, whose education and experience, or lack thereof, inspire no confidence that he is qualified to speak to such issues. By way of education, he possesses not so much as a high school diploma, and his only technical background is a brief stint as a telephone repairman. He claims to have once taken in-house training (at an AT&T affiliate long before divestiture) in tariff writing.

We recognize that the qualifications for an expert witness are, these days, elastic. But Mr. Wilner's qualifications

²¹As a further example of Bridge's attempts to obfuscate, Bridge's reply brief tries to make something of the Administrative Law Judge's (ALJ) use of the term "blackbox" in regard to Bridge's equipment, misconstruing the term as having, in the ALJ's mind, some pejorative connotation. As the context of the ALJ's remarks show, he was using the term simply as a generic term for equipment the inner workings of which are not known. The ALJ used the same term for USWC's equipment--equally with no pejorative intent.

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are stretched so thin that in our estimation they break. We accord his testimony no credibility whatever.²² Since Bridge did not even offer any credible testimony on the technical issue, it can hardly complain if we ignore that issue.

Returning to our main discussion, the Latin prefix "re" means to iterate or perform an action again.²³ To sell is to relinquish for money or other valuable consideration.²⁴ Thus to resell is to "sell again." We believe the dictionary definition is quite clear and adequate for our purposes and nicely describes respondents' activities. We see no reason to suppose it does not embody the intent of the drafters of the tariff. In terms of statutory construction, language is to be assigned its ordinary, plain meaning absent exceptional circumstances, and we do not discern any exceptional circumstances here. Respondents subscribe to EAS and call transfer services, tariffed and sold by USWC, for money, and for money, respondents transfer those same services to others who have not subscribed to them. Respondents are unauthorized resellers, and all of respondents' energetic attempts

²²For example, Wilner made much of the issue of "control" of the call. He never did clarify what he fancied by this term. For our purposes, it is sufficient that respondents' equipment enables the calls to be redirected--that is all the control necessary. Exactly how that is achieved is legally irrelevant.

²³Websters New Collegiate Dictionary, 1973 Ed. 960.

²⁴Id. 1051

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to obfuscate that simple state of affairs cannot change it.

Respondents' last line of defense is citation of Josephson v. Mountain Bell,²⁵ a case in which the Utah Supreme Court said that filed tariffs are to be construed strictly against the utility.²⁶ We agree with and follow that principle. Strict construction of the tariff, however, does not require us to find vagueness or ambiguity where none exists, nor does it require us to adopt a strained and unreasonable construction to the utility's detriment. This we would have to do to find for respondents.

It may well be that the applicable tariff provisions require a certain amount of close reading and tracking of cross-references; that does not in itself create ambiguity or vagueness. Nor do we believe that makes reading the tariff unduly burdensome. Many documents to which respondents are held, including Commission rules, are at least equally convoluted.

CONCLUSION

We should be very clear what is and is not involved in these proceedings. This is not a case of small, virtuous Davids being set upon by a powerful, evil Goliath out to crush legitimate

²⁵576 P.2d 850 (Utah 1978).

²⁶The case was decided on the alternative bases that the utility had not complied strictly with the tariff or that the tariff provision itself was unjust and unreasonable and thus should be judged void. Accordingly, the language regarding strict construction of the tariff is dictum.

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competition. These respondents are offering no innovation in service or technology. This is a case of these respondents setting out to exploit a legal anomaly which was created by this Commission in an effort to promote equity between telephone service providers and customers. These respondents are turning the Commission's effort to promote equity on its head. For their own profit, they are enabling some USWC customers to realize savings to which those customers are not entitled. In the process, these respondents are depriving USWC of revenues which it would collect otherwise, and they are competing unfairly with authorized resellers of MTS service who abide by the applicable USWC tariffs. They also do not contribute revenues which would otherwise go to the Universal Service Fund,²⁷ thus potentially saddling telephone service subscribers in outlying areas of the state with higher costs than they would incur otherwise. Respondents' service is, in short, contrary to the public interest.

Having concluded that respondents are illicit resellers of USWC's service, we need not reach the issue whether they are public utilities.

The complaint of USWC should be sustained, and it should

²⁷The Universal Service Fund was created to subsidize telephone service to customers in small, isolated locations. Without the fund, such customers would have to bear the full costs of service, which, in many cases, would be prohibitive. The fund is financed by a surcharge on calls subject to MTS charges.

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be authorized to cut off service to respondents for violation of its tariffs.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that:

- >> The motions to dismiss of BRIDGE COMMUNICATIONS, INC., and AMERICAN LONG DISTANCE SERVICES, INC., be, and they are, singularly and collectively, denied.
- >> US WEST COMMUNICATIONS, INC., be, and it is, authorized to withdraw service, singularly and collectively, from BRIDGE COMMUNICATIONS, INC., and AMERICAN LONG DISTANCE COMMUNICATIONS SERVICES, INC., and to withhold such service until such time as said respondents, or either of them, furnish adequate assurance that such service will not be resold contrary to the applicable tariffs.
- >> Any person aggrieved by this Order may petition the Commission for review within 20 days of the date of this Order. Failure so to do will forfeit the right to appeal to the Utah Supreme Court.

DATED at Salt Lake City, Utah, this 19th day of August,

1994.

/s/ A. Robert Thurman
Administrative Law Judge

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Arizona Corporation Commission
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Approved and Confirmed this 19th day of August, 1994, as
the Report and Order of the Public Service Commission of Utah.

/s/ Stephen F. Mechan, Chairman

(SEAL)

/s/ James M. Byrne, Commissioner

/s/ Stephen C. Hewlett, Commissioner

Attest:

/s/ Julie Orchard
Commission Secretary

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