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Arizona Corporation Commission

**DOCKETED**  
**BEFORE THE ARIZONA CORPORATION COMMISSION**

OCT 20 1999

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CARL J. KUNASEK  
CHAIRMAN  
JIM IRVIN  
COMMISSIONER  
WILLIAM A. MUNDELL  
COMMISSIONER

DOCKETED BY [Signature]

ARIZONA CORPORATION COMMISSION  
DOCUMENT CONTROL

IN THE MATTER OF THE COMPLAINT OF  
AT&T COMMUNICATIONS OF THE  
MOUNTAIN STATES, INC. AGAINST U S WEST  
COMMUNICATIONS, INC. REGARDING  
ACCESS SERVICE.

DOCKET NO. T-01051B-99-0476

**PROCEDURAL ORDER**

**BY THE COMMISSION:**

On August 18, 1999, AT&T Communications of the Mountain States, Inc. ("AT&T") filed a Complaint against U S WEST Communications, Inc. ("U S WEST"), alleging an unwillingness to provide facilities necessary for access services; an unwillingness to timely provision the facilities it does provide; practices that favor itself, its affiliates and its own customers; and maintaining unreasonable differences as to access services between localities and classes of services when deciding where to provision facilities. On September 13, 1999, U S WEST filed a Motion for More Definite Statement, Motion for Extension and, in the Alternative, Motion for Partial Summary Judgment ("Motion"). On September 30, 1999, AT&T filed a Response to U S WEST's Motion; and on October 12, 1999, U S WEST filed a Reply.

U S WEST claimed that the Commission does not have jurisdiction to consider any interstate allegations made by AT&T, including access services ordered pursuant to U S WEST's interstate FCC tariff. U S WEST alleged that AT&T's "federal claims" are barred by the filed rate doctrine, AT&T v. Central Office Telephone, Inc., 118 S. Ct. 1956, (1998). In AT&T v. Central Office, certain contractual commitments were different than AT&T's federal tariff for services. According to U S WEST, the United States Supreme Court ruled that the filed rate doctrine dictates that all terms and conditions of a federally tariffed service must be governed entirely by the terms of the federal tariff.

U S WEST requested that the Commission direct AT&T to remove or clearly identify any claims governed by federal law for access services bought out of U S WEST's FCC tariff, or grant U

1 S WEST partial summary judgment as to AT&T's claims based upon federal law. U S WEST further  
2 requested an extension of time to answer AT&T's Complaint until ten days after the Commission  
3 ruled upon its Motion.

4 U S WEST claimed that the Colorado Public Utilities Commission recently granted a virtually  
5 identical motion filed by U S WEST. U S WEST alleged that a state public utility commission is not  
6 free to impose terms and conditions that are not set forth in the tariff.

7 AT&T claimed that U S WEST has violated numerous Arizona statutes and U S WEST's  
8 Service Quality Plan tariff ("Tariff"). AT&T alleged that the Tariff, Section 2.5.4, entitled  
9 "Interoffice Trunking," sets specific engineering design standards for interoffice trunk facilities.  
10 AT&T claimed that the Commission recognized that Arizona customers are entitled to specific levels  
11 of quality for communications using such facilities. AT&T asserted that access services priced and  
12 ordered under its FCC tariff have definite and substantial intrastate components, and are not subject  
13 solely to FCC oversight.

14 AT&T claimed that the filed rate doctrine restricts only the common law remedies of one who  
15 purchases services, not the regulatory oversight of the Commission. AT&T asserted that 47 U.S.C. §  
16 253(b) grants the Commission authority to impose requirements necessary "to protect the public  
17 safety and welfare, ensure the continued quality of telecommunications services, and safeguard the  
18 rights of consumers," including jurisdiction to oversee the provision and quality of intrastate services.  
19 According to AT&T, the filed rate doctrine does not prevent the Commission from enforcing its own  
20 regulatory provisions.

21 AT&T asserted that Arizona is a "notice pleading" state, and the Complaint provides U S  
22 WEST with sufficient notice of the factual and legal bases of the Complaint. AT&T claimed that  
23 there exist genuine issues of material fact to withstand U S WEST's Motion.

24 AT&T requested that U S WEST's request for an extension be denied. AT&T claimed that U  
25 S WEST was able to answer a similar Complaint in another state, and to determine from its own  
26 records the held orders ordered from the interstate tariff. AT&T requested that U S WEST be  
27 ordered to file its Answer immediately.

28 At this time, we will grant U S WEST's Motion for a More Definite Statement. AT&T will

1 be directed to file a more definite statement of the allegedly held orders. The Motion is granted in  
2 part, in the interest of providing discovery in this matter. U S WEST's Motion for Partial Summary  
3 Judgment will be denied at this time. U S WEST is free to submit a Motion for Partial Summary  
4 Judgment at a later date, based upon the record to be developed in this matter. U S WEST will be  
5 allowed additional time to answer the Complaint.

6 The filed rate doctrine does not preempt the Commission's jurisdiction in this matter.  
7 Contrary to the claims of U S WEST, through the Tariff, the Commission has imposed terms and  
8 conditions for the provision of services, and penalties if the conditions were not met. Furthermore, in  
9 addition to the provision in the Tariff cited by AT&T, the Tariff, Section 2.5.2.A, in relevant part  
10 provides:

11 **Basic Service Standard**

12 As part of its obligation to provide adequate basic telephone service, the Company  
13 shall construct and maintain its telecommunications network so that the  
14 instrumentalities, equipment, and facilities within the network shall be adequate,  
efficient, just and reasonable in all respects in order to provide each customer within  
its service area with the following services or capabilities:

15 5. Access to toll services

16 IT IS THEREFORE ORDERED that U S WEST's Motion for More Definite Statement shall  
17 be, and is hereby, granted. AT&T shall file a clarification of the "at least 93" allegedly held orders  
18 referenced in paragraph 36 of its Complaint, by October 29, 1999.

19 IT IS FURTHER ORDERED that U S WEST's Motion for an Extension of time to answer  
20 the Complaint is hereby granted. U S WEST shall file its Answer within ten calendar days of AT&T  
21 filing its clarification.

22 IT IS FURTHER ORDERED that U S WEST's Motion for Partial Summary Judgment is  
23 hereby denied.

24 IT IS FURTHER ORDERED that a hearing in this matter shall be held on January 12, 2000,  
25 at 9:30 a.m., at the Commission's offices at 1200 West Washington Street, Phoenix, Arizona, 85007.

26 IT IS FURTHER ORDERED that discovery shall be as permitted by law and the rules and  
27 regulations of the Commission, except that every effort shall be made to respond within seven  
28 calendar days of receipt; the response time may be extended by mutual agreement of the parties

1 involved if the request requires an extensive compilation effort.

2 IT IS FURTHER ORDERED that in the alternative to filing a written motion to compel  
3 discovery, any party seeking discovery may telephonically contact the Commission's Hearing  
4 Division to request a date for a procedural hearing to resolve the discovery dispute; that upon such  
5 request, a procedural hearing will be convened as soon as practicable; and that the party making such  
6 a request shall forthwith contact all other parties to advise them of the hearing date and shall at the  
7 hearing provide a statement confirming that the other parties were contacted.<sup>1</sup>

8 IT IS FURTHER ORDERED that the Presiding Officer may rescind, alter, amend, or waive  
9 any portion of this Procedural Order either by subsequent Procedural Order or by ruling at hearing.

10 DATED this 20<sup>th</sup> day of October, 1999.

11  
12   
13 BARBARA M. BEHUN  
14 HEARING OFFICER

14 Copies of the foregoing mailed/delivered  
15 this 20<sup>th</sup> day of October, 1999, to:

16 Thomas M. Dethlefs  
17 Senior Attorney  
18 U S WEST Communications, Inc.  
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20 Denver, Colorado 80202

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26 Richard S. Wolters  
27 AT&T Law Department  
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<sup>1</sup> The parties are encouraged to attempt to settle discovery disputes through informal, good-faith negotiations before seeking Commission resolution of the controversy.

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11  
12 By:   
13 Brenda Sanchez  
Secretary to Barbara M. Behun  
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