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BEFORE THE ARIZONA CORPORATION COMMISSION

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**CARL J. KUNASEK**  
Chairman  
**JIM IRVIN**  
Commissioner  
**WILLIAM A. MUNDELL**  
Commissioner

IN THE MATTER OF THE GENERIC REVIEW ) DOCKET NO. RT-00000D-00-0694  
OF PROCEDURES FOR COMPETITIVE )  
TELECOMMUNICATIONS ) **COMMENTS OF ALLTEL**  
 ) **COMMUNICATIONS, INC.**

ALLTEL Communications, Inc. ("ACI") submits these comments to the Arizona Corporation Commission ("Commission") as requested in its September 18, 2000 Procedural Order.

In 1995, the Commission adopted rules allowing telecommunications providers to become certified to provide competitive local and intraLATA telecommunications services in Arizona. Several companies have filed for and obtained competitive Certificates of Convenience and Necessity ("CC&N's") from the Commission. In granting those applications, the Commission approved proposed tariffs establishing rates that were above the total service long run incremental costs, but did not consider fair value rate base.

On June 2, 2000, ACI filed an application for a CC&N to provide resold interexchange services within the State of Arizona. See Docket No. T-03887A-00-0386. On August 21, 2000, the Utilities Division issued its Staff Report, which recommended approval of the application without a hearing. Subsequent to the Staff Report, the Commission issued a Procedural Order requiring ACI to file Fair Value Rate Base ("FVRB") to justify its proposed rates.

1           On July 21, 2000, ACI filed an application for a CC&N to provide facilities-based and  
2 resold local exchange services and access service within the State of Arizona. *See* Docket No. T-  
3 03887A-00-0529. On September 22, 2000, the Utilities Division issued its Staff Report, which  
4 recommended approval of the application. Subsequent to the Staff Report, the Commission issued  
5 its Procedural Order dated October 3, 2000, requiring ACI to file FVRB.

6           On August 29, 2000, the Arizona Court of Appeals, Division One, issued its Opinion in  
7 *U.S. West Communications, Inc. v. Arizona Corporation Commission*, Cause No. 1 CA-CV 98-  
8 0672 (the "Court of Appeals Opinion"). The court held: "Under our constitution as interpreted by  
9 this court, the commission is required to find the fair value of the company's property and use such  
10 finding as a rate base for purpose of calculating what are just and reasonable rates." The court  
11 noted that the Arizona Supreme Court has consistently treated fair value determinations for public  
12 service corporations as constitutionally required.

13           ACI believes it is procedurally too soon to begin addressing and following the Court of  
14 Appeals Opinion in light of the fact that there are still so many unknowns. The Court of Appeals  
15 Opinion will likely be appealed to the Arizona Supreme Court, which will cause the Court of  
16 Appeals Opinion to be stayed until such time as the Supreme Court rules. These appeals have not  
17 even been filed, as the final date for filing of appeals is October 26, 2000. With a stay in place, the  
18 Commission would be subject to the same procedures it operated under before the Court of  
19 Appeals Opinion was issued. The Court of Appeals Opinion might also be appealed on a Federal  
20 level, leaving even more uncertainty. Another issue that comes to surface is the proposed  
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1 constitutional amendment on the November ballot, which, if passed, would affect the entire fair  
2 value rate base issue for all public telecommunication utilities in the State of Arizona.<sup>1</sup>

3 Use of rate base determinations to set rates for competitive carriers is a barrier to  
4 competition in Arizona, and is contrary to the spirit of the Telecommunications Act of 1996 (“the  
5 Federal Act”). In Section 254(a), the Federal Act states: “No State or local statute or regulation,  
6 or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability  
7 of any entity to provide any interstate or intrastate telecommunications service.” Requiring rate  
8 base determinations clearly has the effect of prohibiting an entity from providing  
9 telecommunications services by not allowing companies to set and adjust rates based on  
10 competition, and by lengthening the amount of time required to become certified. The use of the  
11 FVRB calculation will lengthen the amount of time needed for approval of an application for a  
12 CC&N, as ACI would already have an approved CC&N to provide resold interexchange services  
13 within the State, but now must submit these fair value calculations before consideration of the  
14 application can continue.

15 Although the issue of determining FVRB is obviously complex, the requirement to perform  
16 FVRB calculations is a barrier to entry and the Federal Act must preempt the State Constitution.

17 The fact that there are many resold interexchange carriers and competitive local exchange  
18 carriers already certified in this State who were not subjected to FVRB calculations creates a  
19 discriminatory landscape in Arizona. These companies have been allowed to set rates at  
20 competitive levels and adjust those rates in response to competition. Now the Commission has  
21 begun to issue Procedural Orders on pending applications requiring applicants to justify their rates,

22  
23 <sup>1</sup> See Consumer Choice and Fair Competition Telecommunications Amendment; Proposing an  
24 Amendment to the Constitution of Arizona; Adding Sections 3.1 and 3.2 to Article XV,  
Constitution of Arizona; Relating to Local Telephone Service.

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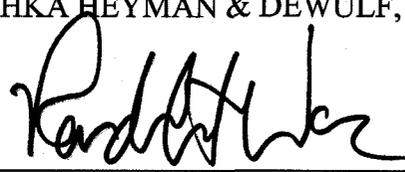
1 in essence making them rate-of-return regulated, rather than allowing them to determine rates  
2 through the competitive process. The requirement to seek approval of rates and changes to those  
3 rates will be detrimental to competition in the State. In a competitive environment, companies are  
4 forced to price reasonably or they price themselves out of business.

5 As stated herein, the Commission should postpone the requirement for new entrants to  
6 establish rates based on FVRB. There are too many unknowns to begin addressing this issue now  
7 and doing so would cause wasted time, effort and resources for all parties involved should the  
8 Court of Appeals decision be overturned in the future.

9 Attempting to apply this methodology to new entrants will be detrimental to competition in  
10 the State of Arizona, as companies seeking entrance into Arizona will pursue other states where  
11 competition in the telecommunications market is welcomed. The use of this methodology for only  
12 new entrants would also be a discriminatory practice, as so many companies have already been  
13 certified without performing the fair value rate base calculations.

14 RESPECTFULLY SUBMITTED this 11<sup>th</sup> day of October, 2000.

15 ROSHKA HEYMAN & DEWULF, PLC

16  
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1 **Original and ten copies of the foregoing**  
2 **filed this 14<sup>th</sup> day of October, 2000, with:**

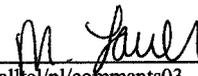
3 Docket Control  
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7 **Copy of the foregoing mailed**  
8 **this 14<sup>th</sup> day of October, 2000, to:**

9 Telecommunications Service List

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