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BEFORE THE ARIZONA CORPORATION COMMISSION

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

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AZ CORP COMMISSION  
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IN THE MATTER OF THE GENERIC  
REVIEW OF PROCEDURES FOR  
COMPETITIVE  
TELECOMMUNICATIONS

) Docket No. RT-00000D-00-0694  
)  
) RESPONSE OF AT&T AND  
) TCG PHOENIX TO COMMENTS  
) ON PROPOSED FAIR VALUE  
) PROCEDURES

AT&T Communications of the Mountain States and TCG Phoenix (collectively "AT&T") offer the following response to the Comments of Qwest Communications ("Qwest") dated October 20, 2000.

Qwest submits that, in response to *US West Communications, Inc. v. Arizona Corporation Comm'n*, 1 CA-CV 98-0672 (August 29, 2000) ("*US West II*"), the Arizona Corporation Commission ("Commission") should amend its rules and establish procedures that require the Commission to ascertain the fair value of property within the state of each public service corporation before setting rates and charges. Qwest Comments at 1. This approach puts the cart before the horse. As explained in the Comments of AT&T dated October 10, 2000, it is premature for the Commission to act on this new law before it is final. The mandate has not issued in *US WEST II* and the Court's directive to the Commission -- to determine fair value for all public service corporations -- is not yet effective. The law imposes no obligation on the Commission to commence fair value determinations before a final ruling is entered in *US West II*.

Six competitors and the Commission filed petitions for review on October 26, 2000, asking the Arizona Supreme Court to review and reverse the Court of Appeals' decision in *US WEST II*. Qwest will respond to these petitions on November 30, 2000. Soon thereafter we will learn whether the Supreme Court will grant review. No one at this juncture agrees on what *US WEST II* requires of the Commission.

To the extent Qwest submits that flexible pricing is permitted under *US WEST II*, Qwest's legal position appears inconsistent with language in the Court's decision. The opinion, on its face, states that the Commission must determine a utility's "fair value rate base" and to set rates "according to fair value rate base calculations." Op. At 18, 21. Rates must be based on the fair value of a company's property. The opinion makes no exception for flexible pricing, price caps, or other competitive market pricing schemes.<sup>1</sup> Because *US WEST II* is not yet final and is subject to various interpretations, the Commission would be wise to let the litigation conclude before investing resources in setting rates based, even in part, on fair value information.

Setting aside this timing problem, AT&T does not agree with Qwest that these interim procedures are generally unobjectionable. The interim procedures suggest that the Commission will determine rates according to fair value rate base calculations. Qwest argues that the fair value rate base must be used in setting both minimum and maximum rates for new competitors. Such a requirement violates section 253(a) of the Telecommunication Act of 1996 which prohibits any state or local regulation that has the affect of "prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service." Any regime that set rates (or rate ranges) based on a provider's investment in property in the state, rather than on market conditions, "may," as

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<sup>1</sup> Arguably, the opinion leaves open to question whether the Commission has authority to adopt a price cap mechanism for Quest's services.

a practical matter, "have the effect of prohibiting the ability" of many carriers to enter this market. Wholly apart from the expense imposed by traditional rate-of-return regulation, a carrier who is not free to adjust its rates to the market without regard to the amount of property it owns in the state simply cannot compete. A competitive market will not function if market participants all have differing rates that are established by traditional rate-of-return regulation and based on company-specific fair-value determinations. If this is what *US WEST II* requires (as Qwest advocates), then it surely has the effect of prohibiting the ability of carriers to provide telecommunications services.

AT&T agrees with Qwest that the Commission rules and procedures will be affected by the Court of Appeals' opinion if the mandate issues. In addition, AT&T submits that the Commission cannot require certificated carriers (or certificate applicants) to produce fair value information without first amending the Competitive Telecommunications Services rules, thereby setting lawful parameters for gathering, protecting and using information gathered from the new entrants. If and when the mandate issues in *US WEST II*, and the Commission promulgates regulations implementing the decision, then the Commission should begin gathering fair value information from new entrants.

Finally, AT&T agrees with Qwest's assertion that, if and when *US WEST II* becomes final, the Commission need not conduct a fair value analysis for a company each time a new service is offered. Qwest Comments, p. 4.

RESPECTFULLY submitted this 6<sup>th</sup> day of November, 2000.

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## CERTIFICATE OF SERVICE

I hereby certify that the original and 10 copies of the Response of AT&T and TCG Phoenix to Comments on Proposed Fair Value Procedures were filed this 6<sup>th</sup> day of November, 2000, with:

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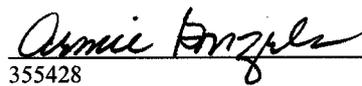
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