

ORIGINAL



0000053474

BEFORE THE ARIZONA CORPORATION COMMISSION

RECEIVED Arizona Corporation Commission  
DOCKETED

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

WILLIAM A. MUNDELL  
Chairman  
JIM IRVIN  
Commissioner  
MARK SPITZER  
Commissioner

2001 JAN 31

JAN 31 2001

AZ CORP COM  
DOCUMENT CO

DOCKETED BY	
-------------	--

IN THE MATTER OF THE GENERIC  
REVIEW OF PROCEDURES FOR  
COMPETITIVE TELECOMMUNICATIONS.

DOCKET NO. RT-00000D-00-0694

QWEST CORPORATION'S SURREPLY  
TO REPLY COMMENTS OF THE  
ARIZONA CORPORATION  
COMMISSION STAFF

Qwest Corporation ("Qwest") hereby submits this Surreply to the Reply Comments of the Arizona Corporation Commission Staff ("Staff") filed pursuant to the Procedural Order dated September 18, 2000 in this proceeding. This Surreply is necessary to address new factual and legal issues first raised in Staff's Reply.

Staff's Summary Comments

Staff's Reply Comments consistently defer to the CLECs' position that imposition of the constitutional requirement of fair value rate base ("FVRB") unduly burdens new entrants. Qwest believes that concerns about FVRB burdens placed on new entrants should be balanced against fairness to existing carriers, such as Qwest and the independent telephone companies. Placing the requirement to file the FVRB information on only some carriers, and not others, is discriminatory. It increases Qwest's cost of doing business, making it a less effective competitor. Further, it provides perverse incentives for competitors to contest

1 Qwest's FVRB information for no other reason than to delay needed  
2 rate restructuring and other competitive responses.

3 Staff further urges the Commission to proceed slowly in  
4 establishing FVRB requirements for CLECs. In the interim, the  
5 Commission continues to grant CC&Ns via a process (recommended by  
6 Staff), whereby CLECs must file sufficient FVRB information  
7 within eighteen (18) months of offering service. Qwest is  
8 concerned that the Commission must implement a process whereby  
9 compliance with this requirement is monitored. Staff makes no  
10 recommendation concerning the method by which the Commission will  
11 follow-up with these companies to ensure their compliance.

12 **Staff Comments on Procedures for Pending CC&N Applications**

13 Staff suggests that CLEC rates could be established on  
14 an interim basis pending a FVRB determination. Staff then  
15 indicates that "the 'interim' rates would automatically become  
16 permanent rates, based upon a subsequent 'generic' order by the  
17 Commission if it appears appropriate at some time." Staff's  
18 recommendation is vague. For example, Staff does not address how  
19 a generic order for multiple CLECs will establish a unique FVRB  
20 for each individual carrier. Qwest believes that Staff should  
21 provide more information concerning this recommendation.

22 Staff also recommends that CLECS not be required to  
23 provide TSLRIC information. Current Commission rules do not  
24 require CLECs to provide TSLRIC information, unless requested by  
25 Staff. The Commission should consider requiring TSLRIC  
26 information in order to ensure that CLECs are recovering their  
27 costs and not taking risks which could lead to financial  
28 instability and the resultant disruption of customer service.



1 these new electrical service providers to aid in its  
2 determination that their market rates are just and  
3 reasonable. Even companies who broker electricity who  
4 buy low and sell high, will have supply contracts to  
5 value. We do not live in a static economy, and the  
6 Commission's duty to set just and reasonable rates is  
7 on going and cannot be abdicated.

8 See Tucson Electric Power Company, et al. v. The Arizona  
9 Corporation Commission, et al., Minute Entry, July 12, 2000, at  
10 9.

11 In response to Question No. 4, Staff asserts that the  
12 Court of Appeals' Opinion may impact new tariff filings, among  
13 other rates. Qwest does not believe that new tariff filings  
14 require FVRB information. Staff's interpretation would require  
15 all new service offerings to be introduced in a rate case.

16 In response to Question No. 7, Staff states that the  
17 Commission could establish interim rates for new CC&N applicants  
18 pending a later FVRB determination. As discussed above, under  
19 such circumstances, the Commission must also create a procedure  
20 to ensure FVRB compliance before simply deeming all initial rates  
21 "interim." Again, the Commission's claim that it will eventually  
22 evaluate the fair value of the property of public service  
23 corporations has been rejected when the Commission's rules and  
24 regulatory scheme do not mandate such a process. See Tucson  
25 Electric Power Company, et al. v. The Arizona Corporation  
26 Commission, et al., Minute Entry, July 12, 2000, at 8.

27 In response to Question No. 8, Staff claims that  
28 "U S WEST II does not have a direct impact upon CC&N applications  
already granted by the Commission." Staff goes on to state,  
however, that the tariffs of such companies would be subject to

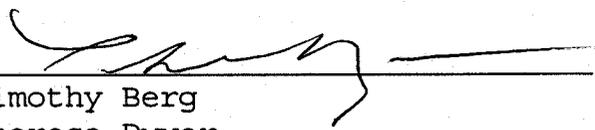
1 challenge until an FVRB determination occurs. Staff should  
2 clarify whether it intends to request a review of these tariffs  
3 at the end of the appellate process. Qwest believes that if the  
4 Court of Appeals' Opinion is upheld, the Commission must apply  
5 FVRB requirements to all regulated companies, including those  
6 carriers for whom the granting of CC&Ns without FVRB  
7 determinations formed the bases for the suit. Complying with the  
8 ultimate mandate of the Court of Appeals is the responsibility of  
9 the Commission. Under these circumstances, the Commission should  
10 not place the cost and burden of compliance by forcing third  
11 parties to file additional legal "challenges."

12 Conclusion

13 Based on the comments received in this docket, Qwest  
14 requests that the Commission establish a formal rulemaking  
15 proceeding to address these issues upon the conclusion of the  
16 appellate process.

17 RESPECTFULLY SUBMITTED this 31st day of January, 2001.

18 FENNEMORE CRAIG, P.C.

19  
20  
21 By 

22 Timothy Berg  
23 Theresa Dwyer  
24 3003 N. Central Avenue, Suite 2600  
25 Phoenix, AZ 85023  
26 Attorneys for Qwest Corporation  
27  
28

1 ORIGINAL AND TEN COPIES  
2 of the foregoing hand-delivered for  
3 filing this 31st day of January, 2001, to:

4 ARIZONA CORPORATION COMMISSION  
5 DOCKET CONTROL  
6 1200 West Washington Street  
7 Phoenix, AZ 85007

8 COPY of the foregoing  
9 hand-delivered this 31st  
10 day of January, 2001, to:

11 Lynn Farmer, Chief Administrative Law Judge  
12 Hearing Division  
13 Arizona Corporation Commission  
14 1200 West Washington Street  
15 Phoenix, AZ 85007

16 Christopher Kempley, Chief Counsel  
17 Legal Division  
18 Arizona Corporation Commission  
19 1200 West Washington Street  
20 Phoenix, AZ 85007

21 Deborah R. Scott, Director  
22 Utilities Division  
23 Arizona Corporation Commission  
24 1200 West Washington Street  
25 Phoenix, AZ 85007

26 COPY of the foregoing  
27 mailed this 31st day  
28 of January, 2001, to  
the attached service  
list:

20

21

22

23

24

25

26

27

28



PHX/TDWYER/1147633.1/67817.251

SERVICE LIST  
RE: GENERIC REVIEW OF PROCEDURES  
FOR COMPETITIVE TELECOMMUNICATIONS

Docket No. RT-00000D-0694

Thomas C. Pelto  
Richard S. Wolters  
1875 Lawrence Street, Suite  
1575  
Denver, CO 80202

Pam Gregg  
ALLTel Communications  
One Allied Drive  
Little Rock, Arkansas 72202

Michael Patten  
Brown & Bain  
P.O. Box 400  
2901 N. Central Ave.  
Phoenix, AZ 85001-0400

Joan Burke  
Osborn Maledon  
2929 N. Central Ave.  
Phoenix, AZ 85012

Karen Notsund  
Urban Media  
Vice President of Law  
One Kaiser Plaza, Suite 1350  
Oakland, CA 94612

Daniel Waggoner  
Davis Wright Tremaine  
2600 Century Square  
1502 Fourth Avenue  
Seattle, WA 98101-1688

Paul B. Hudson  
Swidler & Berlin  
3000 K Street, N.W., Ste. 300  
Washington, D.C. 20007-5116

Thomas H. Campbell  
Lewis and Roca, L.L.P.  
40 N. Central Avenue  
Phoenix, AZ 85004-4429

Thomas F. Dixon  
MCI WorldCom  
707 Seventtentth St.  
Denver, CO 80202

Darren Weingard  
Sprint Communications  
1850 Gateway Dr., 7<sup>th</sup> Floor  
San Mateo, CA 94404

Lindy Funkhouse  
RUCO  
2828 N. Central Ave., Ste. 1200  
Phoenix, AZ 85012

Philip Carrington  
Cox Communications  
1400 Lake Hearn Drive, N.E.  
Atlanta, GA 30319

Joseph S. Faber  
Davis Wright Tremaine  
One Embarcardo Center, Suite  
600  
San Francisco, CA 94111

John Kelly  
Office of the Governor  
1700 W. Washington St.  
Phoenix, AZ 85007

Richard Silverman  
Salt River Project T-PAB 300  
P.O. Box 52025  
Phoenix, AZ 85072

Raymond Heyman  
Steve Wheeler  
Snell & Wilmer  
One Arizona Center  
400 E. Van Buren St.  
Phoenix, AZ 85004

Penny Bewick  
Electric Lightwave  
4400 N.E. 77<sup>th</sup> Avenue  
Vancouver, WA 98662

Joan Hinson  
John C. Lincoln Hospital  
250 E. Dunlap  
Phoenix, AZ 85020

Leroy Pilant  
Valley Telephone Cooperative  
P.O. Box 970  
752 E. Maley  
Wilcox, AZ 85644

Kenneth Melley  
U.S. Long Distance, Inc.  
9311 San Pedro, Ste. 300  
San Antonio, TX 78216

Jean L. Kiddoo  
Swidler & Berlin  
3000 K St., N.W., Ste. 300  
Washington, D.C. 20007

Bob Whipple  
Stenocall  
1515 Avenue J  
P.O. Box 10127  
Lubbock, TX 79408

Patricia van Midde  
AT&T  
111 W. Monroe St., Ste. 1201  
Phoenix, AZ 85003

Randall H. Warner  
Roshka, Heyman & DeWulf  
400 N. 5<sup>th</sup> St., Ste. 1000  
Phoenix, AZ 85004

Craig Marks  
Citizens Utilities Co.  
2901 N. Central Ave., Ste. 1600  
Phoenix, AZ 85012

Charles Born  
Citizens Utilities Co.  
7901 Freeport Blvd., Ste. 200  
Sacramento, CA 95832

Tony Dittirro  
MCI WorldCom  
201 Spear St., 9<sup>th</sup> Floor  
San Francisco, CA 94105

John Coleman  
Electric Lightwave  
2600 N. Central Ave., Ste. 300  
Phoenix, AZ 85012

John Laue  
City of Tempe  
132 E. 6<sup>th</sup> St., Ste. B109  
Tempe, AZ 85280

Joe Hommel  
Electric Lightwave  
8100 N.E. Parkway, Ste. 200  
Vancouver, WA 98662

Mile Schulties  
AllTel Services  
1 Allied Drive  
Little Rock, AR 72203

Rick McAllister  
AllTel Western Region  
P.O. Box 3373  
Little Rock, AR 72203

Jack Trahan  
Western Electronics &  
Communications  
2332 Kingman Ave.  
Kingman, AZ 86401

David Porter  
WorldCom, Inc.  
1120 Connecticut St., N.W.,  
Ste. 400  
Washington, D.C. 20036

Jesse Sears  
City of Phoenix  
200 W. Washington St., 13<sup>th</sup>  
Floor  
Phoenix, AZ 85003

Sue Williams  
Teltrust Communications  
221 N. Charles Lindbergh  
Salt Lake City, UT 84116

Charles Best  
Attorney at Law  
1220 S.W. Morrison St., Ste.  
805  
Portland, OR 97205

Jim Wortham  
TEP, Legal Department  
220 W. 6<sup>th</sup> St.  
P.O. Box 711  
Tucson, AZ 85702

Fred Shepherd  
Tohono O'Odahm Utility  
Authority  
P.O. Box 816  
Sells, AZ 85634

Darel Eschback  
Arizona State University  
Box 870201  
Tempe, AZ 85287

Tim Delany  
Brown & Bain  
P.O. Box 400  
2901 N. Central Ave.  
Phoenix, AZ 85001

Paul Schneider  
Arizona Business Gazette  
P.O. Box 1950  
Phoenix, AZ 85001

Jeffrey Weir  
S. Gila County Economic Dev.  
P.O. Box 1351  
Globe, AZ 85502

Peter Nyce, Jr.  
U.S. Army Litigation Center  
901 N. Stuart St., Ste. 713  
Arlington, VA 22203

Ivan Johnson  
Times Mirror Cable Television  
17602 N. Black Canyon Highway  
Phoenix, AZ 85023

Jim Wortham  
City of Phoenix, Legal Dept.  
150 S. 12<sup>th</sup> St.  
Phoenix, AZ 85034

Bill Meek  
AUIA  
2100 N. Central Ave., Ste. 210  
Phoenix, AZ 85004

M. Kimberly Roberts  
GTE Communications  
5221 N. O'Connor Blvd.  
Irving, TX 75039

Terry Forthun  
Arizona State AFL-CIO  
5818 N. 7<sup>th</sup> St., Ste. 200  
Phoenix, AZ 85014

Doug Hsiao  
Rhythms Links, Inc.  
6933 S. Revere Parkway  
Englewood, CO 80112

Timothy Hogan  
Arizona Center for Law in the  
Public Interest  
202 E. McDowell Rd., Ste. 153  
Phoenix, AZ 85004

Timothy Hogan  
Arizona Center for Law in the  
Public Interest  
202 E. McDowell Rd., Ste. 153  
Phoenix, AZ 85004

William Pollard  
KLP & Associates  
8526 Torwoodlee Court  
Dublin, OH 43017

Martin Aronson  
Morrill & Aronons  
One E. Camelback Rd., Ste. 340  
Phoenix, AZ 85012

Ian Calkins  
Phoenix Chamber of Commerce  
201 N. Central Ave., 27<sup>th</sup> Floor  
Phoenix, AZ 85073

Bradley Carroll  
Cox Communications  
1550 W. Deer Valley Rd.  
Phoenix, AZ 85027

Karen L. Caluson  
Eschelon Telecom, Inc.  
730 2<sup>nd</sup> Ave., South, Ste. 120  
Minneapolis, MN 55402

Robert Tanner  
Davis Wright Tremaine, L.L.P.  
17203 N. 42<sup>nd</sup> Street  
Phoenix, AZ 85032

PHX/1150001.1/67817.251