



Communications Workers Local 7019

(AFFILIA

ORIGINAL



PHONE: 602-331-7019 • FAX: 602-861-4171 • WWW

July 10, 2003

Arizona Corporation Commission

DOCKETED

JUL 10 2003

DOCKETED BY *AK*

AZ CORP COMMISSION
DOCUMENT CONTROL

2003 JUL 10 P 12:23

RECEIVED

Chairman Marc Spitzer
Commissioner William Mundell
Commissioner Jim Irvin
Commissioner Mike Gleason
Commissioner Jeff Hatch-Miller
Parties to Docket Control No. T-01051B-02-0666

Re: Qwest/Dex proposed transaction, Docket No. T-01051B-02-0666

Dear Chairman Spitzer:

The Communications Workers of America (hereinafter the "Union") supports the Staff of Arizona Corporation Commission (hereinafter the Staff) and Qwest (hereinafter the Company) Stipulation Agreement (hereinafter the Agreement) Docket No. T-01051B-02-0666, dated April 10th, 2003.

The Union applauds the Company and Staff for working through the complex and emotional Dex issues in a timely manner and coming to a compromise which we, the Union, believe achieves the balance needed to ensure the public interest is protected. The Agreement addresses different facets of the public interest, and in each case where the test on whether the Agreement is in the public interest, the Agreement meets the test.

Public Interest - Arizona Consumer:

The Arizona Consumer component of the public interest is protected in the Agreement by recognizing an equitable monetary imputation of \$72 million (SEVENTY TWO MILLION DOLLARS) for "rate case(s), earnings or Price Cap review or other rate



proceedings commenced at any time within the 15-year period.”¹ “The 15-year period shall begin on the date when the Company submits its first Price Cap Plan review filing pursuant to the Settlement Agreement in Docket No. T-0105B-99-0105 and paragraph 6(b) of Attachment A of the Price Cap Plan, as approved in Decision No. 63487.”²

The 15-year imputation period acknowledges the evolving and volatile communications industry and protects the Arizona Consumer with a set dollar amount of imputation for the Company's rate proceedings. The communications industry in 15-years will evolve into an industry that is wide-open with competition, including the information directory publishing business. For example, this year Verizon Information Services launched a successful information directory in Phoenix, and plans to expand their directory business to other parts of Arizona later this year. Competition may be a good thing for the Arizona consumer, but it will affect the incumbent information directory publisher, Dex, to lose market share, which will drive-down the fees and value of services Dex charges the Company. A set imputation amount protects the Arizona Consumer from this downward trend with a considerable higher imputation amount than the 1988 Settlement Agreement had set - \$43 million. .

The Agreement legally binds the Company and the Arizona Corporation Commission (hereinafter the Commission) to a settlement that is not subject to interpretation because the Agreement clarifies that the \$72 million imputation shall not be increased or decreased within the 15-year period. The Dex imputation amount, \$43 million, established in the 1988 Settlement Agreement between the Commission and The Mountain States Telephone and Telegraph Company, the Company predecessor, has been in dispute on whether or not it could be increased.

In 1996, *US West Communications, Inc., v. The Arizona Corporation Commission*, 185 Arizona 277, 915 2d 1232 (app. 1996), the Arizona Court of Appeals (hereinafter the

¹ Staff of Arizona Corporation Commission and Qwest Stipulation Agreement Docket No. T-01051B-02-0666, dated April 10th, 2003, page 2, lines 11-12.

² Staff of Arizona Corporation Commission and Qwest Stipulation Agreement Docket No. T-01051B-02-0666, dated April 10th, 2003, page 2, lines 14-17.

Court) reversed the Commission's imputation of directory revenue greater than \$43 million in a 1993 rate case. The Court did acknowledge that the Commission could raise the imputation amount above the \$43 million level. The Court stipulated in their 1996 award:

“US West argues that the Commission has violated the settlement agreement by treating USWD's assets as if they were still a part of the regulated utility, rather than calculating the imputed income in terms of the fees and value of services US West receives. We agree. The Commission unequivocally agreed in 1988 to accept the transfer of directory publication to an unregulated subsidiary. It is wholly inconsistent with this agreement to impute to US WEST all of USWD's profits exceeding the rate of return USWD would have been permitted to receive had it remained regulated and to seek thereby for 'ratepayers the same benefit from the directory publishing business as they had before the assets transferred.' By such a methodology the Commission in effect pretends that the transfer it previously accepted did not occur.

The imputation method approved in the agreement was not the excess-profit imputation adopted by the Commission but rather a method dependent upon proof of “the fees and the value of services received by Mountain Bell from USWD under publishing agreements with USWD.”

Id. At 281,915 P.2d at 1236

The public interest of the Arizona Consumer is protected and as a matter of fact actually enhanced in the Agreement from the original 1988 Settlement Agreement imputation amount, and without costly litigation, which in the past has always favored the Company. The 1988 Settlement Agreement and the Court's decision in 1996 seem clear that the Commission in 1988 allowed the transfer of the Company's information directory business to an unregulated status that is not within the jurisdiction of the Commission, except for an imputation amount that is determined by the fees and the value of services received by the Company from the unregulated information directory business under publishing agreements.

The Commission should applaud the Staff and the Company for their work in negotiating an Agreement that balanced the public interest of the Arizona Consumer and the long-term financial health of the Company without costly litigation.

Public Interest - the Company's employees (the Union's members):

Another factor to be considered in evaluating if the Agreement meets the test that it is in the public interest is the effects it may have on the employees of the Company. The Court in their 1996 judgement in the matter of the 1988 Settlement Agreement stipulates:

"The Corporation Commission shall... make and enforce reasonable rules, regulations, and orders for the convenience, comfort, and safety, and the preservation of the health, of the employees and patrons of (public service corporations). Ariz. Const. Art. 15, § 3."

Id. at 281, 915 P.2d at 1236

The Commission has taken the Constitutional charge of balancing the public interest of the employees and the patrons of the company seriously in the past. The Commission has shown inventive ways to craft a settlement that looked at different ways to solve an issue without severe punitive measures that would only exasperate the final outcome.

Although, the Union and its membership are frustrated and angry at the fact that a previous "greed-based" management team under the Company's former CEO Joe Nacchio literally stole our future: the Union negotiated a ground breaking labor agreement that is currently in the member ratification process. The Union, using the Commission's example of looking at the "big" picture with a watchful eye on the future, negotiated a tentative labor agreement that acknowledges the current financial situation of the Company.

In a message to its members explaining the tentative agreement, the Union Bargaining Committee explained:

"Bargaining with Qwest was very different from any bargaining we have ever done with Qwest or any of their predecessors. CWA has never bargained with a major telephone company who faces so many financial and operational challenges. While this in and of itself is tough, it would be much more difficult if Qwest's financial situation would worsen and force the Company to declare

bankruptcy. You only have to read the newspaper and watch the TV news reports to know the trauma faced by the workers employed or unemployed by bankrupt companies. United, U.S. Air, Enron, Alcoa, and World Com are just a few examples.

Qwest, like many other major corporations in the U.S. today, is struggling to keep afloat and has limited cash flow because of the high debt level. Through no fault of our members, the prior Qwest leadership literally ran the Company into the ground both financially and figuratively in the public's opinion. While the financial future of Qwest is still murky, it appears they are headed in the right direction, but challenges still remain. The sale of DEX and the restructure of their debt have kept the "wolf from the door". Hopefully, our joint effort during these tough times to negotiate this contract will contribute to Qwest's successful future.

With the unanimous support of the sixty some CWA locals that represent our Qwest members, this bargaining team entered early negotiations on May 13, 2003. Unlike full-blown bargaining, we agreed to bring a limited number of issues to the bargaining table. The Locals, with input from the membership, assisted us in identifying priority issues. This bargaining process extended to our BRI membership as the Bargaining team also negotiated contract items for employees in BRI.

Because of the current economy and Qwest's financial challenges, we knew we would have limited success in achieving items that would increase Qwest's costs. Traditional improvements such as regular wage increases, pension increases, or increases to the 401K match would not be obtained. Therefore, we focused on issues within our contract that would provide greater employment security and improve the daily work lives of our members."

The Union did not take the Company's financial woes on face value, but had the Union's research-economists, in Washington, DC, evaluate the Company's provided financial records, along with the mountains of public records outlining the Company's financial situation. The outcome of the Union's research was not a rosy picture of the Company's short-term financial health, but the Union did acknowledge the Company's current efforts to re-establish the financial health of the Company. The Company made some painful, but needed, short-term financial decisions; the Company has restructured their outstanding debt twice in one-year, and the Company is attempting to sell their profitable directory publishing business - Dex.

The Union agreed to forego the traditional pay raises for two-years of a fixed percentage that is added into the Union's members base wage based on the Company's financial situation. The Union accepted a "bonus" that is contingent on the Company's earnings before interest, taxes, depreciation, and amortization. (EBITDA).

An analyst in an article in the Denver Post on June 14th summed it up accurately about the Union's new tentative agreement. "It is surprisingly responsive on the part of the union, as unions are rarely inclined to make concessions," said Michael Balhoff, an analyst with Legg Mason. "My assumption is that Qwest management was forceful in articulating its case to arrive at this resolution. I also believe that the union has properly assessed that squeezing Qwest could arrive at a result that would be harmful to its membership."³

The Union membership, if the tentative agreement is ratified, will have chosen a course that will acknowledge the Company's financial woes and forego fixed wage increases. The Union's elected leadership may have taken a position that is not popular with the membership, but the hard decisions are not always popular.

The Commission on July 1, 2003 made a similar decision in the UniSource Energy Corporation approval to buy the Citizen's property in Northern Arizona. The Commission's decision to increase rates by 22 percent for the ratepayers of UniSource Energy Corporation may not initially be popular with the Commission's constituents, but in the long-term it will be beneficial for the Arizona Consumer because it will allow the financial viability of UniSource Energy Corporation. Commissioner Gleason correctly stated a hard, but painful fact, "I don't like 20 percent increases, but (it is) better than face 40 to 50 percent later."⁴

The Union recognizes the crucial importance of the approval of the pending sale of the Company's information directory publishing business, Dex, that coupled with the Union's

³ Hudson, Chris. "Qwest, union reach bonus-laden deal." Denver Post 14, June 2003: Business Section.

⁴ Jarmen, Max. "Utility bills soar in N. Ariz." Arizona Republic 3, July 2, 2003: D1.

tentative agreement ratification would allow the Company the ability to re-establish their financial stability, and that would be in the public interest of the Company's employees.

Concerns of Chairman Spitzer⁵, Commissioner Mundell⁶, and Department of Defense⁷:

Chairman Spitzer and Commissioner Mundell, as elected Commissioners, are asking the appropriate questions in the appropriate forum, letters filed in the Docket, based on the cumbersome Commission process embedded in the Arizona Constitution and the Arizona Revised Statutes. The Arizona Constitution restricts the Commissioners of having sidebar conversations with another Commissioner on matters before the Commission, and in addition restricts closed-door negotiations with the Commissioners, Staff, RUCO and the Company to "hammer-out" a settlement that would be in the public interest.

Although, the Union understands and supports the current Commission procedures and format; it does add a layer of confusion and time delays in matters that need an expedited process, such as in the current Dex case before the Commission. The pending sale of Dex is crucial to the financial health of the Company and the sale needs to be completed by end of this year, which adds additional pressure on the approval process in Arizona. The Company and the buyers of Dex need a few months to complete the final details of the pending sale, which establishes a timetable of late summer for the Commission to take affirmative action on the approval of the Dex sale in Arizona or the issue becomes moot. The Company will have to evaluate a course of action they will have to take to protect their short and long term financial health, if the approval of the sale of Dex is extended beyond Labor Day of this year.

⁵ Chairman Spitzer letter dated June 12, 2003, re: Qwest/DEX proposed transaction, Docket NO. T-01501B-02-0666.

⁶ Commissioner Mundell, letter dated May 23, 2003, re: Qwest/DEX proposed transaction, Docket NO. T-01501B-02-0666.

⁷ Rejoinder Testimony of Richard B. Lee on behalf of the United States Department of Defense and All other Federal Executive Agencies, filed May 9, 2003, Docket NO. T-0101B-02-0666

The Union is not a legal expert in the complicated matter the Department of Defense (hereinafter the DOD) raises in their testimony¹⁰, but the Union is an expert on the effects of a prolonged approval process of the Dex sale in Arizona. The effects would be the same if the Union refused early bargaining with the Company on a new labor agreement, and did not recognize the Company's deep financial woes. The Union took a position, regardless of our legal ability to bargain from a position of strength; the Union understood with our strength came a responsibility to secure the employment security for our members by recognizing that the long-term financial stability of the Company needed to be addressed.

This is the same position the Staff was in when they opened talks with the Company to try to come to an equitable agreement with the Company that would be in the public interest - balancing the needs of the Arizona Consumer, the Company's employees and the Company's financial stability. The task before the Staff was a "King Solomon" decision that will be judged by the Commission, and if approved by the Commission, the Agreement will be evaluated by future historians on the merits of the Agreement, whether it was in the public interest.

The Dex approval process in Arizona mirrors the current Union's ratification process on their tentative agreement. Some of the Union's members are "second-guessing" the Union's Bargaining Committee based on outside factors. The Union has been able to negotiate labor agreements with other former Bell System companies with fixed semi-annual wage increases, and our members wonder why the Union was not able to achieve the same outcome with the Company? The answer is simple; the Company is not like any other former Bell System company. The Company has restructured its debt twice in one-year, faces multiple lawsuits because of actions of former management teams at the Company, and is being forced to sell their information directory business, Dex, to maintain financial stability. This is not a pretty picture.

The Union believes that all interested parties in the Dex sale process acknowledge that the Company would not sell their unregulated information directory portion of their parent company, if they did not have to; it is a matter of financial survival. Furthermore, the Union believes all interested parties in this matter should look at the "big picture". The Company's financial woes are not restricted to Arizona, but stretch across fourteen states, Wall Street, and Washington D.C. The Company has to pay countless millions defending itself in matters the current management team was not a part of. Some may believe that they were not part of the current Company's financial woes and are trying to separate this issue from the overall situation, and is that position in the public interest? The Union believes it is not in the public interest to look at the Dex sale as a separate and stand-alone issue. The Company is attempting to sell Dex to raise cash to reduce outstanding debt of \$20 billion-plus, and the sale of Dex will infuse \$7.05 billion⁸ of needed cash to buy down the Company's staggering debt. As the Company reduces their exorbitant debt incurred by the flamboyant and greed-based former CEO Joe Nacchio, the Company will have freed-up capital to be invested in their infrastructure instead of paying interest on their debt, which is in the public interest.

The Union understands and supports the Arizona Consumer should be adequately compensated for the Dex sale. The question is what is adequate and fair compensation for the Arizona Consumer? Granted, it would be nice if the Arizona Consumer could obtain all the different compensation plans the Company has paid across the twelve states that have already approved the Dex sale. In addition, it would be nice if the Arizona Consumer could reap the benefits of the proposed Washington settlement offer the Company made in that state, but is that a fair and adequate compensation for the Arizona Consumer, and is it in the public interest?

The Company, because of the nature of its business holdings that stretch over a fourteen-state region has and will continue to make monetary and investment decisions based on the regulatory, investment opportunities and market share within each state it is allowed

⁸ Qwest Corporation's Post Hearing Brief, Docket NO. T-01051B-02-0666, filed June 24, 2003, page 2, lines 1-5.

to operate-in the regulated arena. The Company in Arizona has made record investments in expanding its network and rebuilding its infrastructure over the past few years in Arizona. The Company's service quality measurements in Arizona have vastly improved from their low marks in the late 1990's.

The Attorney General of Arizona and the Company have announced a settlement agreement to resolve the outstanding Slamming and Cramming complaint that was filed in Pima County Superior Court in October 2001 by then Attorney General Janet Napolitano. Again, the slamming and cramming addressed in this complaint was an environment that was created and fostered in the days of the Company's previous CEO Joe Nacchio, and the whole senior management who were responsible for this environment who have since left the employment of the Company.

The Company is also attempting to resolve other issues pending before the Commission. The Union will pose the question, again, what is a fair and adequate compensation for the Arizona Consumer in the Dex transaction docket before the Commission? **Should the Commission take into consideration the Company's current investments, service quality improvements and the Company's willingness to settle outstanding issues at the Commission and at other state agencies in Arizona and if the Commission does take into consideration these other factors, what weight should the Commission give them?** The answer is not easy, but the Union feels it is a fair question. The Commission will be the ultimate decision maker on whether or not other factors should be consider in this docket.

The Union has not always been an advocate of the Company's behavior in the state of Arizona, but the Union applauds the Company's attempt to improve its image in Arizona.

The Commission should take credit for the Company's current behavior because the Commission has establish a tone of fair, but stern handling of issues concerning the Company's previous poor behavior. The Commission's groundbreaking provision in Docket No. T-01051B-99-0497, US WEST/Qwest merger approval that established a

Union/Company Service Quality Task Force has been instrumental in the Union's proactive role in dealing with service quality issues.

The Commission established a Union/Company Training Task Force with the approval of Commissioner Irvin's Amendment in Decision Number 63487 – Attachment A) on March 30, 2001 and ordered the Company to allocated an additional \$5 million over a three-year period on training geared to improve service quality in Arizona. The Arizona Training Task Force has fostered a cooperative relationship between the Union and the Company in the field of training that has become a model across the area serviced by the Company.

The Union has and will continue to be the voice of reason in matters that pertain to the public interest of the Arizona Consumer and the active and retired employees of the communications companies in which Union represent workers - AT&T, Dex, Frontier Communications and Qwest. In addition, the Union has an obligation to be the voice of our members that are not employed in the communications industry, but have a vested interest in the vitality of a Company (Qwest) that is the backbone of the telecommunications network of Arizona.

The Union used its voice of reason when it testified in support of the Commission's adoption of the most comprehensive regulations in the nation in regards to the pervasive issue that plagues the American Consumer: the practice of slamming and cramming of telecommunications customers. Although, the Company's previous senior management team did not support the final passage of this landmark set of regulations, the Union applauds and supports the Commission's final order on slamming and cramming.

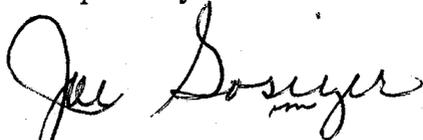
The previous actions of the Commission are sometimes overlooked, but the Union does appreciate their efforts in trying to strike a balance in a complicated world of regulated utilities.

The Union has faith in the wisdom of the Commission to take into consideration and evaluate the merits of the Union's position in regards to the public interest of the Union's membership, the employees of the Company, outlined in the "Public Interest - the Company's employees (the Union's members)" section of this filing. The Union believes the public interest of the Arizona Consumer is addressed in the Agreement, and our great state of Arizona will be served if the Commission approves the Agreement.

Conclusion:

The Union would request the Commission to weigh the Union's voice of reason in this complicated issue and approve the Agreement as submitted by the Staff. Furthermore, the Union would request the Commission to approve the Agreement no later than the Commission scheduled Opening Meeting in August of this year.

Respectfully written and submitted by,



Joe Gosiger

President - Communications Workers of America Local 7019

JG/mw
opeiu 56
afl-cio

ORIGINAL AND 13 COPIES filed
this 10th day of July, 2003 with:

Docket Control
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, AZ 85007

COPY hand-delivered
this 10th day of July, 2003 to:

Maureen Scott
Legal Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007

Jane Rodda
Hearing Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007

Ernest G. Johnson
Director, Utilities Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, AZ 85007

COPY mailed this
10th day of July, 2003 to:

Daniel Pozefsky
Residential Utility Consumer Office
1110 West Washington, Suite 220
Phoenix, Arizona 85007

Michael Patten
ROSHKA, HEYMAN & DEWULF
400 E. Van Buren, Ste. 800
Phoenix, Arizona 85004-3906

Thomas F. Dixon
WorldCom, Inc.
707 17th Street, 39th Floor
Denver, CO 80202

Thomas H. Campbell
Michael T. Hallem
Lewis & Roca
40 N. Central Avenue
Phoenix, Arizona 85004

Russell P. Rowe
William C. Brittan
Campbell, Bohn, Killin, Brittan & Ray, LLC
270 St. Paul Street, Suite 200
Denver, CO 80206

Peter Q. Nyce, Jr.
General Attorney – Regulatory Law Office
Office of the Judge Advocate General
Department of the Army (DOD/FEA)
Litigation Center JALS-RL, Suite 713
901 Stewart Street
Arlington, VA 22203-1837

Timothy Berg, Esq.
Theresa Dwyer
Fennemore Craig
3003 N. Central Avenue, Suite 2600
Phoenix, Arizona 85012

Peter Rosell
Wendy Moser
Sharon Berry
Qwest Corporation
1801 California Street
Denver, CO 80202

Scott S. Wakefield
Chief Counsel
Residential Utility Consumer Office
1110 West Washington, Suite 220
Phoenix, Arizona 85007