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Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, AZ 85007  
Phoenix, AZ 85012-2794

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RE: Docket No. RT-00000J-99-0095

To the Commission:

Enclosed please find an original and ten copies of Comments submitted on behalf of AT&T Communications of the Mountain States, Inc. with regard to the above captioned matter.

Please feel free to contact me if you have any questions.

Sincerely,

  
Rebecca B. DeCook, Esq. (p.m.)

Enclosures

BEFORE THE ARIZONA CORPORATION COMMISSION

**CARL J. KUNASEK**  
Chairman

**JAMES M. IRVIN**  
Commissioner

**BILL MUNDELL**  
Commissioner

Arizona Corporation Commission

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IN THE MATTER OF PLAN TO IMPLEMENT )  
TOLL CARRIER PRESUBSCRIPTION )  
SYSTEM BASED ON STATE RATHER THAN )  
LATA BOUNDARIES )  
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DOCKET NO. RT-00000J-99-0095

**COMMENTS OF AT&T  
COMMUNICATIONS OF THE  
MOUNTAIN STATES, INC.**

AT&T Communications of the Mountain States, Inc. ("AT&T") hereby submits its comments on the issues regarding the elimination of LATA boundaries and the adoption of toll dialing parity rules on a intrastate/interstate basis raised by the Staff of the Arizona Corporation Commission ("Commission") in a memorandum from David A. Motycka, Acting Assistant Director, Utilities Division, to all parties of record in Docket No. RT-00000J-99-0095.

**INTRODUCTION**

On May 13, 1999, by a 2-0 vote, the Commission entered its Opinion and Order, Decision No. 61696, in Docket No. RT-00000J-99-0095 ("Order").<sup>1</sup> The Decision "directed [Staff] to develop and implement a plan to amend Commission rules and regulations to: a. redefine the LATA boundaries to make Arizona a single-LATA state; and b. establish carrier selection rules for a single-LATA state." Decision 61696 at p. 4. Once the rules take effect, "U S WEST is allowed and ordered to provide all intrastate telecommunication services in Arizona, including services that cross the former LATA boundaries in Arizona. *Id.*

<sup>1</sup> One of the Commissioners voting in favor of Decision No. 61696 is no longer a Commissioner with the Arizona Corporation Commission.

Staff's questions are intended to assist Staff in implementing the Commission's decision. Although AT&T understands the Staff's desire to comply with the Commission's directives in Decision No. 61696, no intervening event has occurred since the Commission's Decision No. 61696 that eliminates the conflict with the Federal Communications Commission's ("FCC") *LATA Boundary Order*.<sup>2</sup>

On the contrary, in a recent order entered by the Commission recently in U S WEST's Section 271 proceeding, the Commission appears to acknowledge that the Section 271 requirements must be met before U S WEST can provide in-region interLATA service. Specifically, the Commission stated:

The Federal Telecommunications Act of 1996 added § 271 to the Communications Act of 1934. The purpose of § 271 is to specify the conditions that must be met in order for the FCC to allow a Bell Operating Company ("BOC"), such as U S WEST to provide in-region interLATA services. The conditions described in § 271 are intended to determine the extent to which local phone service is open to competition.<sup>3</sup>

Thus, the Findings of Fact reflect a recognition by the Commission that U S WEST must meet the conditions of Section 271 of the Act before U S WEST can provide service across existing LATA boundaries.

Accordingly, while AT&T will respond generally to the questions posed by Staff, to the extent such question can be answered at this point, AT&T maintains that this rulemaking is improper because it is based upon the Commission's unlawful conclusion that it may redefine LATA boundaries, is premature and will require AT&T and other commentors to divert resources that should be allocated to more immediate concerns. For all the reasons set forth in AT&T's Motion to Dismiss and Reply Re: Motion to Dismiss in Arizona Docket No. E-1051-

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<sup>2</sup> *In the Matter of Petition for Declaratory Ruling Regarding U S WEST Petitions to Consolidate LATAs in Minnesota and Arizona*, NSD-L-97-6, DA 97-767 (released April 21, 1997) ("*LATA Boundary Order*").

<sup>3</sup> Decision No. 61837, Findings of Fact, ¶1.

97-044 and AT&T's oral argument in Docket No RT-00000J-99-0095, this Commission lacks jurisdiction to eliminate the LATA boundaries in Arizona.<sup>4</sup> Therefore, Decision No. 61696, which serves as the predicate for this rulemaking and the questions posed by staff, is unlawful.

### COMMENTS

1. Please identify any and all ramifications to your company once the LATA boundaries in Arizona are redefined to make it a single-LATA state. Please identify any and all ramifications to your company once the current LATA-based carrier selection process in Arizona is revised to be based on state boundaries, rather than LATA boundaries.

It is AT&T's position that it is premature to address the ramifications of rules to be implemented once the FCC has properly determined that the LATA boundaries in Arizona should be redefined to make Arizona a single-LATA state. However, in Decision No. 61696, this Commission ordered U S WEST to provide in-region, intrastate interLATA telecommunications services before U S WEST complies with the requirements of Section 271 of the Telecommunications Act of 1996 ("Act") that are intended to open the local telephone monopoly to competition. Such premature entry would seriously harm both local telephone competition and long distance competition by allowing U S WEST to extend its monopoly over local telephone service to become the monopoly provider of packaged services. U S WEST recognizes the benefits of "one-stop shopping," or packaged services,<sup>5</sup> and it hopes to extend the benefits it enjoys as the monopoly provider of local services to the in-state interLATA market.

Entry barriers in the long distance market are non-existent. Existing operational support systems permit interexchange carriers ("IXCs") to change millions of subscribers a year electronically and quickly, at minimal cost. On the other hand, U S WEST is currently the

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<sup>4</sup> Oral Argument Transcript No. 13842, Docket No. RT-00000J-99-0095, Reporter's Transcript of Proceedings, dated April 26, 1999, pp. 19-25.

<sup>5</sup> *U S WEST's Communications, Inc.'s Compliance with § 271 of the Telecommunications Act of 1996*, Docket No. T-00000B-97-0238, *U S WEST's Supplemental Notice of Intent to File with FCC and Verification of § 271(c) Compliance*, p. 9.

monopoly provider of local services in Arizona, and barriers to entry in the local market have not been removed as a legal and practical matter. U S WEST is not providing nondiscriminatory access to its operational support systems that permit competitive local exchange carriers to change customers electronically, cheaply, quickly and in substantial volumes. Therefore, if U S WEST is permitted to provide in-state, interLATA services, U S WEST will become the monopoly provider of packaged intrastate, interLATA long distance and local telephony services by virtue of its current monopoly of local services.

The FCC has noted that, “the intrastate, interLATA market is an essential component of the structured federal scheme contemplated in Section 271 of the Act because the possibility of BOC participation in this market should act as a powerful incentive for BOCs to open up the local market.”<sup>6</sup> This “powerful incentive” will be seriously undermined if U S WEST is permitted into the intrastate, interLATA market before U S WEST complies with the requirements of Section 271 and 272 of the Act.

2. Please describe how the ramifications identified in question 1 above can be addressed in the proposed rules.

The proposed rules should not be implemented until the FCC has taken action to redefine the LATA boundaries. Pursuant to FCC orders, this will not occur until U S WEST complies with the competitive checklist in Section 271 of the Act, demonstrates that granting U S WEST in-region interLATA authority is in the public interest, and demonstrates that U S WEST is in compliance with Section 272 of the Act. In addition, the FCC has stated that the LATA boundaries will have ongoing significance during the statutory period of at least three years in which the RBOCs may offer in-region interLATA service only through a separate affiliate.<sup>7</sup> The FCC explained that the separate affiliate requirement would cause the LATA

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<sup>6</sup> *LATA Boundary Order*, ¶28.

<sup>7</sup> See 47 U.S.C. § 272(f)(1).

distinction to remain relevant because LATA boundaries will continue to define the geographic areas in which a BOC that provides toll services must do so through an affiliate (interLATA) versus those areas in which it may provide toll service directly (intraLATA).

3. Please identify any remaining issues arising in conjunction with redefining the LATA boundaries in Arizona. Please also identify any remaining issues arising in conjunction with amending the current intraLATA toll carrier presubscription plan in Arizona.

Because it is AT&T's position that the Commission's Decision No. 61696 is unlawful, AT&T does not believe there are any issues regarding the redefining of LATA boundaries and amending the current intraLATA toll PIC process in Arizona that should be addressed at this point. AT&T, however, reserves the right to raise additional issues at any time during the rulemaking process, either before the Staff or the Commission.

4. Are there any factual issues which may need further examination by the Commission Staff before the issuance of proposed rules?

Before any issues are examined or rules issued, the FCC must act to redefine the LATA boundaries. As discussed above, the Arizona Commission lacks jurisdiction to any action to redefine the LATA boundaries. Before the FCC can take such action, at a minimum, U S WEST must comply with the requirements of Section 271 and 272 of the Act. In addition, the three year structural separation term must have elapsed and it must be determined that the need for such structural separation no longer exists. Once all this occurs at the FCC, the FCC indicated that states would be permitted "to redefine the toll dialing parity requirement based on state, rather than LATA, boundaries where a state deems such a requirement to be pro-competitive and otherwise in the public interest."<sup>8</sup>

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<sup>8</sup> *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Second Report and Order, FCC 96-333 (released August 8, 1996), ¶. See also *Id.*, ¶ 37. The FCC Common Carrier Bureau confirmed the FCC's position in the *LATA Boundary Order*. See *LATA Boundary Order*, ¶2.

5. Please discuss any Federal requirements that the Staff should consider in drafting its proposed rules for both the carrier presubscription process and the redefinition of LATA boundaries.

The Commission's rules must comply with the requirements of the Act, the *FCC's Second Report and Order*, the *LATA Boundary Order*, and the FCC's recent rules on subscriber carrier selection changes.<sup>9</sup>

6. What terms and conditions on Arizona becoming a single-LATA state should be included in the proposed rules? What terms and conditions should be placed on the new toll carrier presubscription process taking effect?

*See Response to No. 4, above.*

7. Please identify all sections of existing Commission rules that you believe would need to be amended to accomplish the objectives set out in the Commission's Order. The Staff encourages parties to draft and submit proposed amended and new rules to accomplish the objectives set forth in the Commission's Order for Staff's considerations.

It is premature to consider any rules implementing the Commission's Order. In any event, there are no Commission carrier selection rules currently in effect. The emergency rules that implemented intraLATA equal access on December 22, 1995, expired by operation of law 180 days after the rules went into effect. The expired rules were at R14-2-1401 through R14-2-1409.

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<sup>9</sup> *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996*, CC Docket No. 94-129, Second Report and Order, FCC 98-334 (released December 23, 1998).

RESPECTFULLY SUBMITTED this 23<sup>rd</sup> day of July, 1999.

**AT&T COMMUNICATIONS OF  
THE MOUNTAIN STATES, INC.**

By: Rebecca B. DeCook (pvm)  
Maria Arias-Chapleau  
Rebecca B. DeCook  
Richard S. Wolters  
1875 Lawrence Street  
Suite 1575  
Denver, Colorado 80202  
Telephone: 303-298-6357  
Facsimile: 303-298-6301  
E-mail: decook@att.com

## CERTIFICATE OF SERVICE

I hereby certify that the original and 10 copies of the Comments of AT&T Communications of the Mountain States, Inc. regarding Docket No. RT-0000J-99-0095, were hand delivered this 23rd day of July, 1999, to:

Arizona Corporation Commission  
Docket Control - Utilities Division  
1200 West Washington Street  
Phoenix, AZ 85007

and a true and correct copy was hand delivered this 23rd day of July, 1999 to:

Carl J. Kunasek, Chairman  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, AZ 85007

Jerry Porter  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, AZ 85007

Jim Irvin, Commissioner  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, AZ 85007

Patrick Black  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, AZ 85007

William Mundell, Commissioner  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, AZ 85007

Teena Wolfe  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, AZ 85007

Mark DiNunzio  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, AZ 85007

Ray Williamson  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, AZ 85007

Maureen Scott  
Legal Division  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, AZ 85007

and a true and correct copy was sent via United States Mail, postage prepaid, this 22nd day of July, 1999, to:

Thomas F. Dixon  
MCI WorldCom  
707 17th Street, Suite 3900  
Denver, CO 80202

Thomas H. Campbell  
Lewis and Roca, LLP  
40 North Central Avenue  
Phoenix, AZ 85004-4429

Thomas Dethlefs  
Law Department  
U S West Communications, Inc.  
1801 California Street, Suite 5100  
Denver, CO 80202

Andrew O. Isar  
Director – State Affairs  
Telecommunications Resellers Association  
4312 92nd Avenue, NW  
Gig Harbor, WA 98335

Timothy Berg  
Fennemore Craig, PC  
3003 N. Central Avenue, Suite 2600  
Phoenix, AZ 85012-2913

Deborah R. Scott  
Citizens Utilities Company  
2901 N. Central Ave, Suite 1660  
Phoenix, AZ 85012

  
\_\_\_\_\_  
Teresa Hunt