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BEFORE THE ARIZONA CORPORATION COMMISSION

REHEARING

AUG 20 2000

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Arizona Corporation Commission

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**IN THE MATTER OF INVESTIGATION)
INTO U S WEST COMMUNICATIONS,)
INC.'S COMPLIANCE WITH CERTAIN)
WHOLESALE PRICING REQUIREMENTS)
FOR UNBUNDLED NETWORK)
ELEMENTS AND RESALE DISCOUNTS)**

**DOCKET NO. T-00000A-00-0194
AT&T'S REQUEST FOR
RECONSIDERATION**

Pursuant to Ariz. Adm. Code R14-3-111, AT&T Communications of the Mountain States, Inc. ("AT&T") requests reconsideration of the Arizona Corporation Commission's ("Commission") Order and Opinion, Decision No. 62753.

The Commission entered an order on July 25, 2000, adopting U S WEST Communications, Inc.'s ("U S WEST") proposed methodology for establishing deaveraged rates for the unbundled loop. However, the Commission used U S WEST's current retail zones, instead of the zones proposed in U S WEST's current rate case. The rates are subject to true-up, and the competitive local exchange carriers ("CLECs") may ultimately collect interest.

The rates adopted are not compliant with Section 252 of the Telecommunications Act of 1996 ("Act") or the Federal Communications Commission's ("FCC") orders and rules. The rates will not promote residential or business competition, as contemplated by the Act. In fact, the explicit purpose for adopting U S WEST's rates is to continue to delay competition for residential telecommunications customers in Arizona.

U S WEST has not taken issue with AT&T's statements contained in AT&T's brief that the rates include implicit subsidies. Nor did U S WEST take issue with similar statements made by AT&T at the open meeting before the Commission. TR 26-28 (July 18, 2000). In fact, U S WEST witness testified that the rates contain implicit subsidies to subsidize *retail* services. Million Direct at 17-18. The Administrative Law Judge stated that "the order acknowledges that [the ACC] need[s] to go to more cost based rates." TR 28. Furthermore, the Opinion and Order finds (at paragraph 19) that "Staff and AT&T presented plans that reflect costs better than U S WEST's proposal." Although no party has taken issue with the fact that the deaveraged unbundled loop rates adopted contain explicit subsidies, the Commission has ignored FCC orders and rules and court decisions¹ that prohibit the inclusion of implicit subsidies to support universal service in rates for unbundled network elements ("UNEs").

More recently, the Eighth Circuit Court of Appeals held that "the costs of universal service subsidies should not be included in the costs of providing the network elements." *Iowa Utils. Bd. v. FCC*, No. 96-3321, slip op. 13 (July 18, 2000 8th Cir.). In essence, in an attempt to comply with a FCC rule requiring that rates for UNEs be deaveraged, the Commission is violating another FCC rule that specifically prohibits the recovery of universal service subsidies in rates for the very same UNEs, even on an interim basis. The FCC has explicitly stated that "[s]tates may not . . . include universal service support funding

¹ *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, FCC 96-325 (rel. Aug. 8, 1996) ("Local Competition Order"), ¶ 713; 47 C.F.R. § 51.505(d)(4). *AT&T v. Pacific Bell*, 1998 WL 246652, *10 (N.D. Cal.); *Southwestern Bell v. AT&T*, 1998 WL 657717, *12 (W.D. Tex.) ("In addition, the Court rejects SWBT's attempts to raise 'universal service' issues as an end-run attack against the TELRIC methodology."); *Southwestern Bell v. FCC*, 153 F.3d 523, 539-540 (8th Cir. 1998).

in rates for elements or services pursuant to Sections 251 and 252, nor may they implement mechanisms that have the same effect.”²

The Decision states that the deaveraged loop rate is an interim rate and that it is subject to refund, and possibly interest, at the time permanent rates are established in Phase II of the proceeding. The problem inherent in a refund mechanism is that between the time that the interim rates are set and permanent rates are established, competition is precluded in many areas and for certain classes of customers. Therefore, establishing interim rates subject to a refund by itself is a necessary but inadequate solution. Paying interest does not resolve this problem. No reasonable businessman is going to invest millions of dollars on a bet that the Commission will set future rates that are cost-based and promote competition. This Commission has had two opportunities to establish cost-based UNE rates and both times the rates authorized by the Commission preclude local residential telecommunications competition and violate legal decisions interpreting the Commission’s obligations under the Act.

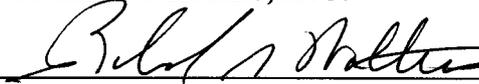
The methodology or mechanism adopted by the Opinion and Order, by U S WEST’s own admission, is intended to recover implicit universal service subsidies. Because the Commission allows U S WEST to recover implicit universal service subsidies in rates for UNEs, the rates are contrary to FCC rules, federal court decisions and Section 252 of the Telecommunications Act of 1996. Simply stated, the rates are unlawful.

AT&T respectfully requests that the Commission reconsider the Decision and adopt AT&T’s proposed deaveraged rates for the unbundled loop and its five zones.

² In *Local Competition Order*, ¶ 713.

Dated submitted this 27th day of July, 2000.

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

By: 

Mary B. Tribby
Richard S. Wolters
1875 Lawrence Street, #1500
Denver, Colorado 80202
303-298-6741

CERTIFICATE OF SERVICE

I hereby certify that the original and 10 copies of AT&T Communications of the Mountain States, Inc.'s Request for Reconsideration in Docket No. T-00000A-00-0194 were sent by overnight delivery on this 27th day of July, 2000 to:

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

and a true and correct copy was sent by overnight delivery on this 27th day of July, 2000 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

James M. 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 A. Mundell, Commissioner
Arizona Corporation Commission
1200 West Washington Street
Phoenix, AZ 85007

Hercules Alexander Dellas
Arizona Corporation Commission
1200 West Washington Street
Phoenix, AZ 85007

Lyn Farmer
Legal Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, AZ 85007

Deborah Scott
Director - Utilities Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, AZ 85007

Mr. Jerry L. Rudibaugh
Chief Hearing Officer
Arizona Corporation Commission
1200 West Washington Street
Phoenix, AZ 85007

and a true and correct copy was sent by United States Mail, postage prepaid, this 27th day of July, 2000, to:

Thomas Dethlefs
Wendy M. Moser
Qwest Corporation
1801 California Street, Suite 5100
Denver, CO 80202

Joan S. Burke
Osborn Maledon, P.A.
2929 North Central Avenue, 21st Floor
P. O. Box 36379
Phoenix, AZ 85067-6379

Richard L. Sallquist
Sallquist & Drummond
2525 E. Arizona Biltmore Circle
Phoenix, AZ 85016

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

Peter A. Rohrback
Mace J. Rosenstein
Yaron Dori
Hogan & Hartson, LLP
555 Thirteenth Street, NW
Washington, DC 20004-1009

Daniel M. Waggoner
Gregory T. Diamond
Davis Wright Tremaine
2600 Century Square
1501 Fourth Avenue
Seattle, WA 98101-1688

Drake Tempest
Qwest Communications International, Inc.
555 Seventeenth Street
Denver, CO 80202

Maureen Arnold
Qwest Corporation
3033 North Third Street, Room 1010
Phoenix, AZ 85012

Michael W. Patten
Brown & Bain
2901 N. Central Avenue, Suite 2000
Phoenix, AZ 85012

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

Raymond S. Heyman
Randall H. Warner
Roshka Heyman & DeWulf, PLC
Two Arizona Center, Suite 1000
400 North 5th Street
Phoenix, AZ 85004

Gregory Kopta
Davis Wright Tremaine
2600 Century Square
1501 Fourth Avenue
Seattle, WA 98101-1688

David R. Conn
McLeodUSA Telecommunications Services
6400 C Street, S.W.
Cedar Rapids, IA 52406

Jon Poston
Arizonans for Competition in Telephone Service
6733 E. Dale Lane
Cave Creek, AZ 85331-6561

Scott Wakefield
Residential Utility Consumer Office
2828 North Central Ave., #1200
Phoenix, AZ 85004

Diane Bacon
Communications Workers of America
5818 N. 7th Street, Suite 206
Phoenix, AZ 85014-5811

Thomas W. Hartman
SBC Telecom
175 E. Houston Street, Room 1256
San Antonio, TX 78205

Gary Yaquinto
GST Telecom, Inc.
3003 N. Central Avenue, Suite 1600
Phoenix, AZ 85012

Penny Bewick
New Edge Networks, Inc.
P. O. Box 5159
3000 Columbia House Blvd., Suite 106
Vancouver, WA 98668

W. Clay Deanhardt
Covad Communications
2330 Central Expressway
Santa Clara, CA 95050

Darren S. Weingard
Stephen H. Kukta
Sprint Communications
1850 Gateway Drive, 7th Floor
San Mateo, CA 94404-2467

Carrington Phillip
Cox Arizona Telecom, Inc.
1400 Lake Hearn Drive
Atlanta, GA 30319

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

Rex M. Knowles
Nextlink Communications, Inc.
111 E. Broadway, Suite 1000
Salt Lake City, UT 84111

Robert S. Tanner
Davis Wright Tremaine
17203 N. 42nd Street
Phoenix, AZ 85032

Brian Thomas
GST Telecom, Inc.
4001 Main Street
Vancouver, WA 98663

Michael M. Grant
Todd C. Wiley
Gallagher & Kennedy, P.A.
2575 E. Camelback Road
Phoenix, AZ 85016-9225

Timothy Peters
Electric Lightwave, Inc.
4400 N.E. 77th Avenue
Vancouver, WA 98662

Elizabeth Howland, National Director
Regulatory and Interconnection
Allegiance Telecom, Inc.
1950 Stemmons Freeway, Suite 3026
Dallas, TX 75207-3118

Kath Thomas
Advanced Telecom Group, Inc.
100 Stoney Point Road, Suite 130
Santa Rosa, CA 95401

Jeffrey W. Crockett
Jeffrey B. Guldner
Snell & Wilmer LLP
One Arizona Center
Phoenix, AZ 85004-2202

Timothy Berg
Fennemore Craig, P.C.
3003 North Central Avenue, Suite 2600
Phoenix, AZ 85012-2913

Gary L. Lane
6902 E. 1st Street, Suite 201
Scottsdale, AZ 85251

Mary Steele
Davis Wright Tremaine
2600 Century Square
1501 Fourth Avenue
Seattle, WA 98101-1688

Steve Sager
McLeodUSA Telecommunications Services, Inc.
215 South State Street, 10th Floor
Salt Lake City, UT 84111