



0000096262

BEFORE THE ARIZONA CORPORATION COMMISSION

RECEIVED
AUG 4 4 45 PM '00

CARL J. KUNAS ^{Arizona Corporation Commission}
Chairman
JAMES M. IRVIN
Commissioner AUG 04 2000
WILLIAM A. MUNDELL
Commissioner

DOCKETED

DOCUMENT CONTROL

DOCKETED BY

IN THE MATTER OF INVESTIGATION)
INTO U S WEST COMMUNICATIONS,)
INC.'S COMPLIANCE WITH CERTAIN) DOCKET NO. T-00000A-00-0194
WHOLESALE PRICING REQUIREMENTS)
FOR UNBUNDLED NETWORK)
ELEMENTS AND RESALE DISCOUNTS)

**COMMISSION STAFF SUPPLEMENTAL COMMENTS
ON THE IMPACT OF THE RECENT EIGHTH CIRCUIT DECISION**

On July 24, 2000, the Hearing Division issued a Procedural Order requesting comment on the impact of the July 18, 2000 Eighth Circuit Court of Appeals Decision No. 96-3321 in Iowa Utilities Board, et al. V. Federal Communications Commission, on the issues to be addressed in Phase II of this case. The Eighth Circuit had previously vacated the FCC's pricing rules on jurisdictional grounds, however that decision was subsequently reversed resulting in reinstatement of the FCC rules. In its decision, the Eighth Circuit addressed, inter alia, the substance of the reinstated FCC pricing rules, including its forward-looking TSLRIC methodology, proxy rates and wholesale discount provisions. Overall, the Commission Staff believes, based upon its preliminary review, that the Eighth Circuit decision has little impact on the issues to be addressed in this case, although it may affect the outcome in limited instances.

In its decision, the Eighth Circuit vacated several provisions of the FCC pricing rules, including most importantly for purposes of this proceeding, 47 C.F.R. Sections 51.505(b)(1) and 51.609. Section 51.505(b)(1) provides as follows:

....

....

1
2 (1) Efficient network configuration. The total element long-run
3 incremental cost of an element should be measured based on the use of the most
4 efficient telecommunications technology currently available and the lowest cost
5 network configuration, given the existing location of the incumbent LEC's wire
6 centers.

7 The Eighth Circuit vacated this provision because it found that "Congress did not expect a
8 new competitor to pay rates for a 'reconstructed local network,' [cite omitted], but for the existing
9 local network it would be using in an attempt to compete." Order at p. 8. Nonetheless, the Court
10 also held that costs could be forward-looking in that "they can be calculated to reflect what it will
11 cost the ILEC in the future to furnish to the competitor those portions or capacities of the ILEC's
12 facilities and equipment that the competitor will use including any system or component upgrading
13 that the ILEC chooses to put in place for its own more efficient use." Order at p. 8. The Court also
14 stated that "it is the cost to the ILEC of carrying the extra burden of the competitor's traffic that
15 Congress entitled the ILEC to recover, and to that extent, the FCC's use of an incremental cost
16 approach does not do violence to the statute." Order at p. 8. The Staff believes that the Eighth
17 Circuit's holding regarding rule 51.505(b)(1) on UNE rates should be evaluated in this case. While
18 the Commission did not adopt either the Hatfield Model or the U S WEST model as presented since
19 both used certain assumptions that were not acceptable, the Commission did appear to utilize the
20 use of a hypothetical network based upon the "forward-looking, most efficient technology", which
21 the Eighth Circuit found problematic. See ACC Docket No. U-3021-96-488, et.al, Decision No.
22 60635.

23 In addition, the Commission Staff believes, given the obligations on ILECs such as Qwest
24 imposed by recent FCC decisions, including the FCC's UNE Remand Order and Advanced Services
25 Orders, that the Commission should proceed to establish rates for any new UNEs or other affected
26 services.

27 The Eighth Circuit also vacated and remanded rule 51.609 which governs the calculation of
28 avoided retail costs. The Eighth Circuit found that under the relevant statutory provision, 47 U.S.C.
Section 252(d)(3), "costs that are actually avoided, not those that could be or might be avoided,
should be excluded from the wholesale rates." Order at p. 17. Since the Commission will be

1 examining the issues involving the wholesale discounts remanded by the Arizona District Court in
2 U S WEST v. Jennings, 46 F.Supp. 2d 1004 (D.Ariz. 1999), it should also request parties to consider
3 this aspect of the Eighth Circuit's holding in their filings.

4 Finally, the Staff does not believe that the Eighth Circuit decision in any way affects the
5 Commission's review of Qwest's Statement of Generally Available Terms and Conditions
6 ("SGAT") which review Staff supports being done within the context of this proceeding.

7 RESPECTFULLY submitted this 4th day of August, 2000.

8
9 By:


10 Maureen A. Scott
11 Attorney, Legal Division
12 1200 West Washington Street
13 Phoenix, Arizona 85007
14 Telephone: (602) 542-6022
15 Facsimile: (602) 542-4870
16 e-mail: maureenscott@cc.state.az.us

17
18
19
20
21
22
23
24
25
26
27
28
Attorneys for the Arizona Corporation
Commission Staff

CERTIFICATE OF SERVICE

I Hereby certify that the original and 15 copies of the foregoing were filed this 4th day of August, 2000 with:

Arizona Corporation Commission
Docket Control
1200 West Washington Street
Phoenix, Arizona 85007

and a true and correct copy was sent by United States Mail, postage prepaid, this 7th day of August, 2000:

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

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

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

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

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

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

Joan S. Burke
Osborn Maledon, P.A.
2929 North Central Avenue, 12st Fl.
P.O. Box 36379
Phoenix, AZ 85067-6379

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

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

Maureen Arnold
Qwest Corporation
3033 North Third Street, Room 1010
Phoenix, AZ 85004

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

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

David R. Conn
McLeodUSA Telecommunications Svcs.
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 avenue, #1200
Phoenix, AZ 85004

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

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

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

Thomas W. Hartman
SBC Telcom
175 E. Houston St., Rm. 1256
San Antonio, TX 78205

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

Gary Yaquinto
GST Telecom, Inc.
3003 N. Central Ave., Ste. 1600
Phoenix, AZ 85012

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

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

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

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

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

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

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

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

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

Jeffrey W. Crockett
Jeffrey B. Guldner
Snell & Wilmer
One Arizona Center
Phoenix, AZ 85012-2913

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

Timothy Berg
Fennemore Craig, PC
3003 North Central avenue, Ste. 2600
Phoenix, AZ 85012-2913

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

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

By:  _____