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DOCKET NO. T-00000A-00-0194

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

**QWEST CORPORATION'S REPLY TO
MEMORANDA OF WORLDCOM AND
AT&T IN RESPONSE TO STAFF'S
MOTION FOR CLARIFICATION OF
PROCEDURAL ORDER AND FOR
EXTENSION OF THE DEADLINE FOR
FILING TESTIMONY**

I. INTRODUCTION

Qwest Corporation ("Qwest"), formerly U S WEST Communications, Inc., has already responded to Staff's motion for clarification of the Arizona Corporation Commission's ("Commission") August 21, 2000, Procedural Order that establishes the schedule for Phase II of this proceeding. WorldCom, Inc. ("WCom") and AT&T Communications of the Mountain States, Inc., ("AT&T") also have filed memoranda in response to Staff's motion along with an alternative motion to review all wholesale prices previously approved by the Commission. Qwest submits this memoranda addressing those new matters raised by WCom and AT&T.

This Commission, as well as participating parties, spent tremendous resources carefully developing unbundled network element ("UNE") rates in the cost docket. WCom and AT&T offer only conclusory statements regarding the so-called need to relitigate those rates. The Commission should focus its limited resources on addressing new elements and issues and decline any invitation to relitigate final, established UNE rates.

1 **II. DISCUSSION**

2 **A. The Commission Did Not Intend Rates To Be Revisited Automatically**
3 **A Year After Exhaustively Reviewing and Establishing Them.**

4 WCom quotes isolated passages from hearings in the cost docket to argue that the
5 Commission "clearly contemplated" reviewing those rates within a year. WCom Response to
6 Motion of Commission Staff for Clarification of Procedural Order and for Extension of the
7 Deadline for Filing Testimony or in the Alternative, Motion to Review All Wholesale Prices
8 Previously Approved by the Commission in 1997, and List of Issues for Phase III ("WCom
9 Response") at 1. Even WCom's isolated quotations do not support its argument. At most,
10 members of the Commission opined that rates should not be reevaluated precipitously and if
11 necessary to correct identified errors, rates could be reevaluated. For example, Chairman Irvin
12 commented that "if the numbers and the calculations prove to be wrong," rates could be
13 revisited, "if necessary." WCom Response at 2 (quoting transcript of open meeting held
14 January 8, 1998). No member of the Commission, and certainly not the Commission itself,
15 stated that rates would automatically be revisited within a year or any other time as a matter of
16 course. The Commission did not identify the passage of time alone as a reason.

17 WCom identifies no error or newly developed information for any input or calculation
18 used in establishing permanent rates that requires reopening them. Furthermore, as noted in
19 Qwest's response to Staff's motion for clarification, not only are the UNE rates the Commission
20 approved correct and TELRIC-based, an Arizona federal court has affirmed them. U S WEST
21 Communications, Inc. v. Jennings, 46 F. Supp. 2d 1004 (D. Ariz. 1999).¹ Accordingly, the
22 isolated statements WCom cites regarding possible errors that may require reopening certain
23 rates, even if relevant, do not support reopening the entire slate of UNE rates.

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26 ¹ Notably, neither WCom nor AT&T has appealed those rates to the Ninth Circuit, though they have
appealed other issues.

1 **B. There Are No "Factual Developments" That Require Re-Opening the**
2 **Final Rates from the Cost Docket.**

3 WCom further states that "factual developments" require reopening the final, permanent
4 rates. None of these so-called "developments" has any relevance to UNE rates set in Arizona.

5 For example, WCom cites the bankruptcy filings of ICG Communications, Inc. and GST
6 Communications of Tucson as reasons to reopen UNE rates because those carriers allegedly
7 "relied on [their] interconnection agreements and previous Commission rulings regarding
8 reciprocal compensation for ISP traffic that were modified by the Federal Communications
9 Commission ("FCC")." WCom Response at 3. It hardly needs stating that the reasons a
10 company chooses to file for bankruptcy protection are numerous and complex, and WCom's
11 attempt to oversimplify the reasons and suggest Arizona UNE rates are a culprit is unavailing.
12 Furthermore, that a CLEC may have based its business plan heavily on receiving reciprocal
13 compensation for Internet-bound traffic is not a reason to reopen *UNE* rates, which are separate
14 from reciprocal compensation. Instead, WCom's observation simply demonstrates that some
15 CLECs narrowly focus their business on serving ISPs to the exclusion of other consumers in the
16 hopes of receiving reciprocal compensation and have difficulty sustaining their business plan if
17 their arbitrage opportunity is removed.
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20 Next, WCom states that new data LECs or "DLECs," such as NorthPoint and COVAD,
21 have entered the market and observes that the stock of these companies, like all technology
22 stocks in recent months, have dropped. WCom Response at 3. Qwest's own stock has also sunk
23 in recent weeks. Be that as it may, WCom makes no connection at all between the rise and fall
24 of technology stocks and the rates this Commission set for UNEs.
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1 WCom also notes that WCom, AT&T, and Sprint have chosen to serve business
2 customers in metropolitan areas instead of residential consumers or small businesses. Id. at 3.
3 This is correct, but it does not warrant reopening Arizona rates. The major interexchange
4 carriers ("IXCs") have chosen to eschew these customers for many reasons, including their desire
5 to focus on more lucrative, high margin customers and densely populated areas of Arizona.
6 Furthermore, the decision of AT&T, WCom and the other major IXCs to focus on business
7 customers and metropolitan markets is not unique to Arizona and plainly not triggered by
8 Arizona's rates.
9

10 WCom also cites Verizon's allegedly high UNE rates in Massachusetts as an example of
11 why the Commission should reopen Qwest's Arizona rates. The Commission has no basis to
12 draw any comparison between the allegedly high rates Verizon charges in Massachusetts with
13 the rates the Commission painstakingly reviewed in Arizona. WCom provides no evidence,
14 support or explanation for Verizon's allegedly high rates and no comparison of the supposed
15 flaws in those rates or the rates set in Arizona. Furthermore, it has provided no information
16 whatsoever that would allow the Commission to compare rates set for a different carrier in an
17 entirely different northeast state with those set for Qwest in Arizona. The United States
18 Department of Justice may be concerned with Verizon's Massachusetts UNE rates, but that
19 concern is relevant only to Verizon, the Massachusetts Department of Transportation and
20 Energy, and the FCC, not this Commission.
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23 In an apparent effort to persuade the Commission that the rates it set are unfairly high,
24 WCom also points to rates more to its liking set in Washington and Minnesota. There is no
25 requirement in the Act or the FCC rules that UNE rates for an incumbent LEC must be uniform
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1 across its territory. Indeed, by mandating cost-based rates, the Act and FCC rules preclude such
2 cookie-cutter decisionmaking. Furthermore and not remarkably, other states in Qwest's 14-state
3 local service territory have set rates more akin to those in Arizona. For example, in Colorado
4 Qwest's deaveraged two-wire loop rates are \$19.65 in the base rate area, \$26.65 in density zone
5 1, \$38.65 in density zone 2 and \$84.65 in density zone 3, and in Idaho the average two-wire loop
6 rate is \$25.52. The point, of course, is that each state commission sets rates, and the rates, not
7 surprisingly, are different. Furthermore, WCom is simply incorrect in arguing that the
8 Commission's interim deaveraging decision resulted in a statewide average loop rate of \$36.28.
9 WCom Response at 4. Because the Commission did not adopt Staff's proposed zones, as WCom
10 assumes, WCom uses incorrect percentages in its calculations. Under the Commission's interim
11 decision, the statewide average rate of \$21.98 is preserved.²
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14 In short, the so-called "factual developments" WCom cites may be informative regarding
15 the vagaries of the stock market, the volatility of the telecommunications market, and the
16 business decisions of the major IXCs, but they have nothing to do with the UNE rates this
17 Commission established for Arizona. The Commission should not undertake the daunting task
18 of reopening final rates because of WCom's unsupported market theories.

19 **C. The Passage of Time Does Not Warrant Reopening Rates.**

20 WCom's remaining arguments essentially boil down to a claim that because four years
21 have passed, rates should be revisited. It provides, however, no concrete evidence of changes in
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24 ² The deaveraged rates the Commission adopted were based on a Staff-requested late filed exhibit
25 submitted by Qwest. There, Qwest calculated deaveraged unbundled loop rates based on a percent of
26 deaveraged loop investment for the existing base rate and zone structure specifically taking into account
the \$21.98 statewide average loop rate. Qwest's proposed permanent deaveraged loop rates in this phase
of the proceeding are cost-based and use wire center zones similar to Staff's phase I proposal. Again,
Qwest preserves and tracks the statewide average loop rate of \$21.98.

1 these four years that would affect the inputs to the rates the Commission set that would justify
2 reopening those rates. Instead, WCom baldly states that, in its opinion, competition has not
3 flourished in this state during that time. Qwest respectfully disagrees. Qwest has executed
4 nearly 150 interconnection agreements in Arizona, and numerous facilities-based and reseller
5 CLECs are competing in this state. Regardless, that some CLECs have chosen to avoid the
6 residential market has far more to do with the CLECs' own business plans and search for quick
7 profits than the rates this Commission approved for UNEs. The Commission should not reopen
8 established UNE rates in this or any other phase of this proceeding.
9

10 **D. The So-Called "Missing Rates" Are Irrelevant to A Request to**
11 **Review Rates.**

12 WCom claims Qwest did not propose recurring rates for UNE-P, line conditioning, and
13 vertical features. This assertion has nothing to do with whether the Commission should reopen
14 final UNE rates. In any event, it is misleading. Qwest witness Theresa Million filed testimony
15 stating that Qwest would not file separate cost studies for UNE-P recurring costs because
16 individual recurring rates exist for the elements that make up the UNE platform. Direct
17 Testimony of Theresa Million at 16. Qwest has not submitted rates for vertical features because
18 it proposes addressing those rates in Phase III of this docket. As for line conditioning, this is a
19 nonrecurring cost that does not affect the recurring loop rate WCom seeks to reopen.
20

21 WCom also faults Qwest for not proposing rates for a bulk transfer of Qwest's
22 InterNetwork Calling Name ("ICNAM") database. Qwest notes initially that while WCom has
23 requested bulk access to Qwest's ICNAM database in checklist item 10 workshops in some
24 states, Qwest does not recall WCom doing so in Arizona.
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1 Regardless, WCom fails to note that in the two states in which this issue has been
2 presented for resolution, WCom's claims have failed: both the Washington Staff and the Oregon
3 Administrative Law Judge in Section 271 proceedings in those states have rejected WCom's
4 request for bulk access to Qwest's ICNAM database. The reasons are simple and unassailable.
5 FCC rules provide for access to calling-name databases on a query-response basis -- precisely the
6 type of access Qwest provides in its SGAT and that it has priced. See, e.g., 47 C.F.R.
7 § 51.319(e)(2) ("*For purposes of switch query and database response through the signaling*
8 *network, an incumbent LEC shall provide access to its call-related databases, . . . by means of*
9 *physical access at the signaling transfer point linked to the unbundled databases*") (emphasis
10 added); Third Report and Order and Fourth Further Notice of Proposed Rulemaking,
11 Implementation of the Local Competition Provisions of the Telecommunications Act of 1996,
12 CC Docket No. 99-238, FCC 99-238, 15 FCC Rcd 3696 ¶¶ 402, 403 (Nov. 5, 1999)
13 ("[I]ncumbent LECs, upon request, [must] provide nondiscriminatory access to their call-related
14 databases on an unbundled basis, *for the purpose of switch query and database response through*
15 *the SS7 network*") (emphasis added); id. ¶ 410 (incumbent LECs must provide access to calling-
16 name databases "by means of physical access at the signaling transfer point linked to the
17 unbundled databases").³ Accordingly, because the SGAT does not provide the "bulk transfer" of
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24 ³ In its first local competition order, the FCC reached a similar conclusion, determining that because the
25 STP performs mediation and screening functions, "access to call-related databases must be provided
26 through interconnection at the STP and that [the FCC] do[es] not require direct access to call-related
databases." First Report and Order, *Implementation of the Local Competition Provisions in the*
Telecommunications Act of 1996, CC Docket No. 96-98, 11 FCC Rcd 15499 ¶ 485 (Aug. 8, 1996).

1 the ICNAM database that WCom seeks, and FCC rules do not require Qwest to provide it, Qwest
2 reasonably declined to provide a price for such a bulk transfer.⁴

3 **E. None of AT&T's Unspecified Changes in Technology, Corporate**
4 **Changes or Cost Model Enhancements Justifies Re-Opening the**
5 **Entire Cost Docket.**

6 AT&T has offered its additional reasons why this Commission should revisit rates that it
7 unsuccessfully challenged before this Commission and then in federal court. First, AT&T claims
8 that technology has continued to advance since the Commission established UNE rates. Of
9 course, technology has advanced, and it will continue to advance. If rates must be changed to
10 keep up with changes in technology, they would have no permanence, and there would be a
11 perpetual cost docket. Moreover, AT&T does not identify any particular changes in technology
12 that impact rates set in the previous docket. Much more is required to justify revisiting rates that
13 this Commission and the United States District Court for the District of Arizona have held to be
14 lawful, despite AT&T's objections every step of the way.

15
16 Similarly, AT&T claims that Qwest is a different company now than it was in 1997.
17 AT&T points to two specific alleged changes – changes in Qwest's price structure, reflecting
18 economies of scale and scope not available to U S WEST, and Qwest's agreement to sell a
19 number of its rural, high-cost exchanges to Citizens. Staff Witness Michael Brosch testified in
20 Qwest's recent rate case that savings from the merger in the near term are likely to be offset by
21

22 _____
23 ⁴ In its Response at 5, WCom also asserts that unspecified rates in Exhibit A exceed unspecified rates in
24 Qwest's prefiled testimony. Without some indication of which rates WCom references, Qwest is at a loss
to respond to its assertion. Regardless, WCom's assertion is not a reason to reopen existing rates.

25 WCom also raises various procedural issues at page 6-7 of its response. As set forth in its
26 response to Staff's motion for clarification, although WCom does not oppose Staff's request to file
testimony after all other parties, Qwest does. WCom's other comment regarding the filing of issues lists
on Phase III is moot.

1 the costs of the merger. Mr. Brosch was not able to predict precisely when Qwest would be able
2 to realize these synergies. Therefore, any attempt to adjust rates today as a result of these
3 synergies would be speculative, at least according to Staff. Furthermore, in setting the original
4 loop rates, the Commission used a forward-looking overhead factor. As for the sale to Citizens,
5 the Commission has not yet approved that sale. Furthermore, an eventual sale would not affect
6 the inputs or require the Commission to begin again from scratch.
7

8 Finally, AT&T points to revisions to the pricing models that the Commission had
9 evaluated during the prior docket. Like technology, pricing models are always changing. As the
10 Commission is well aware, both Qwest and AT&T revised their costs models during the past
11 proceedings, they have revised them since then, and they are likely to continue to revise them in
12 the future. Rates would have no permanence, however, if they were to change whenever cost
13 models change. AT&T itself advocated this Commission's use of Hatfield 2.2, even though other
14 states were using Hatfield 3.1. Transcript of Special Open Meeting of Oct. 28, 1997, at 25-28.
15

16 AT&T's attorney stated then:

17 We used 3.1 in other states that I have been previously involved in where we had
18 previously had Hatfield model 2.2 results. The results were not significantly
different in those other states.

19 Id. at 27. Indeed, the Hatfield model had progressed to version 5 by the time the earlier cost
20 docket had been closed. AT&T provides no evidence that the use of a different model would
21 have any more effect now than it had then.
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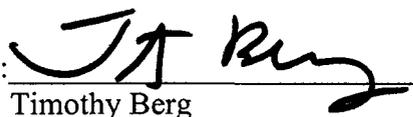
23 III. CONCLUSION

24 Qwest respectfully requests that the Commission deny any request to reopen previously
25 established rates in this proceeding.
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Respectfully submitted this 6th day of December, 2000.

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