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BEFORE THE ARIZONA CORPORATION COMMISSION

WILLIAM A. MUNDELL  
Chairman  
JIM IRVIN  
Commissioner  
MARC SPITZER  
Commissioner

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.

DOCKET NO. T-00000A-00-0194

**QWEST CORPORATION'S MOTION FOR RECONSIDERATION OF THE PROCEDURAL ORDER ISSUED DECEMBER 14, 2000**

**I. INTRODUCTION**

Qwest Corporation ("Qwest"), submits this motion requesting the Arbitrator to reconsider part of the Procedural Order issued December 14, 2000 ("Procedural Order"). Specifically, Qwest seeks reconsideration of the Arbitrator's ruling that Phase II of this proceeding shall include a review of whether the rates the Commission established for unbundled network elements ("UNEs") in Decision No. 60635 comply with the FCC's pricing rules. As demonstrated below, the Commission already has determined that the UNE rates it established in Decision No. 60635 are consistent with the FCC's pricing requirements. Accordingly, the review of those rates that the Arbitrator has ordered in this docket would be duplicative and would improperly prolong Phase II and impose substantial, unnecessary burdens on the Commission and the parties.

The Order requiring a review of the UNE rates from Decision No. 60635 rests on the Arbitrator's conclusion that "[i]t appears that the Commission has not itself determined that the UNE rates it set in Decision No. 60635 comply with FCC pricing rules." Procedural Order at 2,

1 Lines 27-28. That conclusion is incorrect. A review of Decision No. 60635 clearly demonstrates  
2 that the Commission evaluated the requirements of the FCC's pricing rules and concluded that  
3 the UNE rates it ordered comply with those requirements. The decision is replete with  
4 references to the FCC's pricing rules, and the Commission's Conclusions of Law deliberately  
5 recite the FCC's pricing methodology as the basis for the UNE rates: "The prices for unbundled  
6 network elements are intended to recover the costs of a forward-looking, least cost, efficient  
7 network, not embedded costs." Decision No. 60635, Conclusion of Law No. 9 (emphasis  
8 added).  
9

10 The Commission's conclusions that the UNE rates from Decision No. 60635 are  
11 consistent with the FCC's pricing rules were echoed by Commission Staff in the appeal of those  
12 rates to the United States District Court for the District of Arizona. In that appeal, Staff  
13 emphatically defended the UNE rates as being fully consistent with the FCC's pricing rules,  
14 including the FCC requirement that prices be based upon total element long run incremental  
15 costs ("TELRIC"). Moreover, the federal district court that decided the appeal expressly  
16 concluded that the Commission had determined the UNE price for the 2-wire unbundled loop by  
17 applying the FCC's TELRIC methodology. U S WEST Communications, Inc. v. Jennings, 46  
18 F. Supp. 2d 1004, 1012 (D. Ariz. 1999).  
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21 These statements and conclusions demonstrate that there is no need to conduct a review  
22 of the existing UNE rates to determine if they comply with the FCC's pricing rules. The  
23 Commission, the Staff, and the federal district court already have conducted that review, and  
24 they have concluded uniformly that the rates meet the FCC's requirements. In addition to being  
25 unnecessary, a review of the UNE rates from Decision No. 60635 would substantially expand the  
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1 size and scope of this proceeding and would significantly delay the date by which the  
2 Commission could conclude Phase II. The parties would have to create new cost studies and  
3 prepare extensive new testimony, all of which would require several months to complete. Under  
4 these circumstances, the hearing could not realistically be completed before next summer.

5  
6 For these reasons and the reasons set forth below, Qwest respectfully requests that the  
7 Arbitrator reconsider the portion of the Procedural Order that includes in Phase II a review of the  
8 UNE rates from Decision No. 60635.

9  
10 Alternatively, if the Arbitrator adheres to her initial view that the UNE rates should be  
11 revisited, Qwest requests that the Arbitrator adopt the approach taken recently by a Hearing  
12 Commissioner in a similar proceeding before the Colorado Commission. As described below, in  
13 that cost proceeding, the Hearing Commissioner ruled that the rates from the Colorado  
14 Commission's generic cost docket order issued in 1997 are "presumptively valid," but that the  
15 competitive local exchange carriers ("CLECs") will have the opportunity to make a *prima facie*  
16 showing that the rates are not correct. If the Commission were to follow that approach in this  
17 docket, it would have the proper effect of giving weight to the UNE rates from Decision 60635,  
18 avoiding unnecessary duplication of the substantial time and resources that the Commission and  
19 the parties invested in the earlier docket, and allowing the CLECs an opportunity to present their  
20 contentions that some rates are incorrect. Accordingly, if the Arbitrator decides that the  
21 Commission should revisit UNE rates to determine if they comply with the FCC's pricing rules,  
22 any reconsideration should be consistent with the procedures recently adopted in the Colorado  
23 order.  
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1 **II. DISCUSSION**

2 **A. The Commission, the Staff, and a Federal District Court have**  
3 **Determined that the UNE Rates from Decision No. 60635 Comply**  
4 **with the FCC's Pricing Rules.**

5 A brief review of the FCC's pricing rules, the evidence presented in Docket No. U-3021-  
6 96-448 et al., the Commission's reasoning in Decision No. 60635, the Staff's representations to a  
7 federal judge, and the federal court's ruling affirming one of the critical UNE rates leaves no  
8 doubt that contrary to the statement in the Procedural Order, the Commission already has  
9 determined that the existing UNE rates comply with the FCC's requirements and that another  
10 review of those rates would be duplicative and wasteful.

11 On August 8, 1996, the FCC issued its First Report and Order implementing the local  
12 competition provisions of the Telecommunications Act of 1996 ("the Act").<sup>1</sup> The First Report  
13 and Order includes provisions for pricing interconnection services and UNEs that are intended to  
14 implement the requirement in section 252(d)(1) of the Act that rates be "just and reasonable,"  
15 "based on cost," and "nondiscriminatory." At the heart of the FCC's pricing rules is the  
16 requirement that state commissions set prices based on "forward-looking long-run economic  
17 cost." First Report and Order ¶ 672 (emphasis added). According to the FCC, this requirement  
18 means that prices must be "based on the TSLRIC of the network element, which we will call  
19 Total Element Long Run Incremental Cost (TELRIC), and will include a reasonable allocation of  
20 forward-looking joint and common costs." Id. In adopting this pricing methodology, the FCC  
21 reasoned that an approach "based on forward-looking, economic costs best replicates, to the  
22 extent possible, the conditions of a competitive market." First Report and Order ¶ 679.  
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26 <sup>1</sup> In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of  
1996, CC Docket Nos. 96-98, 95-185, FCC First Report and Order (Rel. Aug. 8, 1996).

1 To determine the forward-looking costs that are to be used in a TELRIC analysis, the  
2 FCC adopted a "scorched node" approach that calculates costs based on the use of an incumbent  
3 local exchange carrier's ("ILEC's") existing wire centers:

4 We, therefore, conclude that the forward-looking pricing methodology for  
5 interconnection and unbundled network elements should be based on costs that  
6 assume that wire centers will be placed at the incumbent LEC's current wire  
7 center locations, but that the reconstructed local network will employ the most  
8 efficient technology for reasonably foreseeable capacity requirements.

9 First Report and Order ¶ 685. The FCC also specifically rejected the use of an ILEC's embedded  
10 costs to determine the rates for interconnection services and UNEs. First Report and Order  
11 ¶ 705.<sup>2</sup>

12 Consistent with the FCC's requirements, the UNE cost studies that the parties presented  
13 in Docket No. U-3021-96-448 et al. were based on TELRIC. As the "starting point" for  
14 determining the cost of UNEs, the Commission relied on the Hatfield model that AT&T  
15 Communications and MCImetro Access Transmission Services presented. Decision No. 60635  
16 at 6-7. AT&T's and MCI's witnesses emphasized that the Hatfield model complies with TELRIC  
17 and the FCC's pricing rules. For example, AT&T witness, R. Glen Hubbard, testified that "[t]he  
18 Hatfield model meets both the criteria of economically efficient pricing principles and the

19 \_\_\_\_\_  
20 <sup>2</sup> The FCC's pricing rules were stayed and eventually vacated by the United States Court of Appeals for  
21 the Eighth Circuit on jurisdictional grounds. See Iowa Utils. Bd. v. FCC, 120 F.3d 753 (8<sup>th</sup> Cir. 1997).  
22 However, in AT&T Corp. v. Iowa Utilities Bd., 525 U.S. 366 (1999), the United States Supreme Court  
23 reversed the Eighth Circuit's ruling that the FCC had exceeded its jurisdiction in promulgating the pricing  
24 rules, and it remanded the case to the Eighth Circuit for a review of the merits of the rules. On remand,  
25 the Eighth Circuit vacated several of the pricing rules on the grounds that they were not consistent with  
26 the Act. Iowa Utils. Bd. v. FCC, 219 F.3d 744 (8<sup>th</sup> Cir. 2000). However, the Eighth Circuit later stayed  
its order vacating the pricing rules pending another potential review by the Supreme Court. As Qwest  
demonstrated in its response to Staff's Motion for Clarification of Procedural Order, the parties in Docket  
No. U-3021-96-448 et al. presented cost studies that were based on the FCC's pricing rules, including the  
FCC's requirement of a TELRIC pricing methodology, even though the rules were not in effect at the time  
of the docket. See Qwest Corporation's Response to Staff's Motion for Clarification of Procedural Order  
and for Extension of the deadline for Filing Testimony at 3-5.

1 criteria set forth by the FCC." See Direct Testimony of R. Glen Hubbard at 56 lines 3-13.  
2 (Docket Nos. U-3021-96-448 et. al.); see also Direct Testimony of Stephen E. Siwek at 4-5  
3 (Docket Nos. U-3021-96-448, et. al.) ("The methodology underlying the Hatfield Model fully  
4 implements the definition of TELRIC adopted by the FCC."); Direct Testimony of R. Glen  
5 Hubbard at 46 (Docket Nos. U-3021-96-448 et. al.) ("Whether or not the FCC Order continues to  
6 be stayed, the methodology adopted by the FCC largely is consistent with the economic  
7 principles I have described in this testimony. The Commission thus may safely adopt AT&T's  
8 proposals, secure in the knowledge that they are consistent with the FCC Order if it is upheld and  
9 consistent with proper economic theory. . .").

11           Throughout Decision No. 60635, the Commission describes the TELRIC-based evidence  
12 upon which it based its rate determinations and explains how its determinations comply with the  
13 FCC's pricing rules. The Commission summarizes this overall compliance with the FCC's rules  
14 in Conclusion of Law No. 9: "The prices for unbundled network elements are intended to  
15 recover the costs of a forward-looking, least cost, efficient network, not embedded costs."  
16 Decision No. 60635 at 39. Similarly, in Conclusion of Law No. 6, the Commission expressly  
17 states that its decision is consistent with the FCC's rules, leaving no doubt that the Commission  
18 determined that the UNE rates it ordered comply with the FCC's pricing requirements: "The  
19 Commission's resolution of the issues pending herein is just and reasonable, consistent with the  
20 Act, the FCC Order and Rules, the Commission's Rules, and all applicable law, and is in the  
21 public interest." Decision No. 60635 at 39 (emphasis added). At other places in its decision, the  
22 Commission uses language and rationales from the FCC's pricing rules to explain its UNE  
23 pricing decisions:  
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1 • At page 5 of Decision No. 60635, the Commission states that "[t]he  
2 unbundled loop prices are based upon a forward-looking, least cost, efficient  
3 network, in order to stimulate economic efficiency." (emphasis added)

4 • In discussing the depreciation lives to use for determining UNE rates, the  
5 Commission states that it is "determining the appropriate depreciation lives to be  
6 used in determining the costs of a forward-looking, least cost, efficient network  
7 consistent with the Act, Commission rules, and all other applicable law."  
8 Decision No. 60635 at 10 (emphasis added).

9 • In addressing the appropriate level of overhead expenses to include in the  
10 UNE rates, the Commission observed that "[t]he FCC anticipated that common  
11 costs related to elements would be less than common costs associated with  
12 TSLRIC." Decision No. 60635 at 13.

13 • Discussing the appropriate network design to assume for the purpose of  
14 establishing UNE rates, the Commission concluded that "an existing system built  
15 and reinforced over time would use multiples of the sheath mileage necessary in a  
16 forward-looking, least cost, efficient network." Decision No. 60635 at 15  
17 (emphasis added).

18 • The Commission rejected the fill factors that U S WEST proposed for the  
19 feeder network that would underlie the UNE rates, stating that "the actual fill rate  
20 of the U S WEST network is not appropriate with a forward-looking, least cost,  
21 efficient network." Consistent with the FCC's pricing rules, the Commission  
22 explained further: "It must be recognized that we are utilizing a forward-looking,  
23 least cost, efficient network model in a scorched node environment." Decision  
24 No. 60635 at 16-17 (emphasis added).

25 • The Commission also rejected the construction method that U S WEST  
26 used in its cost study for placing outside plant, choosing the method used in the  
Hatfield model instead. The Commission explained that its decision relating to  
this issue was based upon its application of TELRIC: "Differences between the  
U S WEST model's method of construction and the Hatfield Model's method  
often are resolved when realizing that the Hatfield Model is based upon the  
TELRIC method, using the most efficient technology, rather than the method  
developed over history in a non-competitive environment. Therefore, the  
Commission will adopt the Hatfield Model's method for calculating placement  
costs." Decision No. 60635 at 19.

27 Despite its desire to have the Commission revisit the UNE rates from Decision No.  
28 60635, the Staff could not have been clearer in telling the United States District Court for the  
29 District of Arizona that those rates comply with the FCC's pricing rules. Staff stated  
30 unequivocally that "[t]he rates for unbundled network elements established by the Commission  
31 comply with all of [the FCC's] rules." Post Hearing Brief of the Arizona Corporation

1 Commission on the Impact of the Recent Supreme Court Ruling in AT&T Corp. v. Iowa Utilities  
2 Board at 6 (emphasis added) (Brief attached hereto as Exhibit 1). Staff stated further that the  
3 UNE rates comply with the rate structure rules set forth in Sections 51.507 and 51.509 and were  
4 established pursuant to a forward-looking economic cost-based pricing methodology." Id. And  
5 Staff also emphasized to the federal court that the Commission based the UNE rates on "the most  
6 efficient telecommunications network configuration and technology, and the forward-looking  
7 economic cost of the network." Id. In Staff's mind, as these representations to a federal judge  
8 demonstrate, there was no doubt whatsoever that the Commission deliberately and strictly  
9 complied with the FCC's pricing rules in setting the rates for UNEs.  
10

11 On appeal, presented with the parties' TELRIC-based cost studies, the Commission's  
12 repeated references in Decision No. 60635 to the FCC's pricing requirements, and the Staff's  
13 strong assertions that the Commission followed the FCC's pricing rules, the federal district court,  
14 not surprisingly, affirmed the UNE rate for the two-wire unbundled loop. U S WEST  
15 Communications, Inc. v. Jennings, 46 F. Supp. 2d 1004, 1012 (D. Ariz. 1999). In doing so, the  
16 court recognized the FCC's requirement of TELRIC-based pricing and specifically  
17 acknowledged that the Commission had applied that pricing methodology. Id. at 1009, 1012.  
18

19 In summary, it is abundantly clear that the Commission carefully considered and relied  
20 upon the FCC's pricing rules in establishing the UNE rates in Decision No. 60635. The contrary  
21 conclusion in the Procedural Order is incorrect, and the Arbitrator should, therefore, amend that  
22 Order to establish that Phase II will not include reconsideration of those rates.  
23

24 **B. Verizon's Rates in Massachusetts do not Provide any Justification for**  
25 **Revisiting the UNE Rates the Commission Set in Decision No. 60635.**

26 In support of their argument for revisiting the UNE rates, Staff and WorldCom, Inc. cited

1 concerns that the United States Department of Justice expressed about Verizon's UNE rates in  
2 Massachusetts in connection with Verizon's application for long distance relief in that state.  
3 However, there is no basis for drawing any comparisons between the appropriateness of  
4 Verizon's rates in Massachusetts and the rates this Commission set for Arizona.

5         The TELRIC of providing UNEs is largely dependent upon state-specific factors relating  
6 to the cost of providing network elements. For example, states that have large rural areas and  
7 significant population dispersions have higher UNE costs and higher UNE rates than states that  
8 have more centralized populations and smaller geographic areas. These state-specific differences  
9 in rate structures are explained by the fact that it is simply more expensive to build networks that  
10 reach into rural areas and provide service to significant numbers of customers located in remote  
11 areas. States that are smaller in size and that have more centralized populations allow for cost  
12 savings that can be achieved through economies of scale. These economies often are unavailable  
13 or less pronounced in states with substantial geographic territories and rural populations.

14         Arizona and Massachusetts are good examples of how state-specific conditions affect  
15 UNE rates. Arizona is, of course, a large state with substantial rural areas that have  
16 decentralized populations. By contrast, Massachusetts is among the smaller states, and its  
17 population is, for the most part, highly centralized. As a result of these differences, the  
18 investment needed to provide UNEs in Arizona is likely to be substantially higher than the  
19 investment required in Massachusetts. Accordingly, the UNE rates in these two states are not  
20 comparable, and any attempt to cite the Massachusetts rates as evidence that the Arizona rates  
21 are too high is necessarily flawed from the start.

22         Furthermore, the concerns the Department of Justice expressed in its evaluation regarding  
23 Verizon's Massachusetts' rates are simply not present in this case. The Department of Justice  
24 raised four basic concerns with Verizon's rates. First, the Department of Justice noted that while  
25  
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1 state commissions may reasonably adopt different UNE rates across an incumbent LEC's region,  
2 there was no explanation for the magnitude of the difference between Verizon's rates in  
3 Massachusetts and other states in Verizon's region. Application of Verizon New England, Inc.,  
4 Bell Atlantic Communications, Inc. (d/b/a Verizon Enterprise Solutions), and Verizon Global  
5 Networks Inc. for Authorization to Provide In-Region, InterLATA Services in Massachusetts,  
6  
7 CC Docket No. 00-176, Evaluation of the United States Department of Justice at 19 n. 67.

8 In Qwest's region, by contrast, while some states with more urban population centers  
9 have adopted UNE rates that are lower than those in Arizona, other comparable states have  
10 adopted rates that are entirely consistent with -- and sometimes higher -- than those in Arizona.  
11 For example, in Idaho, the average 2-wire loop rate is \$25.52. In Montana, the Commission  
12 approved a 2-wire loop rate of \$27.41 in the interconnection agreement between then-U S WEST  
13 and AT&T. In Wyoming, the Commission endorsed 2-wire loop rates of \$19.05 for the base rate  
14 area, \$31.83 for zone 1, and \$40.11 for zone 2, and \$58.43 for zone 3; it approved an average  
15 loop rate of \$25.65 in the interconnection arbitration between then-U S WEST and AT&T.  
16 Finally, in Colorado, Qwest's deaveraged 2-wire loop rates are \$19.65 in the base rate area,  
17 \$26.65 in density zone 1, \$38.65 in density zone 2, and \$84.65 in density zone 3. CLECs in  
18 Colorado challenged these rates, alleging that the Colorado Commission failed to state explicitly  
19 in its orders that it used the TELRIC approach. Like the Arizona federal court that upheld the  
20 rates in Decision No. 60635, a Colorado federal court upheld these Colorado rates as explicitly  
21 following TELRIC principles. Furthermore, the court noted that since all parties presented  
22 TELRIC studies, just like the parties before the Arizona Commission, and the Commission  
23 mentioned its adoption of forward-looking cost principles, just as the Arizona Commission did,  
24  
25  
26

1 the Colorado rates necessarily followed TELRIC. See U S WEST Communications, Inc. v. Hix,  
2 Civil Action No. 97-D-152 (consolidated), Order at 6 (D. Colo. June 23, 2000) ("Since both  
3 parties presented evidence and cost studies to the [Colorado Commission] that purported to be  
4 compliant with TELRIC, and the CPUC repeatedly stated in its orders that it was reviewing  
5 TELRIC data and establishing forward looking prices, this Court concludes that the Commission  
6 applied TELRIC principles in its decisions"). Thus, far from being aberrational, the UNE rates  
7 the Commission approved in Decision No. 60635 are consistent with rates in other states as well  
8 as with TELRIC principles.

10 Second, the Department of Justice noted that several CLECs had raised "facially  
11 reasonable challenges" to the UNE rates in Massachusetts, such as the alleged failure to pass on  
12 an initial switch vendor discount. Department of Justice Evaluation at 19 n. 67. Here, in stark  
13 contrast, neither Staff nor any CLEC has alleged that any particular input or aspect of the  
14 Commission's rate-setting methodology fails to comply with TELRIC. Thus, there is an absence  
15 of any "facially reasonable challenge" to the rates approved in Decision No. 60635.

17 Third, the Department of Justice noted that Verizon reduced rates for the UNE-platform  
18 used to serve residential lines and concluded that this reduction could signal that UNE rates for  
19 business platform lines are not cost-based. Id. There has been no comparable change or  
20 disparate treatment in Qwest's Arizona UNE rates for residential and business consumers.

22 Fourth, the Department of Justice expressed concern with a Verizon tariff filing, made  
23 after its Section 271 application, in which Verizon lowered certain UNE rates in Massachusetts  
24 to correspond to New York rates without providing back-up documentation or demonstrating that  
25 those rates are cost-based for Massachusetts. Department of Justice Evaluation at 19-20. Again,  
26

1 there has been no comparable tariff change by Qwest.

2 Finally, although not discussed in the Department of Justice Evaluation, the Verizon  
3 Massachusetts' rates apparently were not subject to federal court review. As discussed above,  
4 Qwest's Arizona rates have been, and those rates were upheld as consistent with federal law.  
5

6 In short, none of the reasons the Department of Justice cited for questioning Verizon's  
7 Massachusetts' rates applies here. The Arbitrator, therefore, should reconsider any reliance on  
8 the Department of Justice's evaluation of Verizon's Massachusetts' rates.

9 **C. Revisiting the UNE Rates will Significantly Expand the Scope of**  
10 **Phase II and Delay Completion of this Proceeding.**

11 As Qwest pointed out in its brief in response to Staff's Motion for Clarification of  
12 Procedural Order, the proceeding that led to the UNE rates ordered in Decision No. 60635  
13 included testimony from more than 20 witnesses, more than 900 hundred pages of pre-filed  
14 testimony, live testimony spanning 8 hearing days, more than (approximately) 22 cost studies  
15 comprising thousands of pages, and extensive briefing by the parties. If Phase II of this docket  
16 includes revisiting the UNE rates, much of this effort and investment of time and money from  
17 the previous docket will have to be repeated or started anew. Qwest will have to prepare new  
18 cost studies, many witnesses likely will be added to the proceeding, and the length of the hearing  
19 will be significantly expanded. The cost, measured in terms of time, personnel, and money, will  
20 increase enormously.  
21

22 In addition, if the UNE rates are added, the completion of Phase II will be delayed by  
23 many months. Qwest and the Staff had been anticipating that the Phase II hearing would take  
24 place this Spring. If the rates for UNEs are added to Phase II, however, Qwest will not be able to  
25 complete all of the necessary cost studies until March 2001 at the earliest. See Affidavit of  
26

1 Jerrold L. Thompson ¶¶ 2-3 (Attached as Exhibit II). Preparation of cost studies for all of the  
2 UNE rates already approved in Decision No. 60635 is a significant undertaking that requires  
3 numerous Qwest employees. Id. ¶ 3. In addition, Qwest is currently in the process of preparing  
4 cost studies and testimony for rate proceedings previously scheduled in several other states. Id.  
5 ¶¶ 3-4. Indeed, these proceedings alone will require Qwest to prepare more than 250 cost  
6 studies. Id. ¶ 4. Qwest simply cannot commit to providing additional cost studies in Arizona  
7 before March 2001.  
8

9 Under even an expedited schedule for submitting testimony, this would mean that the  
10 Phase II hearing would take place, at the earliest, next summer. This delay will mean that the  
11 network elements and interconnection services for which there are not permanent prices in place  
12 will continue to lack pricing for an extended period of time. This uncertainty in the market is not  
13 beneficial to Qwest or to the CLECs.  
14

15 In other words, there is a significant price to pay for requiring the parties and the  
16 Commission to revisit the UNE rates from Decision No. 60635. While the price might be worth  
17 paying if the Commission did not consider the FCC's pricing rules in establishing the UNE rates,  
18 that is simply not the case. Because the Commission applied the FCC's rules and ordered rates  
19 that have been found to be lawful, there is no legitimate need for imposing the substantial  
20 burdens that will result from revisiting the UNE rates.  
21

22 In their arguments that preceded the Procedural Order, the CLECs suggested that when it  
23 issued the rates in Decision 60635, the Commission intended that the rates would be temporary  
24 in nature and would be revisited within a fairly short time. However, a closer reading of  
25 comments from the Commission during the public hearing of January 8, 1998 indicates that the  
26

1 Commission intended to revisit the rates "if necessary" and if the rates somehow proved to be  
2 wrong. See e.g., January 8, 1998 Hearing Transcript at p. 315, lines 12-18. There is no evidence  
3 and not even a plausible claim that the rates are wrong -- based on incorrect calculations or  
4 improper application of pricing principles, for example -- and, therefore, the potential need to  
5 revisit rates that the Commission referred to in 1997 has not materialized.  
6

7 **D. Alternatively, the Procedural Order Should Establish that the**  
8 **Existing UNE Rates Presumptively Comply with the FCC's pricing**  
9 **Rules and that the Burden of Demonstrating Non-Compliance is on**  
10 **the CLECs.**

11 If the Arbitrator does not modify the Procedural Order to eliminate revisiting the UNE  
12 rates from the previous docket, Qwest requests, in the alternative, that the Arbitrator modify the  
13 Order to establish that: (1) the UNE rates presumptively comply with the FCC's pricing rules;  
14 and (2) the CLECs have the burden of overcoming that presumption and demonstrating that the  
15 rates are not consistent with the FCC's rules. This approach would avoid unnecessary litigation  
16 over existing rates that are clearly lawful and reduce the enormous demands on time and  
17 resources that would result from revisiting all the existing rates, while still giving the CLECs the  
18 opportunity to attempt to demonstrate that some rates should be reconsidered.

19 In a similar docket that is pending in Colorado, the Hearing Commissioner recently  
20 issued a procedural order that adopts this approach. While stating that the rates the Colorado  
21 Commission set in 1997 in its generic cost docket follow "FCC-mandated TELRIC principles"  
22 and "thus are presumptively valid," the order nevertheless allows parties to challenge in the  
23 pending docket any rate "that they believe is not consistent with the FCC pricing directives." In  
24 the Matter of U S WEST Communications, Inc.'s Statement of Generally Available Terms and  
25 Conditions, Docket No. 99A-577T, Decision No. R00-1487-I at ¶¶ 17-18 (Pub. Utils. Comm'n.  
26 of Co. Dec. 29, 2000) (Attached as Exhibit III). Under the order, a party seeking to revisit a rate  
from the generic cost docket "will need some sort of *prima facie* showing that the given rate

1 element is not priced correctly." Id. ¶ 19. The order establishes that Qwest does not bear the  
2 burden of "rejustifying rates" from the cost docket and, therefore, is not required to address those  
3 rates in its direct case. Id. ¶ 18. Instead, the burden of contesting the existing rates is on the  
4 challenging parties who are to assert any challenges they have in their responses to Qwest's  
5 direct case. Id.

6 While there is no reason for this Commission to revisit the UNE rates from Decision No.  
7 60635, if the Arbitrator decides that the Commission should do so, there are several reasons why  
8 the Colorado approach is appropriate.

9 First, there are substantial similarities between the Colorado docket and this docket. Both  
10 dockets are intended to establish rates for UNEs and interconnection products and services for  
11 which rates were not previously established, and those rates are to be included in Qwest's  
12 Statement of Generally Available Terms and Conditions ("SGAT"). In addition, the Arizona and  
13 Colorado commissions established the existing rates from the generic costs in approximately the  
14 same time period – the Colorado Commission issued its rates in July 1997, and this Commission  
15 issued Decision 60635 several months later, in January 1998. Further, federal courts reviewed  
16 rates from both generic cost dockets and, with some exceptions, affirmed the rates as being in  
17 compliance with the FCC's pricing rules.

18 Second, the Colorado approach properly accords substantial weight to rates that were  
19 thoroughly litigated and evaluated and that were largely upheld by a federal district court. In  
20 assigning that weight, the Colorado order appropriately preserves the value of the substantial  
21 time and resources that the Colorado Commission and the parties invested in the generic cost  
22 docket and the appeal in which the rates from that docket were reviewed. As a result, the order  
23 eliminates unnecessary duplication of investment and effort from the original cost docket. This  
24 approach is clearly preferable to the duplicative effort and delay that would result from requiring  
25 the parties to revisit all UNE rates from Decision 60635 regardless whether there has been any  
26

1 showing that those rates fail to comply with the FCC's pricing rules.

2 Third, while giving weight to the existing rates, the Colorado approach still provides the  
3 CLECs with a procedure for challenging those rates. Accordingly, if there were a rate that did  
4 not comply with the FCC's pricing guidelines, the Colorado order would give the Commission  
5 the opportunity to address that rate and to correct it.

6 **III. CONCLUSION**

7 For the reasons stated, Qwest respectfully requests that the Arbitrator reconsider the  
8 Procedural Order and establish that the Phase II hearing will not include revisiting the UNE rates  
9 from Decision No. 60635. Alternatively, the Arbitrator should modify the Procedural Order to  
10 establish that the UNE rates presumptively comply with the FCC's pricing rules and that the  
11 CLECs have the burden of demonstrating non-compliance with those rules.  
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1 showing that those rates fail to comply with the FCC's pricing rules.

2 Third, while giving weight to the existing rates, the Colorado approach still provides the  
3 CLECs with a procedure for challenging those rates. Accordingly, if there were a rate that did  
4 not comply with the FCC's pricing guidelines, the Colorado order would give the Commission  
5 the opportunity to address that rate and to correct it.

6 **III. CONCLUSION**

7 For the reasons stated, Qwest respectfully requests that the Arbitrator reconsider the  
8 Procedural Order and establish that the Phase II hearing will not include revisiting the UNE rates  
9 from Decision No. 60635. Alternatively, the Arbitrator should modify the Procedural Order to  
10 establish that the UNE rates presumptively comply with the FCC's pricing rules and that the  
11 CLECs have the burden of demonstrating non-compliance with those rules.  
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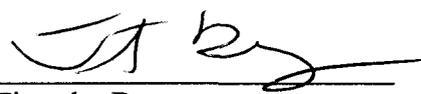
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RESPECTFULLY SUBMITTED this 11<sup>th</sup> day of January, 2001.

QWEST CORPORATION

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Tony West as members of the  
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7  
8 **IN THE UNITED STATES DISTRICT COURT**  
9 **DISTRICT OF ARIZONA**

10 U S WEST COMMUNICATIONS, INC. )  
a Colorado Corporation, )  
11 )  
Plaintiff, )  
12 )  
v. )  
13 )  
RENZ D. JENNINGS<sup>1</sup>, MARCIA WEEKS, )  
14 AND CARL J. KUNASEK, as members )  
of the ARIZONA CORPORATION )  
15 COMMISSION, and TCG PHOENIX, a )  
general partnership, )  
16 Defendants. )  
17 )  
18 AND CONSOLIDATED MATTERS )  
19 )  
20 )

No. CIV 97-0026 PHX-OMP  
CIV 97-0027 PHX-OMP  
CIV 97-0394 PHX-OMP  
CIV 97-1723 PHX-OMP  
CIV 97-1856 PHX-OMP  
CIV 97-1927 PHX-OMP  
CIV 97-2025 PHX-OMP  
CIV 97-2324 PHX-OMP  
CIV 98-0342 PHX-OMP  
CIV 98-0626 PHX-OMP  
CIV 98-0629 PHX-OMP  
(Consolidated)

21 **POST HEARING BRIEF OF**  
22 **THE ARIZONA CORPORATION COMMISSION**  
23 **ON THE IMPACT OF THE RECENT SUPREME COURT**  
**RULING IN AT&T CORP. v. IOWA UTILITIES BOARD**

24 Defendants Jim Irvin, Carl J. Kunasek and Tony West, as members of the Arizona  
25 Corporation Commission (hereinafter referred to as the "Commission"), by their attorneys, file  
26 this post-hearing brief on the impact of the United States Supreme Court's recent decision in  
27  
28

<sup>1</sup> The Commission notes that Renz D. Jennings was succeeded as corporation commissioner on January 1, 1999, by Tony West.

1 AT&T Corp. v. Iowa Utilities Board, No. 97-826, 1999 WL 24568 (S.Ct. Jan. 25, 1999) on the  
2 issues presented for review in this case.

3 **I. INTRODUCTION.**

4 On January 25, 1999, the United States Supreme Court issued its ruling in AT&T Corp.  
5 v. Iowa Utilities Board. The United States Supreme Court reversed the Eighth Circuit Court of  
6 Appeals on a number of issues, including the Eighth Circuit's ruling that the States had exclusive  
7 jurisdiction over intrastate pricing issues under Section 252(d) of the Telecommunications Act of  
8 1996 ("1996 Act"). The United States Supreme Court made similar jurisdictional rulings with  
9 regard to dialing parity, the rural interconnection exemption and state review of preexisting  
10 interconnection agreements. Essentially, the Supreme Court found that while States were given  
11 authority to implement many of these provisions of the 1996 Act, the Federal Communication  
12 Commission ("FCC") had authority pursuant to Section 201(b) of the 1934 Act to adopt rules  
13 governing these State determinations.

14 In addition, the United States Supreme Court reversed the Eighth Circuit's rulings  
15 regarding the FCC's interpretation of the "pick and choose" rule and the obligation of incumbent  
16 local exchange carriers ("ILECs") to make available to competitive local exchange carriers  
17 ("CLECs") already combined network elements. Finally, the United States Supreme Court  
18 vacated 47 C.F.R. Section 51.319 which contains the list of unbundled network elements that the  
19 ILECs (in this case U S WEST) is required to make available to competitors.

20 The Court should allow the Commission to address the impact of the Supreme Court's  
21 ruling in the first instance. Pursuant to the parties' interconnection agreements, the parties may  
22 bring any issues back to the Commission when there has been a subsequent judicial opinion  
23 which would have an impact upon the agreement's provisions, operation or interpretation. Thus,  
24 the parties may at any time ask the Commission to reopen the records in the affected  
25 Commission proceedings to determine the impact of the Supreme Court's ruling. In the unlikely  
26 event no party petitions the Commission for review of any issues impacted by the Supreme  
27 Court's ruling, the Commission and/or FCC will commence a review on their own motion.

28

1           Allowing the Commission to address the impact of the Supreme Court's decision in the  
2 first instance would provide a record on these issues which the Court would not have the benefit  
3 of at this time. In addition, if the Court proceeds to examine the Supreme Court's ruling without  
4 the benefit of a Commission record, the Court would be forced to substitute its judgment for that  
5 of the Commission on many issues. It is further unlikely that the Court could affirmatively rule  
6 in some instances until the FCC issued its orders on remand.

7           However, should the Court elect to proceed at this time and consider the impact of the  
8 Supreme Court's ruling in the first instance, the Court should affirm the majority of the  
9 Commission's rulings. As discussed in more detail below, the non-price issues in this case are  
10 for the most part not affected by the Supreme Court's ruling since the FCC rules that were  
11 vacated by the Eighth Circuit Court of Appeals and subsequently reinstated by the Supreme  
12 Court's ruling, were largely the FCC's pricing rules promulgated pursuant to Section 252(d) of  
13 the 1996 Act. Second, the Commission's ratemaking determinations are for the most part also  
14 unaffected, as discussed further below, because the Commission followed many of the FCC's  
15 pricing rules despite the fact that they were subsequently vacated by the Eighth Circuit Court of  
16 Appeals.

17       **II. THE COURT SHOULD ALLOW THE COMMISSION TO ADDRESS THE**  
18       **IMPACT OF THE SUPREME COURT'S RULING IN THE FIRST INSTANCE.**

19           The Court should allow the Commission to address the impact of the United States  
20 Supreme Court's ruling in AT&T Corp. v. Iowa Utilities Board in the first instance. The  
21 interconnection agreements at issue generally provide for incorporation of any subsequent  
22 administrative and/or judicial opinions. See, e.g., AT&T - U S WEST Interconnection  
23 Agreement, provisions 24 and 27. The parties may, and should, bring any issues impacted by the  
24 United States Supreme Court's ruling in AT&T Corp. v. Iowa Utilities Board back to the FCC  
25 and Commission for resolution. The Court should, therefore, first allow the Commission and  
26 FCC to consider the impact of the Supreme Court's rulings. This would also create a record for  
27 the Court to use as the basis of any subsequent appeal on these issues. Such an approach would  
28 give due recognition to the Commission's expertise in these matters since the framework of the

1 1996 Act "obviously recognizes the various State commissions' expertise in technical matters  
2 related to intrastate telecommunications..." U S WEST v. Hix, 986 F. Supp. 13, 16 (10<sup>th</sup> Cir.  
3 1997).

4 Several other factors support the Court's allowing the Commission to consider these  
5 issues in the first instance. First, it has been over three years now since passage of the 1996 Act.  
6 It has also been almost three years since the FCC's local competition rules were first adopted.  
7 Much has transpired in this three year period creating much uncertainty with respect to how, in  
8 particular, the FCC will decide to proceed on these issues. Not only are there still pending  
9 petitions for reconsideration before the FCC on some of these issues, but the FCC has stated that  
10 it is likely to commence a rulemaking in the near future on at least that portion of the Supreme  
11 Court's ruling, vacating 47 C.F.R. Section 51.319. In addition to this issue, the Commission  
12 believes that it is probable that the FCC will also commence a proceeding to address other issues  
13 impacted by the Supreme Court's ruling. It is likely that the FCC will allow state commissions  
14 some leeway on these issues given the passage of significant time since adoption of its original  
15 rules and the desire to avoid upsetting the competitive momentum already in progress.  
16 Moreover, there are also appeals pending before the Eighth Circuit dealing with the substance of  
17 the FCC's pricing rules which the Eighth Circuit will now have to address since the United  
18 States Supreme Court has ruled that the FCC has the authority to issue pricing rules under  
19 Section 252(d) of the 1996 Act.

20 Second, if the Court proceeds at this time, it will have to substitute its judgment for that  
21 of the Commission on some issues. There would be no administrative record for the Court to  
22 examine. Given all of these considerations, the Court should allow the Commission to address  
23 the impact of the Supreme Court's ruling in the first instance.

24 If the Court determines to address the United States Supreme Court's ruling in the  
25 context of the instant appeal, the Court should find that the Commission's determinations are in  
26 compliance with the 1996 Act and reinstated FCC rules. As discussed in more detail below, the  
27 Commission followed many of the FCC's pricing rules, even though they had been vacated by  
28 the Eighth Circuit Court of Appeals. The only exception to this was the Commission's

1 determination to use statewide averaging in setting initial unbundled network element rates,  
2 rather than at least three density zones as required by FCC rules. In all other respects, the  
3 Commission believes that it operated within the broad pricing guidelines established by the FCC,  
4 even though not required to do so at the time.

5 **III. IF THE COURT DECIDES TO CONSIDER THE IMPACT OF THE SUPREME**  
6 **COURT'S RULING IN MAKING ITS DETERMINATION, THE COURT MUST**  
7 **STILL AFFORD THE COMMISSION'S RATEMAKING DETERMINATIONS**  
8 **SUBSTANTIAL DEFERENCE.**

9 Notwithstanding the United States Supreme Court's jurisdictional ruling, the Court must  
10 still give the Commission's ratemaking determinations substantial deference. State commissions  
11 have original jurisdiction to establish rates under Section 252(d) of the 1996 Act. Section 252(d)  
12 of the 1996 Act states in relevant part:

13 (d) PRICING STANDARDS.—

14 (1) INTERCONNECTION AND NETWORK ELEMENT CHARGES.  
15 Determinations by a State commission of the just and reasonable rate for the  
16 interconnection of facilities and equipment for purposes of subsection (c)(2) of  
17 section 251, and the just and reasonable rate for network elements for purposes  
18 of subsection (c)(3) of such section —

19 (A) shall be—

- 20 (i) based on the cost (determined without reference to a rate-  
21 of-return or other rate-based proceeding) of providing the  
22 interconnection or network element (whichever is applicable), and  
23 (ii) nondiscriminatory, and

24 (B) may include a reasonable profit.

25 (Emphasis added).

26 Moreover, State commissions also have original jurisdiction under the 1996 Act to  
27 establish rates for wholesale discounts and reciprocal compensation and transport and  
28 termination. See 47 C.F.R. Sections 252(e)(2)(A) and 252(e)(3). Where the Act gives the  
agency original jurisdiction over an area, substantial deference is afforded to the State  
commission's findings. U S WEST v. MFS, 1998 WL 350588 (W.D. Wash. 1998), AT&T Op.  
Br. App. Ex. 3.

1           Consequently, although the United States Supreme Court may have reversed the Eighth  
2 Circuit on a number of jurisdictional issues, including the FCC's authority to adopt pricing rules  
3 to govern State commission pricing determinations, it is the State commissions under Section  
4 252(e) of the 1996 Act that have the responsibility to actually determine the rates to be charged.  
5 Thus, while State commissions are now bound to follow the FCC's broad pricing rules or  
6 guidelines in the future, State commissions still have considerable discretion within those broad  
7 guidelines to balance the positions of the various parties and come to an appropriate resolution.  
8 See AT&T Corp. v. Iowa Utilities Board, slip op. at 16 (the state commissions will apply the  
9 FCC standards and "implement that methodology, determining the concrete result in particular  
10 circumstances.").

11           The FCC has no authority to actually set or establish any rates under the plain language  
12 of Section 252(d). Therefore, the State commissions' ratemaking determinations under the 1996  
13 Act are entitled to substantial deference.

14 **IV. IF THE COURT DECIDES TO ADDRESS THE UNITED STATES SUPREME**  
15 **COURT'S DECISION, THE COURT SHOULD AFFIRM THE UNBUNDLED**  
16 **NETWORK ELEMENT RATES ESTABLISHED BY THE COMMISSION SINCE**  
17 **THEY ARE IN COMPLIANCE WITH THE 1996 ACT AND FCC RULES.**

18           The FCC's pricing rules for unbundled network elements are contained at 47 C.F.R.,  
19 Subpart F, Sections 51.101 through 51.515. The rates for unbundled network elements  
20 established by the Commission comply with all of these rules. First, under Section 51.503, the  
21 rates established by the Commission are just, reasonable and nondiscriminatory. They comply  
22 with the rate structure rules set forth in Sections 51.507 and 51.509 and were established  
23 pursuant to a forward-looking economic cost-based pricing methodology. In addition the rates  
24 for unbundled network elements do not vary on the basis of the class of customers served by the  
25 requesting carrier, or on the type of services that the requesting carrier purchasing such elements  
26 uses them to provide.

27           The rates also comply with Section 51.505 of the FCC rules. The rates established by the  
28 Commission were based upon the most efficient telecommunications network configuration and  
technology, and the forward-looking economic cost of the network .

1 As noted at p. 7 of the Commission's Order in the Consolidated Cost Docket (Decision  
2 60635, p. 7, U S WEST Op. Br. App. Ex. 21), the Commission rejected U S WEST's model  
3 platform because it was based in part upon embedded costs and technology. The Commission  
4 used the Hatfield Model platform as a starting point in its analysis to determine the cost of  
5 unbundled elements. Id. The Hatfield Model was sponsored by AT&T and MCI. Both AT&T  
6 and MCI argued that the Hatfield Mode was in compliance with the 1996 Act and FCC Rules.  
7 Id. at 6. Indeed, the Commission's Order notes that the Hatfield Model "considers the  
8 demographics and geography of each state in forecasting element costs, and was used by the  
9 FCC in the determination of proxy prices." Id.

10 Moreover, the model inputs chosen by the Commission were also all based upon the  
11 forward-looking costs involved. First, as the FCC rules require at 51.505(b)(2), the Commission  
12 utilized a forward-looking cost of capital which reflected the "increased risk" to U S WEST  
13 associated with competition. The cost of capital adopted by the Commission was very close to  
14 that recommended by the arbitrators. On the other hand, the CLECs urged the Commission to  
15 use U S WEST's historical cost of capital which does not comply with the FCC rules.

16 Second, the depreciation rates utilized by the Commission were also forward-looking as  
17 required by 51.505(b)(3) of the FCC rules. In addition, they are the "economic" depreciation  
18 rates produced by the Technology Futures, Inc. study, with some adjustments. The CLECs once  
19 again urged the Commission to use U S WEST's historical depreciation rates which do not  
20 comply with the FCC rules. In addition, the depreciation rates advocated by the CLECs for  
21 copper were not based upon "economic" lives, as required by the FCC rules, but instead reflected  
22 the plant's "physical" life.

23 Third, the Commission also utilized a forward-looking allocation of common costs. The  
24 Commission was not required to adopt the 10 percent default allocation contained in its rules or  
25 in the Hatfield Model, that value having been successfully rebutted by U S WEST.

26 In addition, all of the other input values adopted by the Commission were based upon  
27 forward-looking costs or considerations. Further, as required by Rule 51.505(d), the  
28 Commission did not consider embedded costs, retail costs, opportunity costs or revenues to

1 subsidize other services. The Commission's unbundled network element rates also comply with  
2 Rule 51.505(e) of the FCC rules. The Commission gave full and fair effect to the economic cost  
3 based pricing methodology described in that section and provided notice and an opportunity for  
4 comment to affected parties with a written factual record sufficient for purposes or review.

5 The Commission's loop rate also complies with Section 51.509 of the FCC's rules. In  
6 addition the Commission's unbundled network element rates comply with Section 51.511 of the  
7 FCC's rules having been based upon the forward-looking economic cost of each element. In  
8 summary, should the Court address the impact of the Supreme Court's decision on the issues  
9 presented, it should find that the Commission's unbundled network element rates comply with  
10 the FCC rules.

11 **V. IF THE COURT DECIDES TO ADDRESS THE IMPACT OF THE UNITED**  
12 **STATES SUPREME COURT'S RULING, THE COURT SHOULD AFFIRM THE**  
13 **WHOLESALE DISCOUNT RATES ESTABLISHED BY THE COMMISSION**  
14 **SINCE THEY COMPLY WITH THE 1996 ACT AND FCC RULES.**

15 The wholesale discount rates established by the Commission also comply with the FCC's  
16 pricing rules. The Commission's Order, (Decision No. 60635 at p. 36, U S WEST Op. Br. App.  
17 Ex. 21), states that it found MCI's method to be the most reasonable in calculating the avoided  
18 cost discount. MCI estimated costs which reasonably would be avoided in selling at wholesale.  
19 (Id. at p. 36). According to MCI, its method comported with the FCC's rules and was consistent  
20 with the 1996 Act. (Recommended Opinion and Order ("ROO"), p. 32, U S WEST Resp. Br.  
21 App. Ex. 34) According to MCI, it had followed the FCC's guidance in its proposal for which  
22 categories of costs are avoidable by an economically efficient carrier selling at wholesale, and  
23 the percentage of each category which is avoidable. MCI applied the percentage avoidable to  
24 each category of publicly available U S WEST cost data for 1995, yielding a percentage of its  
25 total costs, which would be avoidable. Id. MCI based the discount on U S WEST's embedded  
26 costs, using actual expenditures rather than TSLRIC. Id.

27 The Recommended Opinion and Order further explained that U S WEST had disputed  
28 the MCI study and had recalculated MCI's discount, resulting in a weighted discount of 14.09  
percent. (p. 33, U S WEST Resp. Br. App. Ex. 34).

1           While both the arbitrators and the Commission found MCI's method to be the most  
2 reasonable in calculating the avoided cost discount, they found certain of the concerns expressed  
3 by U S WEST to be valid. First, property taxes should not have been excluded from the  
4 denominator of the MCI avoided cost ratio. In addition, MCI's assumption that 90 percent of all  
5 marketing type costs was not accepted. The Commission and arbitrators found that marketing  
6 costs should be discounted by 75.44 percent, as advocated in U S WEST's prefiled testimony.  
7 These adjustments alone resulted in the arbitrators modifying MCI's proposed discount to 20.22  
8 percent.

9           The Commission made further adjustments bringing the discount to 18 percent for all  
10 services other than residential. An additional adjustment was made by the Commission to the  
11 residential discount to reflect evidence contained in the record that advertising costs were much  
12 lower, and other factors. As the Commission's Response Brief discussed, the Commission's  
13 adjustments resulting in wholesale rates which were well within the wide range of wholesale  
14 discounts contained in the record of the Commission's proceeding. (Commission's Resp. Br.  
15 pgs. 39-40).

16           The Court must afford substantial deference to the Commission's determinations given  
17 the Commission's original jurisdiction to set wholesale discounts under 252(d) of the 1996 Act.  
18 The Commission utilized the overall methodology advocated by MCI, which MCI claimed was  
19 consistent with FCC rules. The adjustments made by the Commission were well within its  
20 discretion under the 1996 Act and FCC rules. The Court should find that the Commission's  
21 wholesale discount determinations comply with the 1996 Act and FCC rules. While the  
22 Supreme Court's decision means that the FCC may adopt rules guiding the State commission's  
23 determination and specifying the methodology to be used by the State, it is the responsibility of  
24 the State, not the FCC, to actually set the rates, taking into account the positions of the various  
25 parties before it, and making any adjustments deemed appropriate.

26       ....  
27       ....  
28       ....

1 VI. IF THE COURT DECIDES TO ADDRESS THE IMPACT OF THE UNITED  
2 STATES SUPREME COURT DECISION, THE COURT SHOULD REMAND  
3 THE GEOGRAPHIC DEAVERAGING ISSUE TO THE COMMISSION FOR  
4 FURTHER REVIEW GIVEN THE SUPREME COURT RULING.

5 The Commission believes that the Court should affirm the portion of the Commission's  
6 Decision which used statewide average costs to determine unbundled network elements since it  
7 complies with the 1996 Act. Other District Courts have correctly found that the 1996 Act does  
8 not require geographic deaveraging, the CLECs arguments to the contrary notwithstanding. MCI  
9 Telecommunications Corp. v. U S WEST Communications. Inc., No. C97-1508R, Slip op. at 33  
10 (W.D. Wash. July 21, 1998), MCI Op. Br. App. Ex. 25. The 1996 Act requires only that  
11 unbundled network rates be cost-based, and the Commission complied with the 1996 Act's  
12 requirement in this regard.

13 The particular costing methodology used, including the degree of averaging contained  
14 therein, is a factual matter within the discretion of the Commission based upon its expertise and  
15 specialized knowledge in this area. In this regard, it was appropriate for the Commission to  
16 consider the impacts of its Decision, including any arbitrage opportunities presented by statewide  
17 averaged retail rates, in determining the degree of averaging to require. As long as the  
18 Commission's methodology complied with the cost-based requirement of the 1996 Act, which it  
19 did, the degree of averaging is not relevant and other District Courts have so found. See  
20 MCIMetro Access Transmission Services. Inc. v. GTE Northwest. Inc., No. C97-742WD, slip  
21 op. at 4 (W.D. Wash. July 7, 1998), MCI Op. Br. App. Ex. 21.

22 Nonetheless, the Commission acknowledges that the United States Supreme Court's  
23 decision which results in the reinstatement of the FCC's pricing rules, require a State  
24 commission to use at least three density-related zones when establishing unbundled network  
25 element rates. See 47 C.F.R. 51.507(f). The FCC Rules, 47 C.F.R. 51.507(b) states in relevant  
26 part:

27 State commissions shall establish different rates for elements in at least three  
28 defined geographic areas within the state to reflect geographic cost differences.

(1) To establish geographically-deaveraged rates, state  
commissions may use existing density-related zone pricing plans

described in Section 69.123 of this chapter, or other such cost-related zone plans established pursuant to state law.

(2) In states not using such existing plans, state commission must create a minimum of three cost-related rate zones.

While the Commission essentially found, like the FCC, that the concept of geographic deaveraging had considerable merit, and stated its intent to consider this issue in an upcoming proceeding, the Commission has not yet commenced such a proceeding. The Commission deferred this issue since it wanted to consider retail rate deaveraging at the same time.<sup>2</sup>

Clearly, the Supreme Court's ruling resulting in reinstatement of 47 C.F.R. Section 51.507(b) requires that this issue be reevaluated by the FCC and State commissions.

In light of the Supreme Court's ruling, the Court should remand the geographic deaveraging issue back to the Commission for further examination.

**VII. IF THE COURT DECIDES TO CONSIDER THE IMPACT OF THE SUPREME COURT'S RULING, IT SHOULD ALSO AFFIRM THE COMMISSION'S OTHER PRICING DETERMINATIONS SINCE THEY ARE CONSISTENT WITH THE 1996 ACT AND THE FCC PRICING RULES.**

The Commission's other ratemaking determinations are consistent with the 1996 Act and the FCC's pricing rules. To the extent there may be some variance, i.e., tariffed non-recurring charges, the Commission did not have an adequate record or evidence before it and therefore had to adopt a rate that it believed to be the most reasonable, pending submission by U S WEST of a new cost study. To date, U S WEST has not submitted a new study to the Commission on this issue. See Commission's Response Brief, p. 39-40.

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<sup>2</sup> The Commission's decision in this matter ordered its Hearing Division to "set a proceeding to determine whether it is appropriate to geographically deaverage rates ..." Decision No. 60635 at p. 41, U S WEST Op. Br. App. Ex. 21. Additionally, no party has asked the Commission to commence a proceeding to deaverage unbundled network element rates.

1 **VIII. IF THE COURT DECIDES TO CONSIDER THE IMPACT OF THE UNITED**  
2 **STATES SUPREME COURT'S RULING IT SHOULD AFFIRM THE**  
3 **COMMISSION'S DETERMINATIONS REGARDING NON-PRICE ISSUES**  
4 **SINCE FOR THE MOST PART THEY WERE NOT IMPACTED BY THE**  
5 **SUPREME COURT'S RULINGS.**

6 The United States Supreme Court's ruling should have little to no impact on the  
7 remaining non-price issues in this case. Therefore, the Court should affirm the Commission's  
8 determinations on non-price issues. However, if there is any question given the Supreme Court's  
9 ruling, the Court should remand the issue(s) to the Commission for further consideration of the  
10 ruling's impact upon the Commission's determinations.

11 Non-pricing issues impacted by the United States Supreme Court's ruling include the  
12 degree of unbundling required by Section 251(d)(2) of the 1996 Act, the proper interpretation of  
13 47 U.S.C. Section 252(i) (the "pick and choose" requirement), the obligation of the ILECs to  
14 offer unbundled network elements on a combined basis, and issues relating to dialing parity, the  
15 rural interconnection exemption and the obligation of State commission's to review preexisting  
16 interconnection agreements. Of these issues, only two before the Court are implicated as a result  
17 of the United States Supreme Court's decision, i.e., the degree of unbundling required (Rule 319)  
18 and the combination of unbundled network element issue.

19 With respect to the unbundled network element issue, it is the Commission's  
20 understanding that U S WEST has agreed to continue to honor all existing contracts with regard  
21 to the seven unbundled network elements required by 47 C.F.R. 51.319 until the FCC completes  
22 its proceeding on remand on this issue. See Exhibit 1. Thus, if the Court addresses the Supreme  
23 Court's ruling, it should find that the action of the Supreme Court vacating Rule 319 has no  
24 impact on existing contracts at this time.

25 The Commission believes the Court should also find that the Supreme Court's actions  
26 vacating Rule 319 has no impact on any other issues in this case, including the Commission's  
27 determinations to: (1) not require subloop unbundling other than on a BFP basis, (2) to require  
28 U S WEST to unbundle dark fiber as a separate network element, and to (3) to require U S  
WEST provide vertical features as a separate network element. First, it is the Commission's  
interpretation of U S WEST's letter to the FCC contained in Exhibit 1, that U S WEST has

1 agreed to honor all existing contracts to the extent that they are impacted by the Supreme Court's  
2 ruling until the FCC issues an order on remand. Second, until the FCC acts on remand to give  
3 further guidance to State commissions on the proper interpretation of the "necessary and impair"  
4 standard, the most the Court should do is remand the issues for further consideration by the  
5 Commission in light of the Supreme Court's decision.

6 Finally, the rebundling issue is already before the Commission; and the Court should  
7 allow the Commission to address this issue in the first instance.

8 **VIII. CONCLUSION.**

9 The Court should allow the Commission to determine the impact of the Supreme Court's  
10 ruling in the first instance. If the Court, however, decides to consider the impact of the Supreme  
11 Court's ruling, on the issues presented, it should affirm the majority of the Commission's  
12 determinations since they comply with both the 1996 Act and the FCC's rules. The Court should  
13 remand the geographic deaveraging issue to the Commission for further consideration, as well as  
14 any Commission determinations it believes do not comply with the Supreme Court's ruling or  
15 the reinstated FCC rules.

16 RESPECTFULLY SUBMITTED this 16th day of February, 1999.

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19 By:

  
Christopher C. Kempley  
Maureen A. Scott  
Janice M. Alward  
Legal Division  
1200 West Washington  
Phoenix, Arizona 85007  
(602) 542-3402

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23 Attorneys for the Arizona Corporation Commission  
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**CERTIFICATE OF SERVICE**

I, Maureen A. Scott, hereby certify that on the 16<sup>th</sup> day of February, 1999, the original and a copy were filed with:

Richard H. Weare  
Clerk/District Court Executive  
United States District Court  
230 North First Avenue  
Phoenix, Arizona 85025

The Honorable Owen M. Panner\*  
Judge of the United States District Court  
1207 U. S. Courthouse  
1000 SW Third Avenue  
Portland, Oregon 97204

On the 16<sup>th</sup> day of February, 1999, a copy of the foregoing was served on the persons listed below by U. S. First-Class mail, postage pre-paid, to the last known business address:

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\*Copy sent via Federal Express

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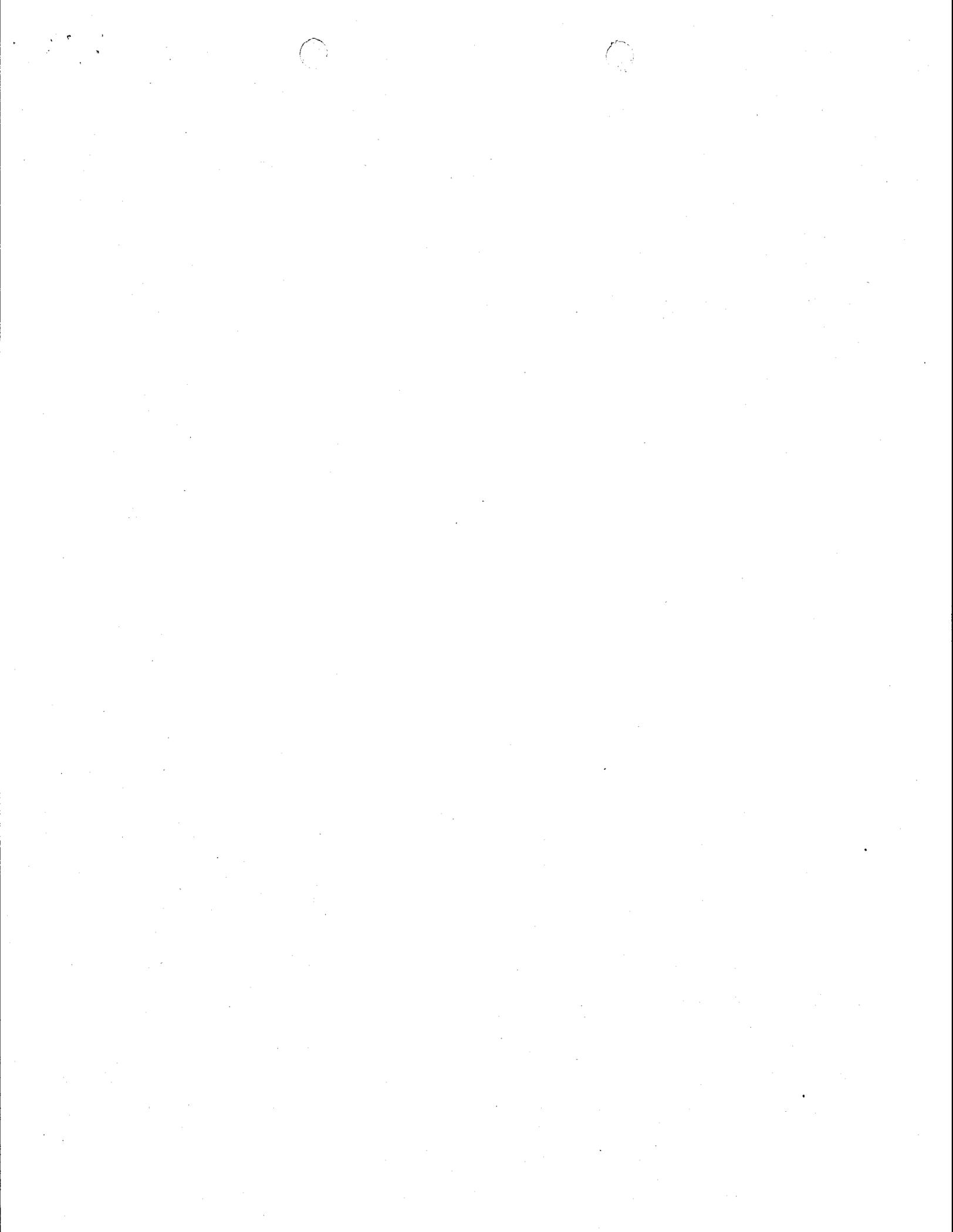
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By   
Maureen A. Scott



02/12/99 FRI 16:00 FAX 303 875 0764

RUSSELL P. ROWE-US WEST

002

Est-10-88 12:32pm From-USWEST

T-512 F-07/02 F-554

U S WEST, Inc.  
 1631 California Street, Room 2410  
 Denver, Colorado 80202  
 Katherine L. Fleming  
 Acting VP - Government Legislation

**USWEST**

February 9, 1999

Mr. Lawrence E. Strickling  
 Chief of Common Carrier Bureau  
 Federal Communications Commission  
 1919 M Street NW, Room 500  
 Washington, DC 20554

Dear Mr. Strickling:

Following the Supreme Court decision in *AT&T v. Iowa Utilities Board*, 1999 WL 24568 (January 25, 1999) questions have arisen regarding the status of various interconnection rules, the appropriate definition of unbundled network elements and most importantly the status of existing interconnection obligations between the incumbent local exchange carriers and competitors seeking access to their networks.

U S WEST strongly believes an orderly process is necessary and in the public interest to avoid turmoil and uncertainty for both incumbents and new entrants while the 8<sup>th</sup> Circuit and the Commission address the full impact of the Supreme Court's decision. In an effort to offer a workable interim solution, U S WEST strongly urges the FCC to conduct an expedited rulemaking addressing the critical need to define and apply the "necessary and impair" standard and not to take any interim actions that would disturb the current relationships between U S WEST and its competitors while that rulemaking is in progress. U S WEST desires to provide stability for the FCC, its competitors and itself during this interim period. Therefore, while the FCC completes its anticipated rulemaking addressing these interconnection issues and related unbundling obligations and in the absence of interim rules, U S WEST commits to the following. First, U S WEST will honor existing contracts with respect to the availability and pricing of unbundled network elements until the FCC adopts its order setting forth new interconnection rules, network element definitions and ILEC obligations. Second, any new competitive carriers seeking interconnection during this period may opt into our existing contracts subject to appeals or dispute resolution. Finally, U S WEST will extend the term of any contracts that are about to expire until the end of the year in order to allow time for the FCC's new rules to be in place.

Please contact me if you have any questions regarding these interim commitments in conjunction with our proposal.

Sincerely,

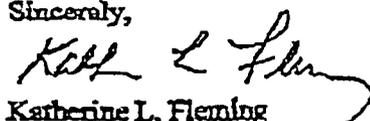
  
 Katherine L. Fleming

Exhibit 1

**EXHIBIT II**

**BEFORE THE ARIZONA CORPORATION COMMISSION**

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**CARL J. KUNASEK**  
**CHAIRMAN**  
**JIM IRVIN**  
**COMMISSIONER**  
**WILLIAM A. MUNDELL**  
**COMMISSIONER**

**IN THE MATTER OF INVESTIGATION INTO) DOCKET NO. T-00000A-00-0194**  
**QWEST CORPORATION'S COMPLIANCE )**  
**WITH CERTAIN WHOLESALE PRICING )**  
**REQUIREMENTS FOR UNBUNDLED )**  
**NETWORK ELEMENTS AND RESALE )**  
**DISCOUNTS. )**

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**AFFIDAVIT OF JERROLD L. THOMPSON**

22 **STATE OF COLORADO )**  
23 **COUNTY OF DENVER )**

24 I, Jerrold L. Thompson, being of lawful age and having been duly sworn, depose and  
25 state:

26 1. My name is Jerrold L. Thompson. My business address is 1801 California Street,  
27 Room 4450, Denver, Colorado 80202. I am employed by Qwest Corporation as Executive  
28 Director, Service Costs in the Policy and Law Department. My responsibilities include  
29 overseeing and participating in the preparation and presentation of the cost studies that Qwest  
30 submits in regulatory proceedings in its 14-state region. The cost studies for which I have  
31 responsibility include studies that estimate the costs of the interconnection products and services  
32 and unbundled network elements ("UNEs") that Qwest provides to competitive local exchange  
33 carriers pursuant to the Telecommunications Act of 1996.

1           2.       The purpose of this Affidavit is to explain the reasons why Qwest requires until  
2 March 1, 2001 to complete the cost studies that are required by the Hearing Officer's Procedural  
3 Order of December 14, 2000 in this docket. The Order states that:

4           It appears that the Commission has not itself determined that the UNE rates it set in  
5 Decision No. 60635 comply with FCC pricing rules. Phase II of this proceeding is the  
6 proper time to perform such review. It does not make sense to be establishing permanent  
7 geographically de-averaged UNE rates without such review.

8 Qwest believes that the premise of this Order – that the Commission did not determine whether  
9 the UNE rates from Decision No. 60635 comply with the FCC's pricing rules – is incorrect and,  
10 therefore, has asked the Hearing Officer to reconsider her decision to review the UNE rates. If  
11 the Hearing Officer does not change her ruling, Qwest believes that other parties will view the  
12 ruling as an opportunity to re-litigate all of the Commission's conclusions in Decision No. 60635  
13 relating to UNE rates and, therefore, will propose new cost studies for all UNE prices previously  
14 determined. Qwest does not believe that this is an appropriate or necessary undertaking.

15 However, in order to protect its interests, if the Hearing Officer does not change her ruling,  
16 Qwest will have to present new cost studies for all of the UNEs previously considered by the  
17 Commission, as well as the new elements not previously considered by the Commission.

18           3.       The development of cost studies for all of the UNEs previously determined by the  
19 Commission and the new UNEs not previously determined by the Commission is a very large  
20 undertaking that requires many employees' time and resources. In addition, Qwest is currently  
21 extremely busy developing cost studies for dockets in other states that had been previously  
22 ordered and scheduled. Because cost studies are in the process of being prepared through the  
23 month of February for these other states, the earliest possible date for filing cost studies for  
24 Arizona would be March 1, 2001.

1           4.     States where Commissions have set filing dates include Colorado, Washington,  
2 Montana, and Utah. New Mexico has recently issued an order with a possible filing date of  
3 January 26 that Qwest is also preparing for. In all, over 250 cost studies will need to be  
4 completed between now and March 1, not including studies for Arizona.

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*Herold L. Thompson*  
Herold L. Thompson

SUBSCRIBED AND SWORN to before me this 9<sup>th</sup> day of January, 2001.

*Margaret Beck*  
Notary Public

My Commission Expires:



**EXHIBIT III**

Decision No. R00-1437-I

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO**

DOCKET NO. 99A-577T

IN THE MATTER OF U S WEST COMMUNICATIONS, INC.'S STATEMENT OF  
GENERALLY AVAILABLE TERMS AND CONDITIONS.

JAN - 2 2001

**PROCEDUURAL ORDER**

Mailed Date: December 29, 2000

**I. STATEMENT, FINDINGS, AND CONCLUSIONS**

**A. Statement**

1. The hearing commissioner ("commissioner") requested additional filings from the parties before setting a hearing date and other procedures. See Decision No. R00-1280-I. Pursuant to that order, Qwest: Communications, Inc. ("Qwest"); Commission Staff ("Staff"), the Office of Consumer Counsel ("OCC"); AT&T Communications of the Mountain States, Inc. and TCG Colorado ("AT&T"); Worldcomm, Inc. ("Worldcom"); ICG Telecom Group, Inc. ("ICG"); Jato Communications Corp. ("Jato"); and XO Colorado LLC, Covad Communications Company, Pac-West Telecom Inc., and New Edge Networks Inc. ("Joint Respondents") made filings. Staff filed a motion for enlargement of time to file its statement. Qwest also filed a Reply in Clarification, and leave to file the same.

2. The parties' comments concern two things: what, exactly, is at issue in this docket, and when those issues will

be heard. Answering the first question obviously affects any schedule set in answer to the second. Accordingly, a discussion of the nature, issues and scope of this docket will be followed by the schedule that will govern this proceeding. Before that, a summary of the respective positions.

3. Qwest's Statement of Elements and Proposed Procedural Schedule contains an Exhibit A that catalogs the elements and services. Qwest's claims are ripe for pricing in this docket. Qwest's exhibit breaks down many of the items into sub-elements and sub-services. Qwest responds to concerns that it is premature to embark on pricing in this docket by asserting that the FCC has already defined the new unbundled network elements ("UNES") that will largely be at issue here. Qwest also objects to revisiting the Commission-established rates from Docket No. 96S-331T. In the end, Qwest proposes a procedural schedule leading to a hearing beginning April 23, 2001.

4. Every other party disagrees with this proposal in some fashion.

5. Staff argues that there is no need to expedite this proceeding, and that a review of the reasonableness of the prices can occur once the terms and conditions are established. Noting that the Statement of Generally Available Terms ("SGAT") is changing, Staff urges Qwest's testimony address expected terms and conditions which it desires to apply to terms and

conditions not yet resolved in Docket No. 97I-198T. Staff further requests that Qwest be required to file not only its cost studies, but also all supporting schedules and workpapers supporting the cost study. Staff urges the Commission to treat the revised SGAT as a new filing and to consider a 110-day procedural schedule consistent with a standard rate case. That would lead to a hearing in early June 2001, with an initial Commission decision in late July 2001.

6. The OCC urges a phased-hearing approach where only services settled in Docket No. 97I-198T are at issue in the first hearing. Otherwise,, the OCC contends, parties will duplicate efforts, or litigate matters that need not be litigated. The OCC urges a three-phase hearing: the first phase beginning with Qwest's filing costing and pricing testimony for already agreed-to matters on December 22, 2000; a second phase beginning in January 2001 once interconnection, co-location and resale are concluded; and a third phase beginning after the workshops on UNEs and loops are complete in Docket No. 97I-198T. The OCC also objects to Qwest's discovery cut-off dates.

7. AT&T urges the Commission to take up costing and pricing only on issues that have been resolved through the workshop process in 97I-198T, and not to attempt ratesetting for not-yet resolved disputed topics. AT&T thus prefers a phased treatment. AT&T further argues that all rates from Docket

No. 96S-331T should be put at issue here. AT&T notes that Qwest has put some of the Docket No. 96S-331T rates at issue already through altering some of the offerings from Docket No. 96S-331T.

3. Worldcom portrayys itself of two minds. On the one hand, it desires permanennt pricing and quickly; on the other, it counsels a methodical examination of all prices. Worldcom argues against forgingg ahead on pricing elements not-yet agreed to in the workshops; in Docket No. 97I-198T. It also sees the need to revisit Docket No. 96S-331T prices, citing the lack of competitive entry tto date as evidence of their insufficiency.

9. Jato deems Qwestt's proposed schedule "speedy" and cautions against undue haste. It nevertheless argues for a December 22, 2000 due date forr Qwest's initial testimony, with an opportunity then for the parrties to assess the necessary time to complete this hearing. Jatco urges the Commission to include Docket No. 96S-331T rates at issue here because those prices are obsolescent.

10. ICG opposes a sirngle hearing to examine the costs and prices at issue here. IInstead, ICG supports postponing setting a schedule here untiil all the Docket No. 97I-198T workshops have concluded. In the alternative, ICG will accede to a phased approach where the: first phase takes up items that have been dealt with in Docket No. 97I-198T workshops. ICG

proposes moving resale, interconnection, co-location, unbundled loops, enhanced extended loops ("EELs"), UNE-P, and bona fide request ("BFR") rates to later phases of this proceeding.

11. Joint Respondents favor a two-phased hearing schedule because of the ongoing changes to the SGAT. The Joint Respondents believe that more-settled SGAT service elements can be priced in Phase 1, while the evolving elements of the SGAT should not be priced until Phase 2. Joint Respondents also propose an actual schedule for the hearing--Phase 1 to begin on May 14 and Phase 2 to be scheduled in September 2001. Phase 1 could include SGAT sections 6 and 10, along with dark fiber, co-location, EEL and unbundled dedicated interoffice transport ("UDIT"). Phase 2 would involve unbundled loops, multiplexing, subloop, transport, UNE-P and line sharing. Finally, Joint Respondents suggest it would be inequitable to allow Qwest alone to put rates at issue, and that Docket No. 96S-331T rates must be at issue here.

12. Qwest's reply endorses the phased hearing approach, if necessary, and argues against delay in scheduling a hearing.

13. Having considered these filings, and comments at the November 8, 2000 scheduling conference, the hearing commissioner finds as follows:

14. The Commission is charged in this docket with certifying that Qwest provides nondiscriminatory access to network elements under terms, rates, and conditions that are just and reasonable. See 477 U.S.C. §§ 251(c)(3), 252(d)(2). The FCC directs that prices should be based on the total element long-run incremental cost ("TELRIC") of providing those elements. 47 C.F.R. § 51.501. Qwest's burden, then, is to establish that its SGAT offerings are priced according to TELRIC principles. Qwest must ultimately convince the FCC of this fact. In this portion of the § 271 process, the FCC has shown considerable deference to state commissions' certification that rate elements--be they interim or 'permanent'--follow TELRIC pricing.<sup>1</sup>

15. Just because the SGAT is an evolving document does not mean that this hearing concerning costing and pricing should not go forward. By its very nature the SGAT will be an ever-changing document. In the same way, TELRIC-pricing of SGAT elements is, almost by definition, obsolete by the time the Commission passes judgment on it. Such is the challenge of having to do static analysis on a dynamic process.

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<sup>1</sup> See, e.g., *In the Matter of Application by Bell Atlantic New York for Authorization under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York*, Memorandum Opinion and Order, CC Docket No. 99-295, ¶¶ 63, 77-80, 237-262 (Dec. 22, 1999); *In the Matter of Application of SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas*, Memorandum Opinion and Order, CCC Docket 00-65, ¶¶ 82-90; 231-242 (June 30, 2000).

16. It appears from the parties' filings that a phased hearing approach can be accomplished. No party expressly or convincingly argued for postponing pricing a specific rate element in Qwest's attachment. Therefore, a Phase 1 hearing will proceed involving, at the very least, the rate elements contained in Qwest's Statement of Elements, with the exception of the UNE-2s on page 11 described as "Items not in SGAT." But that is not all that can be at issue in Phase 1.

17. Rates set in Docket No. 96S-331T are not, at first glance, out of bounds in this proceeding. Neither is the Commission disposed to revisit all rates set in that docket. Though aging, the Commission set rates from Docket No. 96S-331T following FCC-mandated TELRIC principles. A federal court reviewed those rates, and largely upheld the Commission's rates. These TELRIC rates are thus presumptively valid.

18. That said, the Commission will permit parties to challenge rates from Docket No. 96S-331T. At this point, blanket statements about what Docket No. 96S-331T rates could be put at issue here are not possible. In its direct case, Qwest will not bear the burden of rejustifying rates from Docket No. 96S-331T. In response, parties are free to contest any Docket No. 96S-331T rate that they believe is not consistent with FCC pricing directives.

19. Discovery and inevitable disputes will end up defining what Docket No. 96S-331T rates make their way back before the Commission. Any party seeking to revisit a Docket No. 96S-331T rate will need some sort of prima facie showing that the given rate element is not priced correctly. For instance, a party may be able to show that Colorado's price for a given rate element is much higher than similar rate elements in other states. That would get a Docket No. 96S-331T rate in play. Correspondingly, a showing that a rate element in Colorado is priced similarly in other states would militate against revisiting a given Docket No. 96S-331T rate.

20. Contentions that ongoing changes to the SGAT warrant postponing this docket are unavailing. It is the hearing commissioner's understanding that SGAT changes are not so dramatic that rate elements, and their attendant components, cannot be priced now.<sup>2</sup> As has been noted, costing and pricing-- in this docket and into the future--is an iterative process. This means that there will always be reason to postpone, if the predicate is certainty and finality in the terms and conditions of the SGAT. It means, too, that our schedule must remain flexible especially in light of ongoing workshops on

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<sup>2</sup> Take a generic rate element "AA": through SGAT changes, it could change to A' or A'', but it is not changing into rate element B. Therefore, costing and pricing of rate element A, with the need for potential future modification to cost and price rate element A' will not result in unnecessary work.

collocation, unbundled loops, sub-loops, EELs, line sharing, and UNE-Ps.

21. Staff's suggestion that Qwest make available all supporting documents and workpapers associated with its cost studies is well-taken. Qwest shall make available all supporting documents and workpapers to any requesting party to this docket, including Staff, at the same time it files its answer testimony. Qwest is not required to file the same with the Commission. By making these supporting schedules and workpapers available earlier, Qwest will expedite the discovery process and allow a more timely hearing.

22. The contents and timing of a Phase 2 hearing cannot be ascertained at this time. Certainly, terms and conditions of rate elements not-yet considered in Docket No. 97I-198T workshops would seem to fall into this category. Likewise, rate elements for which Qwest offers testimony in Phase 1 could conceivably "slip" into Phase 2 should they undergo extensive revision in the SGAT. Those are issues for down the road.

#### **B. Procedural Dates**

1. The schedule for the prefiling of testimony and exhibits and for hearing before the Commission shall be:

Qwest Direct Testimony	January 15, 2001
Intervenor Answer Testimony	March 16, 2001
Reply and Cross-Answer Testimony	April 6, 2001

Prehearing Conference

May 3, 2001, 9:00 a.m.

Phase 1 Hearing

May 7, 2001, 8:30 a.m.<sup>3</sup>

**C. Discovery**

Discovery shall be conducted in accordance with Rule 77 of the Commission's Rules of Practice and Procedure, 4 Code of Colorado Regulations 723-1-777. Each party filing testimony shall make available to all other parties all workpapers supporting that testimony. The workpapers shall be available upon the filing of that testimony with the Commission. No discovery requests or responses shall be filed with the Commission or served upon the Commission's designated advisory staff.

**D. Trial Data Certificates**

1. To facilitate discussions during the May 3, 2001, prehearing conference, the parties, individually or jointly, shall file trial data certificates on or before April 30, 2001. Trial data certificates should include the following:

- a. Stipulations between parties;
- b. Witness list;
- c. Exhibit list;
- d. Estimate of cross-examination time for each witness;

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<sup>3</sup> Hearing will begin on May 7, 2001, at 8:30 a.m. and continue each day thereafter until completed, subject to the needs of the Commission.

e. Any other matter a party desires to bring to the Commission's attention, including specific legal citations or points of law.

**E. Other Matters**

1. Prefiled exhibits shall be designated by letters of the alphabet; exhibits introduced at hearing shall be designated by numbers.

2. Service of testimony, discovery responses, discovery requests, and testimony shall be by hand delivery, facsimile transmission, or electronic transmission for parties in the Denver metropolitan area. Delivery to all others shall be by overnight mail or any of the preceding methods.

**II. ORDER**

**A. It is Ordered That:**

1. The procedural requirements discussed above are hereby adopted as the requirements for the present proceeding.

2. The hearing shall commence:

DATE: May 7, 2001.

TIME: 8:30 a.m.

PLACE: Commission Hearing Room A  
Office Level 2 (OL2)  
Logan Tower  
1580 Logan Street  
Denver, Colorado

The hearing shall continue as necessary.

3. Trial data certificates in a form consistent with the above discussion shall be filed on or before May 3, 2001.

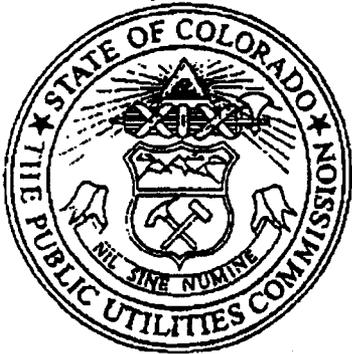
4. Staff's Motion for leave to file one day late is granted.

5. Qwest Corporation's Motion for Leave to Reply is granted.

B. This Order is effective immediately upon its Mailed Date.

( S E A L )

THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO



RAYMOND L. GIFFORD

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Hearing Commissioner

ATTEST: A TRUE COPY

Bruce N. Smith  
Director