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January 18, 2001

Arizona Corporation Commission
Docket Control – Utilities Division
12 West Washington Street
Phoenix, AZ 85007

Arizona Corporation Commission
DOCKETED

JAN 19 2001

DOCKETED BY

Re: ACC Docket No. T-00000A-00-194

Dear Docket Control:

Enclosed please find the *Response of AT&T to Qwest Corporation's Motion for Reconsideration* in the docket referenced above. If you have any questions, please contact me at (206) 628-7161.

Very truly yours,

Davis Wright Tremaine LLP

Larry J. Weathers
Paralegal

Enclosures

- cc: Service List
- Mary Steele
- Rick Wolters
- Mark Trierweiler
- Richard Chandler, HAI
- John Klick, FTI
- Thomas Weiss, Weiss Consulting

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BEFORE THE ARIZONA CORPORATION COMMISSION

WILLIAM A. MUNDELL
CHAIRMAN
JIM IRVIN
COMMISSIONER
MARC SPITZER
COMMISSIONER

DOCKET NO. T-00000A-00-0194

RESPONSE OF AT&T TO QWEST
CORPORATION'S MOTION FOR
RECONSIDERATION

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

I. INTRODUCTION

Qwest Corporation has requested the Hearing Examiner to reverse a determination that this proceeding should include a review of unbundled network element ("UNE") rates set by the Commission in 1997. It is understandable that Qwest would want to maintain a pricing structure that has enabled it to continue its monopoly in the provision of residential telecommunication services in Arizona. Nevertheless, Qwest has provided no basis for the Hearing Examiner to revisit the Procedural Order at issue. The Order is based on the Commission's own statements at the time the UNE prices were set that it intended to revisit these prices within as little as one year. Qwest has presented no facts or arguments in support of its motion that were not made before the Order was issued. AT&T Communications of the Mountain States, Inc. ("AT&T") therefore requests that Qwest's motion be denied.

1 **II. BACKGROUND**

2 Administrative Law Judge Mr. Rudabaugh issued the first procedural order setting
3 the issues to be considered in this proceeding in August 2000. In explaining this order to
4 the Commission, Mr. Rudabaugh stated directly that it contemplated a review of existing
5 rates for unbundled network elements.

6 COMM. IRVIN: One other clarification, Jerry, that I have
7 on this is it seems to me about two or three years ago, we
8 had what, the unbundled cost docket. Does this coincide
9 with that? Is this superseding that? Is this the next step in
trying to undo that, revisit that? Where are we on that? Are
we moving?

10 CALJ RUDIBAUGH: Mr. Chairman, Commissioners, this
11 order utilizes that rate that was established by the
12 Commission several years ago for \$21.98. That statewide
13 average rate is what was utilized to, in fact, establish the
14 geographic deaveraging rates here. At the same time we're
15 in the process of setting up a phase two, because there have
been several court decisions which have made
modifications, and so as a result, it is our intent to revisit the
statewide rate as well as other issues that had then come up
since that decision.

16 Transcript of Proceedings, Working Session and Deliberations, July 18, 2000 at
17 22. Commissioner Irvin confirmed that reviewing the previously established rates was
18 appropriate. *Id.*

19 In filing its testimony in this proceeding, Qwest ignored the terms of the initial
20 procedural order. Qwest, instead, chose its own list of elements for which it wanted new
21 prices and filed testimony only on those elements. Although many of the elements on
22 which Qwest filed testimony were new elements for which the Commission has not yet
23 established prices, some of the new prices sought by Qwest were for elements that the
24 Commission did consider in the 1996-97 cost docket. Nevertheless, Qwest failed to file
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1 cost studies or testimony with respect to most of the UNEs priced in the prior cost
2 proceeding.

3 Commission staff filed a motion seeking clarification of the procedural order
4 pointing out Qwest's failure to provide cost studies with respect to most UNEs. Qwest
5 responded claiming that the Commission had followed the FCC's pricing rules in the prior
6 cost docket and that there was no need to duplicate the effort of establishing UNE pricing.
7 Qwest subsequently sent a letter to the hearing examiner indicating that it could not file
8 cost studies and testimony regarding unbundled network elements until March 1, 2001, at
9 the earliest.

10 The Hearing Examiner issued the Procedural Order at issue on December 14,
11 2000, determining that this proceeding "shall include a review of current rates for
12 unbundled network elements and interconnections." Now, almost a month later, Qwest
13 seeks reconsideration of this order. Qwest has presented no new facts or arguments in
14 support of its request. In fact, Qwest makes the same two arguments it made in response
15 to staff's original motion. As a procedural matter, Qwest argues that considering the
16 existing UNE prices will delay completion of this phase of the hearing. On the merits,
17 Qwest contends that the Commission has already determined that the existing prices
18 comply with FCC rules, and that there is no need to reconsider those prices. Neither of
19 these arguments justifies reconsideration of the Order.

20 III. ARGUMENT

21 Qwest's argument about the potential for delay is curious given its own delay in
22 seeking reconsideration. Qwest waited almost a full month to bring on this motion. At
23 this point, even if the Hearing Examiner ruled tomorrow in Qwest's favor, it is unlikely
24 that any hearing could be held before early summer. All testimony deadlines have been
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1 suspended and would need to be reinstated with sufficient time to allow the parties to
2 prepare the necessary testimony. Adding existing UNE prices as an issue to the
3 proceeding will not result in any substantial additional delay.

4 Moreover, AT&T does not object to the delay that Qwest contends is necessary in
5 this proceeding, if it will allow the Commission an opportunity to review the prices set
6 more than three years ago. At present, there is virtually no competition using UNEs from
7 Qwest because the prices for those elements are too high. The procedural order as it
8 stands gives the Commission an opportunity to evaluate the assumptions underlying those
9 prices and to examine why the prices have hindered competition in Arizona, to the
10 detriment of Arizona consumers.

11 On the merits, Qwest does not argue that there is any legal prescription that would
12 prevent the Commission from reviewing the rates it set in 1997. In fact, Qwest rightly
13 presumes that the Commission has the ability to reexamine those rates. Instead, Qwest
14 argues there is no need to review the rates because, Qwest contends, the Commission has
15 already determined that those rates comply with the FCC's rule.

16 Qwest's argument ignores the Commission's own expressions of intent in
17 originally adopting prices at issue that those prices would be reviewed very shortly in the
18 future. For example, as Chairman Kunasek stated in October 1997 at a special meeting,
19

20 I would expect that we would have to come back and revise
21 and clarify and perhaps change some of the figures. I don't
22 feel like anything we are going to do here today is cast in
23 stone, and I would like to assure everyone that I certainly
24 would be open to a continuing process here. I would agree
25 that perhaps some time, rationale amount of time, perhaps a
26 year, would be necessary to determine the effect that what
we are doing here will have.

1 Transcript, Consolidated Arbitration Deliberations, October 28, 1997, at 29. Later, in
2 reviewing applications for rehearing and reconsideration of the Commission's rulings,
3 Chairman Irvin stated

4 Also, as I recall, when this docket first started, that the
5 Hearing Officer also suggested that we take a look at this for
6 a year and be prepared to revisit it, if necessary. It's a very
7 complex and difficult issue, and I certainly would have no
8 problem to revisit it, if the numbers and calculations prove
9 to be wrong.

8 Transcript, Consolidated Arbitration Deliberations, January 8, 1998, at 315.

9 In fact, the experience over the past three years in telecommunications markets in
10 Arizona presents reason enough to revisit the rates. As indicated above, there is virtually
11 no residential competition occurring through the use of unbundled network elements.
12 Moreover, three years have brought about significant changes to Qwest and its business
13 that should have an impact on its wholesale prices. Qwest has agreed to sell many of its
14 rural, high cost exchanges. This should have a significant impact upon, for example,
15 Qwest's average costs of providing an unbundled loop. Qwest has also represented to the
16 Commission in the context of its merger proceeding that it will experience synergies in
17 conducting its business. These synergies, as well, should have an impact on Qwest's costs
18 of providing wholesale services.

19 Finally, Qwest has suggested that the Hearing Examiner adopt a presumption that
20 previously determined rates are correct and that those rates be revisited only upon a
21 showing that the rates are inconsistent with the FCC's rules. This proposal invites
22 protracted and time-consuming litigation regarding which elements should be reviewed
23 and which should remain in place. The end result will be further delay in competition and
24 further injury to consumers in Arizona.

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26 **AT&T'S RESPONSE- 5**

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IV. CONCLUSION

For all of these reasons, AT&T requests that Qwest's motion for reconsideration be denied.

RESPECTFULLY SUBMITTED this 18th day of January, 2001.

AT&T COMMUNICATIONS OF THE MOUNTAIN STATES, INC.

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CERTIFICATE OF SERVICE

ACC Docket No. T-00000A-00-0194

I hereby certify that on the date given below, in the above named docket, the original and ten (10) copies of the *Response of AT&T to Qwest Corporation's Motion for Reconsideration* was sent via FedEx overnight, next business morning, delivery to:

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

And a true and correct copy was sent via FedEx overnight, next business morning, delivery to:

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And on the same day a copy of the foregoing was sent via U.S. Mail, postage prepaid, to:

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Dated this 18 January 2001

by 