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BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission

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AUG 31 2001

MARC SPITZER  
COMMISSIONER

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In the Matter of Investigation into )  
US West Communications, Inc.'s )  
Compliance with Certain Wholesale )  
Pricing Requirements for Unbundled )  
Network Elements and Resale )  
Discounts )  
\_\_\_\_\_ )

Docket #T-00000A-00-0194

**POST-HEARING BRIEF OF  
TIME WARNER TELECOM OF ARIZONA, LLC**

Time Warner Telecom of Arizona, LLC ("TWTC") respectfully requests that the Arizona Corporation Commission ("Commission") prohibit Qwest from unilaterally imposing new contract terms on CLECs and, in particular, from implementing a new collocation decommissioning policy imposing collocation decommissioning fees. The Commission should order Qwest to negotiate, not dictate, new contract terms and should require that Qwest file and obtain approval of an appropriate TELRIC-based cost study to support any decommissioning charges.

TWTC is a CLEC with nationwide operations. Its customers, operations, and facilities in Arizona are largely the legacy facilities of GST Telecom acquired by TWTC

in January of this year. Nationally, TWTC delivers “last-mile” broadband data, dedicated Internet access and voice services in more than 42 metropolitan areas.

Qwest seeks to impose unilaterally a decommissioning policy that purportedly overrides existing interconnection agreements and to charge CLECs fees that have not been reviewed and approved by this Commission nor even included in cost studies in this proceeding. Specifically, Mr. Kennedy’s rebuttal testimony described three recent collocation policies including a collocation decommissioning policy. Kennedy Rebuttal Testimony, p. 17; and Exhibit RFK-1. Pursuant to this decommissioning policy, Qwest assessed certain payments on CLECs vacating collocation space, including a “Network System Administration Fee” and “Decommissioning Assessment Fee.”

Mr. Hubbard adopted the testimony of Mr. Kennedy during the hearing. Mr. Hubbard was uncertain how this policy was derived and what role the CLECs played in the development of this policy. Transcript, p. 318, l. 14 through p. 319, l. 18. Mr. Hubbard made it clear that this decommissioning policy supercedes existing interconnection agreements with CLECs. Transcript, p. 313, ll. 9-20.

Mr. Hubbard did not know how the prices were determined and whether there are cost studies in support of those prices filed in this proceeding. Transcript, p. 314, ll. 7-15. Questioning of subsequent witnesses confirmed that there are no cost studies supporting these decommissioning prices filed in this docket, nor is Qwest seeking approval of these prices in this proceeding. Transcript, pp. 738-739.

Apparently, Qwest believes it can impose these changes without Commission approval. In fact, Qwest, prior to Commission approval or even the initiation of the hearing in this proceeding, tried to impose these prices on TWTC in Arizona. Transcript,

p. 315, ll. 21-24; *see also* WorldCom Exhibit 3 – attached to this Post Hearing Brief at Tab A. Such behavior is anti-competitive and an example of why it is so difficult for local exchange competition to emerge and flourish in Arizona.

The Commission must stop Qwest from implementing new policies that effectively amend existing Commission approved interconnection agreements without CLEC approval or Commission approval. The Commission also must stop Qwest from assessing rates and charges on CLECs that have not been approved by the Commission. Qwest's new decommissioning policy is but one of many "policies" that have been imposed unilaterally and, according to Qwest, must be followed by a CLEC. In fact, Qwest's position on this and other policies is take it or leave it, and, if you don't like it, the CLEC bears the burden of seeking an amendment to its interconnection agreement. *See* July 11, 2001 letter attached at Tab B. Simply stated, Qwest's view of the world turns contractual law on its head. Moreover, Qwest's position is violative of Section 252 of the Act, which requires negotiation and, if necessary, arbitration before state commissions of disputed terms and conditions for interconnection, collocation, or other requirements set forth in Section 251.

TWTC respectfully requests that the Arbitrators include in their ruling in this proceeding a strong order prohibiting Qwest from implementing new policies such as decommissioning unless or until such policies are mutually negotiated or approved by the Commission in an appropriate proceeding. In addition, TWTC urges the Arbitrators to reject Qwest's proposed decommissioning policy including charging fees for decommissioning until:

1. Decommissioning provisions have been approved by this Commission through the approval of a negotiated or arbitrated amendment to interconnection agreements, and;

2. The prices charged for decommissioning have been reviewed and approved by the Commission during an appropriate hearing.

RESPECTFULLY SUBMITTED this 31<sup>st</sup> day of August, 2001.

LEWIS AND ROCA LLP



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Attorneys for Time Warner Telecom of  
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of the foregoing hand-delivered this  
31<sup>st</sup> day of August, 2001, to:

Arizona Corporation Commission  
Utilities Division – Docket Control  
1200 W. Washington Street  
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A handwritten signature in cursive script, reading "Betty J. Griffin", is written over a horizontal line.

**A**



Collocation Project Management Center  
700 W. Mineral Ave.  
Littleton, CO 80120  
(303) 707-7241  
(303) 707-9185

June 18, 2001

Jennifer Turso  
Time Warner Telcom  
10475 Park Meadow Dr.  
Littleton, CO 80124

Dear Jennifer,

Attached to this letter is a detailed price quote for Decommission of Physical Collocation service for the Tucson Rincon wire center. All Security cards must be returned, unless you additional collocation sites within the wire center. Failure to return Security cards will delay the order.

These price quotes are dated for June 18, 2001 and will expire on July 18, 2001. This limitation is required because of fluctuating prices, cost of materials, labor and space limitations.

Failure to remit your initial 100% within the 30 day acceptance period will result in cancellation and billing of Qwest expenditures incurred to date in building your collocation sites.

If you have any questions regarding this quote, please contact your Wholesale project manager.

Sincerely,

Joe Borrini  
Project Manager-Quotes, CPMC

cc: Pat White

DATE: JUNE 18, 2001  
 CLEC: TIME WARNER  
 C. O.: TUCSON RINCON  
 CLI: TCSNAZRN  
 BAN: C11LD02  
 QUOTE EXPIRATION DATE: JULY 18, 2001

Entrance Facility PLTS	-	<b>Account Team Rep.</b>
Entrance Facility Fiber	-	<u>Pat White</u>
Enclosure	-	<u>515-241-0000</u>
Cage	-	
Base Rate Area	-	
Amps	-	
Feeds	-	

(DECOMMISSION) COLLOCATION PRICE SUMMARY

NONRECURRING CHARGES

USOC	Rate Elements	Qty	Length/Size	Description	Unit Price	Total Price	Price Resource
	Decommission Assessment Fee			Per Request	\$ 854.60	\$ 854.60	
	Network Systems Administrative Fee			Per Request	\$ 2,601.05	<u>\$ 2,601.05</u>	
	Total Nonrecurring Charges					\$3,455.65	
	Total Amount Due				\$3,455.65		

**QWEST PRICE QUOTE**

DATE: JUNE 18, 2001  
 CLEC: TIME WARNER  
 C. O.: TUCSON RINCON  
 CLI: TCSNAZRN  
 BAN: C11LD02

Entrance Facility PLTS -  
 Entrance Facility Fiber -  
 Enclosure -  
 Cage -  
 Base Rate Area -  
 Amps -  
 Feeds -

**Account Team Rep**  
Pat White  
515-241-0000

QUOTE EXPIRATION DATE: JULY 18, 2001

EFFECTIVE BILLING DATE: TBD

(DECOMMISSION) COLLOCATION PRICE SUMMARY

MONTHLY RECURRING CHARGES

USOC	Rate Elements	Qty	Length/Size	Description	Unit Price	Total Price	Price Resource
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NONE

PLEASE NOTE THIS IS A COMPLETE DECOMMISSION RELATED TO BAN# C91LPAA ANN C81LP03.

Receipt of Payment for the 100% indicates acceptance and agreement, in accordance with the terms of your interconnection agreement, to obtain the collocation site and the associated elements requested at the stated quantities and rates.

The provided Quote is based upon the information supplied in your submission of the Qwest Collocation Application and CO-Provider Information Form.

**B**



**Qwest.**  
**Wholesale Product Marketing**

July 11, 2001

Ms. Ann Bryant  
Carrier Relations Manager  
Time Warner Telecom  
P.O. Box 8935  
Vancouver, WA 98668

Via E-Mail and U.S. Postal Service

Dear Ms. Bryant:

This letter is in response to your letter dated June 29, 2001 and subsequent to our verbal conversation regarding your letter on July 11, 2001.

During our discussion today, we committed to respond in writing to your concerns. We will cover several direct points in your letter as well as the future direction of the Decommission product offering.

It is correct that we have not currently filed Telric pricing for the Decommission product offering. We developed this product offering in response to industry need and issued the product offering March 9, 2001. It was communicated via industry notification and channel distribution. The product description has been forwarded to you and is currently in our Qwest Wholesale Product Catalog on the Qwest website.

It is correct that the Arizona Commission has not approved the pricing for this product, since Qwest has not filed this product offering with pricing to the Arizona Commission. The Time Warner Telecom interconnection agreement does not address this product nor pricing either. You do have the right to accept this product offering as it currently is, subject to subsequent filing and a pricing ruling by the Arizona Commission. You also have the right to negotiate an addendum to your interconnection agreement with Qwest.

The quote in question has been issued as of June 17, 2001 and will expire on July 18, 2001 if not accepted as defined by receipt of payment by Qwest via the invoicing process.

Our current pricing which was based on Telric pricing principles is as follows:

- Decommission Assessment Fee \$854.60
- Network System Administrative Fee \$2601.05
- Total Quote \$3,455.65
- Decommission Assessment Fee consists of the following:

- Job monitoring, order validation, and scheduling. We review the request, monitor the request, validate it, enter into our data base tracking system.
- Collocation Project Management Center Quote preparation.
- Common systems planning engineering center prepares the planning document for funding approval, reviews impacts on the space queue, obtains funding authorization, and prepares the engineering walk-thru package.
- We conduct the walk-thru engineering visit, fill out the documentation and inventory for future potential credit if an assuming CLEC is obtained.
- Network Systems Administrative Fee consists of the following:
  - Engineering design work package preparation and issuance.
  - Schedule the job, project manage the job, and prepare an MOP for the actual installation work.
  - On site inventory review, installation changes, tagging, and installation completion notification to engineering.
  - Engineering close out and data base changes.

Lastly, we hereby commit to participating in a joint effort to review this Decommission product offering along with the two related product offerings of Cancellation and Change of Responsibility. This CLEC industry effort will begin on July 18, 2001 and complete in approximately 90 days. During our call today, I shared some of the proposed product modifications. At the conclusion of this joint effort, Qwest will file this revised product offering and rates with the state commissions, including Arizona. We welcome Time Warner Telecom's input to this joint product development process.

Sincerely,

Stephen C. Nelson