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BEFORE THE ARIZONA CORPORATION COMMISSION

2001 OCT 12 P 4: 27

WILLIAM A. MUNDELL
Chairman
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Commissioner
MARC SPITZER
Commissioner

AZ CORP COMMISSION
DOCUMENT CONTROL

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
PHASE II-A

QWEST CORPORATION'S MOTION TO STRIKE THE REBUTTAL TESTIMONY OF TIMOTHY J. GATES

Qwest Corporation ("Qwest") brings this motion to strike the rebuttal testimony of Timothy J. Gates, filed by WorldCom, Inc. ("WorldCom") on September 27, 2001. Mr. Gates' testimony addresses issues that were part of Phase II and were not among the issues the parties deferred to this phase of the docket. The testimony is an untimely attempt to present evidence relating to issues that WorldCom should have addressed in Phase II. The testimony is not relevant to the issues in Phase II-A and should be stricken.

As described by Mr. Gates, his testimony addresses two issues: (1) "Qwest's proposal to charge a fee for the transfer of call record information, referred to as the daily usage file or 'DUF,'" and (2) "Qwest's cost studies purportedly supporting the DUF rates for both Category 10 and Category 11 records." Phase II-A Rebuttal Testimony of Timothy J. Gates at 4. In its direct case in Phase II, Qwest presented cost studies for daily usage record files and Category

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11 records.¹ Qwest's cost witness, Theresa Million, sponsored these studies and, along with Qwest witnesses, Barbara Brohl and Robert Kennedy, provided testimony describing these products. *See* Ex. Qwest-15 (Million Direct) at 58, 60 and Exs. TKM-14 and TKM-18; Ex. Qwest-10 (Brohl Direct) at 26-27; Ex. Qwest-5 (Kennedy Direct) at 10-11. WorldCom had the opportunity to respond to this evidence in Phase II, but it did not do so. It is improper for WorldCom to attempt to address these issues now, after the record from Phase II has been closed.

The issues that Mr. Gates addresses are not among those that the parties deferred to Phase II-A in the stipulation they filed on August 3, 2001. The stipulation, which applies to "switching issues," identifies the specific testimony and Qwest pricing proposals that the parties deferred from Phase II to this phase of the docket. None of the testimony listed in the stipulation relates to daily usage files or Category 11 records, and the deferred pricing proposals, listed in Exhibit A of the stipulation, do not include the prices for these services.² Accordingly, the stipulation establishes clearly that these issues were not deferred to this phase of the docket and were to be decided in Phase II.

For these reasons, the Commission should strike Mr. Gates' testimony on the grounds that it is untimely and not relevant to the issues presented in this phase of the docket.

¹ Contrary to the suggestion in Mr. Gates' testimony, Qwest did not file a separate cost study for Category 10 records or propose a separate price for those records.

² As the stipulation states, the evidence and pricing proposals that the parties deferred relate specifically to "switching issues." The prices for daily usage record files and Category 11 records are not listed under the heading of "switching" in the pricing list that Qwest submitted in Phase II. Instead, the price for daily usage record files is listed under the prices for "Operational Support Systems," and the price for Category 11 records is listed under the prices for "Transit Traffic." *See* Supplemental Direct Testimony of Maureen Arnold, Exhibit MA-1A (Qwest pricing list). This categorization of these prices in the pricing list reflects the fact that these prices are not "switching" in nature.

RESPECTFULLY SUBMITTED this 12th day of October, 2001.

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