



0000096639

EXCEPTION

ORIGINAL

RECEIVED

2001 DEC 12 PM 1:18

BEFORE THE ARIZONA CORPORATION COMMISSION

AZ CORP COMMISSION
DOCUMENT CONTROL

WILLIAM A. MUNDELL
CHAIRMAN

JIM IRVIN
COMMISSIONER

MARC SPITZER
COMMISSIONER

Arizona Corporation Commission

DOCKETED

DEC 12 2001

DOCKETED BY	<i>mc</i>
-------------	-----------

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

EXCEPTIONS OF TIME WARNER TELECOM OF ARIZONA, LLC

Time Warner Telecom of Arizona, LLC ("TWTC") respectfully takes exception to one aspect of the Recommended Opinion and Order ("RO"). The RO concludes that Qwest's proposed collocation decommissioning policy provides reasonable protections for CLEC collocators with respect to the reusability of collocation facilities (RO at 49, ll. 16-17). The RO does not indicate whether this statement is an approval of the decommissioning charges contained in that policy. The decommissioning policy describes procedures by which a CLEC can vacate its collocation space. The policy also proposes to charge CLECs for such decommissioning.

TWTC respectfully requests that lines 16 and 17 be stricken from the final Order, that Qwest be required to negotiate, not dictate, this new decommissioning policy with

CLECs and that Qwest be required to 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 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, Qwest witness Mr. Kennedy described three recent collocation policies including a decommissioning policy. Kennedy Rebuttal Testimony, p. 17; and Exhibit RFK-1. Pursuant to this decommissioning policy, Qwest will assess certain payments on CLECs vacating collocation space, including a “Network System Administration Fee” and “Decommissioning Assessment Fee.”

Qwest witness, 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.

Qwest argues, and the RO seems to adopt, the notion that if a new Qwest policy conflicts with an existing interconnection agreement, the terms of the existing agreement would prevail. That is not TWTC’s point. In the case of the decommissioning policy, Qwest is adding to the interconnection agreement on a unilateral basis, not changing an existing provision. In other words, there is no decommissioning language in the current

TWTC/Qwest interconnection agreement, but Qwest seeks to add such language. A unilateral amendment adding a new provision to an existing interconnection agreement is inappropriate whether that amendment is in conflict with an existing interconnection agreement provision or a new provision that was not agreed to by the CLEC.

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 charges 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 these Exceptions 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 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 Federal Telecommunications Act, which requires negotiation and, if necessary, arbitration of disputed terms and conditions for collocation.

TWTC respectfully requests that the final order in this proceeding include an explicit prohibition on Qwest from implementing new policies such as decommissioning unless or until such policies are mutually negotiated or approved by the Commission. In addition, TWTC urges the Commission 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 proposed prices for decommissioning have been reviewed and approved by the Commission during an appropriate hearing.

RESPECTFULLY SUBMITTED this 12th day of December, 2001.

LEWIS AND ROCA LLP



Thomas H. Campbell
40 N. Central Avenue
Phoenix, Arizona 85007
(602) 262-5723

Attorneys for Time Warner Telecom of
Arizona LLC

ORIGINAL AND ten (10) copies
of the foregoing hand-delivered this
12th day of December, 2001, to:

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

COPY of the foregoing hand-delivered
this 12th day of December, 2001,
to:

Ernest Johnson, Director
Utilities Division
Arizona Corporation Commission
1200 W. Washington Street
Phoenix, Arizona 85007

Maureen Scott
Legal Division
Arizona Corporation Commission
1200 W. Washington Street
Phoenix, Arizona 85007

Lyn Farmer
Chief Arbitrator
Arizona Corporation Commission
1200 W. Washington Street
Phoenix, Arizona 85007

Dwight Nodes
Arbitrator
Arizona Corporation Commission
1200 W. Washington Street
Phoenix, Arizona 85007

COPY of the foregoing mailed
this 12th day of December, 2001,
to:

Thomas M. Dethlefs, Senior Attorney
US West, Inc.
1801 California Avenue
Suite 5100
Denver, Colorado 80203

Timothy Berg
Fennemore Craig, P.C.
3003 N. Central Avenue
Suite 2600
Phoenix, Arizona 85012

Peter A. Rohrback
Mace J. Rosenstein
Yaron Dori
Hogan & Hartson, LLP
555 Thirteenth Street, NW
Washington, DC 20004-1009

Raymond Heyman
Michael Patten
Roshka Heyman & DeWulf
400 N. Fifth Street
Suite 1000
Phoenix, Arizona 85004-3906
Attorneys for Cox Arizona Telcom, Inc., Z-tel
Communications and McCleod USA Telecommunication
Services

Joan S. Burke
Osborn Maledon, P.A.
2929 N. Central Avenue
12th Floor
P.O. Box 36379
Phoenix, Arizona 85067-6379

Michael Singer Nelson
Richard S. Wolters
AT&T
1875 Lawrence Street
Suite 1575
Denver, CO 80202

Eric S. Heath, Esq.
Sprint Communications
100 Spear Street, Suite 930
San Francisco, California 94105

Scott Wakefield, Chief Counsel
Residential Utility Consumer Office
2828 N. Central Avenue
Suite 1200
Phoenix, Arizona 85004

John M. Devaney
Perkins Coie L.L.P.
607 Fourteenth Street NW
Washington, DC 2005-2011

Michael Grant
Gallagher & Kennedy
2575 E. Camelback Road
Phoenix, Arizona 85016-9225
Attorneys for Electric Lightwave, Inc., COVAD
Communications, Inc. and New Edge Networks

Mary E. Steele
Davis Wright Tremaine LLP
2600 Century Square
1501 Fourth Avenue
Seattle, Washington 98101-1688
Attorneys for Nextlink Arizona, Inc.,
Advanced Telecom Group, Inc. and
AT&T Communications of the Mountain States

Maureen Arnold
Qwest Corporation
3033 N. Third Street
Room 1010
Phoenix, AZ 85004

Thomas W. Hartman
SBC Telcom
175 E. Houston Street
Room 1256
San Antonio, TX 78205

Penny Bewick
New Edge Networks, Inc.
P.O. Box 5159
3000 Columbia House Blvd.
Suite 106
Vancouver, WA 98668

W. Clay Deanhardt
Covad Communications
2330 Central Expressway
Santa Clara, CA 95050

Jeffrey W. Crockett
Jeffrey B. Guldner
Snell & Wilmer LLP
One Arizona Center
Phoenix, Arizona 85004-2202

Jon Poston
Arizonans for Competition in Telephone Service
6733 E. Dale Lane
Cave Creek, Arizona 85331-6561

Thomas F. Dixon, Senior Attorney
WorldCom, Inc.
707 -17th Street, #3900
Denver, Colorado 80202

Gary L. Lane
6902 E. First Street
Suite 201
Scottsdale, Arizona 85251

Kath Thomas
Advanced Telecom Group, Inc.
100 Stoney Point Road
Suite 130
Santa Rosa, CA 95401

Marti Allbright, Esq.
Mpower Communications Corp.
5711 South Benton Circle
Littleton, Colorado 80123

Janet Livengood
Z-Tel
601 S. Harbour Is. Boulevard
Tampa, Florida 33602

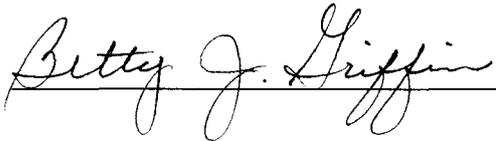
Michael B. Hazzard
Kelley Drye & Warren, LLP
1200 19th Street, N.W.
Fifth Floor
Washington, DC 20036

Steven J. Duffy
Ridge & Isaacson, P.C.
3101 N. Central Avenue
Suite 1090
Phoenix, Arizona 85012-2638

Andrea Harris
Allegiance Telecom, Inc. of Arizona
2101 Webster, Suite 1580
Oakland, California 94612

Douglas Hsiao
Rhythms Links, Inc.
6933 S. Revere Parkway
Englewood, CO 80112

Dennis Ahlers
Eschelon Telecom, Inc.
730 Second Avenue South
Suite 1200
Minneapolis, MN 55402

A handwritten signature in cursive script that reads "Betty J. Griffin". The signature is written in black ink and is positioned above a thin horizontal line.