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BEFORE THE ARIZONA CORPORATION COMMISSION

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2 WILLIAM A. MUNDELL  
3 Chairman  
4 JIM IRVIN  
5 Commissioner  
6 MARC SPITZER  
7 Commissioner

Arizona Corporation Commission

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AZ CORP COMMISSION  
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7 **IN THE MATTER OF INVESTIGATION**  
8 **INTO U S WEST COMMUNICATIONS,**  
9 **WHOLESALE PRICING**  
10 **REQUIREMENTS FOR UNBUNDLED**  
11 **NETWORK ELEMENTS AND RESALE**  
12 **DISCOUNTS**

DOCKET NO. T-00000A-00-0194

11 **JOINDER OF COMMISSION STAFF IN AT&T'S**  
12 **MOTION TO STRIKE POST HEARING "STATEMENT"**  
13 **SUBMITTED BY QWEST AND REPLY TO QWEST'S RESPONSE**

14 On March 8, 2002, the Commission's Hearing Division issued a Supplement to its  
15 Recommended Opinion and Order ("Supplemental ROO") in Phase II of this Docket. The  
16 Hearing Division gave parties until March 18, 2002 to file any exceptions to the Supplemental  
17 ROO. Several parties filed exceptions including Staff, AT&T Communications of the Mountain  
18 States, Inc. ("AT&T"), WorldCom, Inc. ("WorldCom") and Qwest Corporation ("Qwest").  
19 Attached to Qwest's Exceptions was a 10 page Statement by Harry M. Shooshan III, president  
20 and co-founder of Strategic Policy Research, Inc., a communications policy consulting firm  
21 located in Bethesda, Maryland. Mr. Shooshan's statement contains a myriad of policy  
22 arguments, and new supporting "facts" in support of Qwest's position in this case.

23 On March 29, 2002, AT&T filed a Motion requesting that the Commission strike the post  
24 hearing "Statement" of Harry M. Shooshan, III, since it was filed after the record had closed and  
25 the parties did not have an opportunity to cross-examine Mr. Shooshan on the Statement. Staff  
26 concurs with the Motion to Strike the post-hearing Statement of Harry M. Shooshan, III, since  
27 Mr. Shooshan's Statement was not timely filed and attempts to introduce and argue new facts not  
28

1 in evidence, all of which if allowed would severely prejudice the Staff and other parties in this  
2 Docket.

3 For instance, on page 3 of his Statement, Mr. Shooshan refers to specific rate reductions  
4 in access charges in the FCC CALLS Plan and states that "decisions the FCC and this  
5 Commission have made regarding access charges are important in this Docket because UNEs  
6 (especially UNE-Ps) provide long distance carriers with a cheaper alternative to carrier access.  
7 Statement at p. 3.<sup>1</sup> There is nothing in the record to support this statement; and Staff disagrees  
8 with it. Mr. Shooshan also states that while \$25.95 (Qwest's proposed statewide average) may  
9 be too high, \$12.62 (the ALJ's proposed statewide average) is difficult to defend under any  
10 circumstances. He then states on page 9 that "his chief concern about the ALJ's draft order in its  
11 current form is that . . . the recommended UNE loop rate was calculated precisely to come out  
12 just below the already low 1 FR." There is absolutely nothing in the record in support of this  
13 anecdotal statement. On page 4 of his Statement, Mr. Shooshan then goes on to state that  
14 "Qwest must be given additional flexibility in the price regulation plan in order to maintain the  
15 balance that was struck." Mr. Shooshan also states that his own preference would be that "you  
16 not drive UNE prices down to levels where it would be necessary to reopen what I believe is a  
17 very progressive price regulation plan."

18 Staff reminds Qwest that the balance that was struck in the Qwest Rate Case was with  
19 regard to Qwest's retail rates charged to end-users, with the exception of intrastate access  
20 charges. All other wholesale rates were subject to other proceedings, including the Wholesale  
21 Pricing Docket. There was absolutely no agreement "struck" regarding the rates for UNEs or  
22 other wholesale prices which are subject to the FCC's TELRIC pricing rules.

23 Ironically, Qwest chastises AT&T and WorldCom for asserting that local competition is  
24 being thwarted to gain additional concessions from the BOCs. Yet, it appears that it is actually  
25 Qwest that is attempting to gain additional concessions from the Commission by implying that  
26 UNE rates contained in the ROO are set below "cost" and that there will be no facilities-based

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27  
28 <sup>1</sup> Not surprisingly, Qwest makes no mention of Mr. Shooshan's Direct Testimony in the last Qwest Rate Case where he argued that intrastate access charges should be reduced to interstate levels over the term of the Plan, which would have resulted in a significant reduction over the level of reductions eventually contained in the Settlement Agreement.

1 competition as a result and that the Rate Case Settlement will have to be reopened to redo the  
2 balance that was struck.

3 Many of the concerns raised in Mr. Shooshan's statement are based upon facts or  
4 assumptions which are not in the record of this proceeding. In addition to those noted above, one  
5 need only read page 6 to see that Mr. Shooshan is relying upon statements made in articles that  
6 were issued after the record had closed in this proceeding. For Mr. Shooshan to come in at this  
7 late date, after testimony has been submitted and essentially present himself as an expert witness  
8 on these issues, with the other parties having no opportunity to cross-examine Mr. Shooshan,  
9 defies all notions of fair play.

10 In its Reply, Qwest argues that Mr. Shooshan is merely attempting to provide general  
11 public comment. Qwest Response at p. 1. Staff finds this statement to be preposterous. If Mr.  
12 Shooshan was really attempting to provide general public comment, his Statement would not  
13 have been attached to Qwest's Exceptions. The Statement would have been separately filed in  
14 the Docket, on behalf of Strategic Policy Research, the entity in which he is a stakeholder.  
15 Qwest, having attached it as an Exhibit to its Exceptions, is attempting to give the Statement the  
16 weight accorded to regularly filed testimony in this Docket. This is inappropriate and the  
17 damage done and prejudice to Staff and other parties cannot be undone except through striking  
18 Mr. Shooshan's Statement.

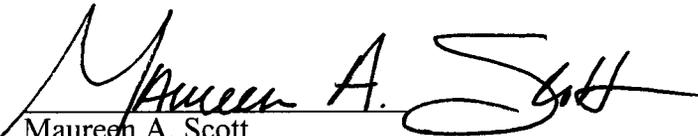
19 Staff is also incredulous at Qwest's position that Mr. Shooshan's Statement is not being  
20 offered to support any party's model in this docket, but it is merely being submitted to "counter  
21 the notion that the public interest requires that TELRIC be ignored or distorted to produce the  
22 lowest rates possible." Not coincidentally, this is Qwest's exact position in the underlying  
23 docket, i.e., that the ROO ignores TELRIC costs and is distorted to produce the lowest rates  
24 possible.

25 Qwest's reliance on Mr. Poston's appearances on behalf of Arizonans for Competition in  
26 Telephone Service in various Commission proceedings to support its actions is also misplaced.  
27 Mr. Poston has always appeared separately on behalf of Arizonans for Competition for  
28 Telephone Service. His statements have never been, to Staff's knowledge, appended as an

1 Exhibit in support of any CLEC's position. Qwest's having attached Mr. Shooshan's Statement  
2 as an exhibit amounts to nothing more than an attempt to introduce late-filed testimony which  
3 cannot be subject to cross-examination by any party.

4 For all of the reasons outlined above, Staff joins in the AT&T Motion to Strike  
5 Mr. Shooshan's Statement.

6 RESPECTFULLY submitted this 10<sup>th</sup> day of April, 2002.

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14 The original and ten (10) copies  
15 of the foregoing were filed this  
16 10<sup>th</sup> day of April, 2002, with:

16 Docket Control  
17 Arizona Corporation Commission  
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19 Copies of the foregoing were  
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21 10<sup>th</sup> day of April, 2002 to:

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