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BEFORE THE ARIZONA CORPORATION COMMISSION

2003 JAN 21 P 4: 15

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Chairman

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Arizona Corporation Commission

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Commissioner

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

ARIZONA CORPORATION COMMISSION,

DOCKET NO. T-01051B-02-0871

Complainant,

v.

QWEST CORPORATION,

Respondent.

QWEST'S RESPONSE TO MTI'S
APPLICATION FOR INTERVENTION

Qwest Corporation ("Qwest") hereby responds to two separate Application(s) for Intervention filed in the above-referenced proceedings by Mountain Telecommunications, Inc. ("MTI") on January 8, 2003 (the "Applications"). As captioned, MTI's applications separately seek intervention in the next scheduled phase (Phase III) of the Commission's ongoing investigation of Qwest's compliance with Commission wholesale pricing requirements, as well as

1 immediate intervention in the Commission's recently-initiated Order to Show Cause proceeding
2 addressing Qwest's procedures for wholesale rate implementation. As explained below, Qwest
3 does not oppose MTI's intervention in Phase III of the Commission's Wholesale Cost Docket but
4 believes the appropriate time for intervention will be when the Commission issues a procedural
5 order for that phase of the docket.
6

7 However, Qwest strongly opposes MTI's companion Motion to intervene in the
8 Commission's pending Complaint and Order to Show Cause proceeding (Docket NO. T-0105B-
9 02-0871). As explained below, Arizona law does not authorize intervention by MTI. Moreover,
10 overriding policy concerns also warrant limitation of both the parties and issues addressed in this
11 proceeding, consistent with the scope set forth in Staff's complaint. MTI's application to
12 intervene in that proceeding, therefore, should be denied.
13

14 **1. The Issues Identified by MTI in Its Application Do Not Support a Grant of
15 Intervention in the OSC proceeding.**

16 In its Application, MTI correctly points out that in Decision 64922, the Commission
17 adopted the results of the HAI model for use in establishing transport rates, while deferring re-
18 examination of modeling mechanisms for transport rates until Phase III of the Wholesale Cost
19 Docket proceeding. MTI apparently seeks intervention in the OSC to utilize this proceeding to
20 request an immediate and comprehensive review of the transport rate regime just adopted by the
21 Commission.

22 Pursuant to Arizona Administrative Code ("A.A.C.") R14-3-105, intervention may be
23 granted only if the applicant for intervention demonstrates that its interests are "directly and
24 substantially affected" by the proceeding. The rule further provides that "[n]o application to
25 intervene shall be granted where by so doing the issues theretofore presented will be unduly
26 broadened . . ." *Id.*

1 The Commission established the wholesale rate implementation OSC for an important,
2 albeit narrow purpose: to evaluate Qwest's actions, and related procedures, associated with
3 implementation of the Commission's June 12, 2002 Order. There are several straightforward
4 reasons why Commission expansion of the OSC is inappropriate and potentially
5 counterproductive.

6 As a threshold matter, the Complaint and OSC does not place at issue the validity of the
7 Commission's recently-approved rate structure, including transport rates. The issue raised by MTI
8 – that Commission-approved Direct Trunk Transport rates “are far higher than the previously-
9 applicable charges for that service”¹ – is an issue already slated for review in the next scheduled
10 phase of the wholesale cost docket. Qwest has correctly calculated and billed MTI for the DTT
11 transport rate in question, consistent with the Commission’s Order. Indeed, MTI does not contend
12 otherwise. Accordingly, MTI offers no compelling rationale why to the extent necessary, re-
13 examination of these rates should not occur in Phase III, as will be the case for other designated
14 issues.

15 Second, contrary to MTI’s contention, the new transport rates in question have not been
16 “imposed by Qwest.” As the Commission and its Staff are well aware, these rates are the result of
17 an extensive and time-consuming evaluation of numerous wholesale rates generated by
18 competing cost models submitted by parties in Phase II of this proceeding. The Commission’s
19 Order explicitly addressed concerns raised by the parties regarding using the HAI model to set
20 applicable transport rates and determined that:

21
22 We believe that consistency requires adoption of the HAI model’s results for both loop
23 costs and transport. As Qwest points out, any UNE pricing inquiry necessarily involves
24 some cost averaging among different kinds of facilities. Even loop costs within a given
25 zone require averaging of costs for different loop lengths within that zone. Accordingly,
26 we will adopt the HAI model’s results for purposes of pricing transport in this
proceeding...Although we are adopting the HAI model’s results at this time, we believe

¹ Application, pg. 3, emphasis in original.

1 that this issue should be re-examined in Phase III so that a full record may be developed.²

2 As the above discussion indicates, in its Order the Commission considered the effect of
3 implementing the rates under discussion, made a decision, and also set forth a specific procedural
4 framework for re-examination. Qwest also points out that Commission Staff did not object to the
5 approach taken by the Order for calculating transport rate charges. Prior to the resolution
6 contained in the Commission's Order, this issue was debated extensively during a January 25,
7 2002 Oral Argument held to address issues identified in briefs that were not included in a
8 proposed order in the proceeding. During that oral argument, Staff offered no objection to
9 Qwest's position on this matter.³

10 Third, from a practical perspective, MTI's Application to intervene in the OSC should be
11 rejected because such intervention would transform a focused "show cause" proceeding into a
12 potentially open-ended process for reconsideration of rates authorized during Phase II. Since there
13 simply is no basis for treating transport rates differently than numerous other rates identified for
14 re-examination or full consideration in Phase III, procedural due process requires that this issue,
15 like others so designated, be considered pursuant to the Commission's existing schedule.

16 Finally, MTI's standing to raise these issues in the context of the OSC is questionable. As
17 the record indicates, concerns regarding Commission treatment of the rates in question have been
18 under discussion for over a year. In spite of the apparent importance of these rates to MTI's
19 business, the company did not intervene in Phase II, was not involved in hearings, and offered the
20 Commission no input during the proceedings on this issue. Its extraordinary request that this
21 issue be addressed immediately and in the context of an OSC proceeding intended to address
22 wholly distinct legal and factual matters is inconsistent with the Commission's directives and
23 would set an undesirable precedent for future proceedings of this nature. In particular, allowing
24 MTI to intervene here would reduce the incentive of potential intervenors in future cost

25 _____
26 ² Decision No. 64922, pg. 79.

³ See Hearing Transcript, Docket T-00000A-00-194, January 25, 2002, pg. 118.

1 proceedings to intervene and raise issues in a timely, efficient, and orderly manner.

2 **2. Qwest Does Not Oppose MTI's Intervention in Phase III of the Wholesale Cost**
3 **Proceeding**

4 As noted above, Qwest does not oppose MTI's proposed intervention in Phase III of the
5 wholesale cost proceeding. The Commission has established that proceeding for, among other
6 purposes, re-examination of the issues raised by MTI. Qwest believes that the Commission's
7 approach is reasonable, and should not be altered at this time.

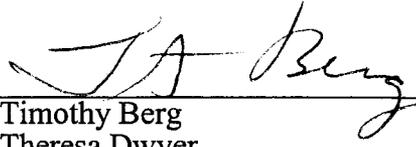
8 Based on the foregoing, MTI has not demonstrated and cannot demonstrate that there is a
9 legal or policy basis supporting its extraordinary request to intervene in the OSC docket. At the
10 appropriate time – when a schedule is set for Phase III – the Commission should grant MTI's
11 request for intervention in the Phase III docket, where these issues may be fully addressed by all
12 parties.

13 DATED this ^{21st} ___ day of January, 2003.

14 QWEST CORPORATION
15 Mark Brown
16 3033 N. 3rd Street
17 Phoenix, AZ 85012
18 Telephone (602) 630-1181

19 -and-

20 FENNEMORE CRAIG

21 By 
22 Timothy Berg
23 Theresa Dwyer
24 3003 North Central Avenue, #2600
25 Phoenix, AZ 85012-2913

26 *Attorneys for Qwest Corporation*

1 ORIGINAL and 15 copies of the
2 foregoing hand-delivered for
3 filing this 21st day of January, 2003 to:

4 Docket Control
5 ARIZONA CORPORATION COMMISSION
6 1200 West Washington
7 Phoenix, Arizona 85007

8 COPY of the foregoing hand-delivered
9 this 21st day of January, 2003 to:

10 Maureen Scott
11 Legal Division
12 ARIZONA CORPORATION COMMISSION
13 1200 West Washington
14 Phoenix, Arizona 85007

15 Lyn Farmer
16 Hearing Division
17 ARIZONA CORPORATION COMMISSION
18 1200 West Washington
19 Phoenix, Arizona 85007

20 Ernest Johnson
21 Utilities Division
22 ARIZONA CORPORATION COMMISSION
23 1200 West Washington
24 Phoenix, Arizona 85007

25 COPY of the foregoing mailed
26 this 21st day of January, 2003 to:

Steven J. Duffy
RIDGE & ISAACSON, P.C.
3101 North Central Avenue, Ste. 1090
Phoenix, Arizona 85012-2638

Richard S. Wolters
M. Singer-Nelson
AT&T
1875 Lawrence Street, Room 1575
Denver, CO 80202-1847

Michael W. Patten
ROSHKA HEYMAN & DEWULF
400 North Fifth St., Ste. 1000
Phoenix, AZ 85004-3906

26

- 1 Michael Grant
Todd C. Wiley
- 2 GALLAGHER & KENNEDY
2575 E. Camelback Rd.
- 3 Phoenix, AZ 85016-9225

- 4 Thomas H. Campbell
LEWIS & ROCA
- 5 40 N. Central Avenue
Phoenix, AZ 85007

- 6 Brian S. Thomas
- 7 TIME WARNER TELECOM
520 SW Sixth Ave., Suite 300
- 8 Portland, OR 97204-1522

- 9 Thomas F. Dixon
WORLDCOM
- 10 707 17th Street
Denver, CO 80202

- 11 Eric S. Heath
- 12 SPRINT COMMUNICATIONS CO.
100 Spear Street, Suite 930
- 13 San Francisco, CA 94105

- 14 Scott S. Wakefield
RUCO
- 15 1110 West Washington, Suite 220
Phoenix, AZ 85007

- 16 Ray Heyman
- 17 ROSHKA HEYMAN & DeWULF
400 North 5th Street, Suite 1000
- 18 Phoenix, AZ 85004

- 19 Rex M. Knowles
XO Communications, Inc.
- 20 111 E. Broadway, Suite 1000
Salt Lake City, UT 84111

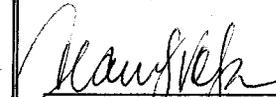
- 21 Megan Doberneck
- 22 COVAD COMMUNICATIONS COMPANY
7901 Lowry Boulevard
- 23 Denver, Colorado 80230

- 24 Lisa Crowley
COVAD COMMUNICATIONS COMPANY
4250 Burton Drive
- 25 Santa Clara, CA 95054
- 26

- 1 Greg Kopta
DAVIS WRIGHT TREMAINE LLP
2 2600 Century Square
1501 Fourth Avenue
3 Seattle, WA 98101-1688
- 4 Mary S. Steele
DAVIS WRIGHT TREMAINE, LLP
5 2600 Century Square
1501 Fourth Avenue
6 Seattle, WA 98101-1688
- 7 Dennis Ahlers
Senior Attorney
8 ESCHELON TELECOM, INC.
730 Second Avenue South, Suite 1200
9 Minneapolis, MN 55402
- 10 Steve Sager, Esq.
MCLEODUSA TELECOMMUNICATIONS SERVICE, INC.
11 215 South State Street, 10th Floor
Salt Lake City, Utah 84111
- 12 Marti Allbright, Esq., Esq.
13 MPOWER COMMUNICATIONS CORPORATION
5711 South Benton Circle
14 Littleton, CO 80123
- 15 Penny Bewick
NEW EDGE NETWORKS
16 PO Box 5159
3000 Columbia House Blvd.
17 Vancouver, Washington 98668
- 18 Michael B. Hazzard
KELLEY DRYE AND WARREN
19 1200 19th Street, NW
Washington, DC 20036
- 20 Janet Livengood
21 Z-TEL COMMUNICATIONS, INC.
601 South Harbour Island
22 Suite 220
Tampa, Florida 33602
- 23 Andrea Harris
24 ALLEGIANCE TELECOM
2101 Webster
25 Suite 1580
Oakland, CA 94612
- 26

1 Traci Grundon
DAVIS, WRIGHT TREMAINE, LLP
2 1300 S. W. Fifth Avenue
Portland, OR 97201

3 Joan Burke
4 OSBORN MALEDON
2929 N. Central Avenue
5 Phoenix, AZ 85012

6 
7 PHX/1380353.1/67817.240

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