



0000096779

BEFORE THE ARIZONA CORPORATION COMMISSION

MARC SPITZER
CHAIRMAN

2003 JAN 31 A 10: 33

DOCKET NO. T-00000A-00-0194

MIKE GLEASON
COMMISSIONER

AZ CORP COMMISSION
DOCUMENT CONTROL

IN THE MATTER OF THE
INVESTIGATION INTO
QWEST CORPORATION'S

JEFF HATCH-MILLER
COMMISSIONER

Arizona Corporation Commission

COMPLIANCE WITH
CERTAIN WHOLESALE
PRICING REQUIREMENTS
FOR UNBUNDLED NETWORK
ELEMENTS AND RESALE

JIM IRVIN
COMMISSIONER

DOCKETED

WILLIAM A. MUNDELL
COMMISSIONER

JAN 31 2003

DISCOUNTS

DOCKETED BY
MA

ARIZONA CORPORATION COMMISSION
Complainant,

and

DOCKET NO. T-0105B-02-0871

v.

QWEST CORPORATION,
Respondent

COMPLAINT
AND
ORDER TO SHOW CAUSE

REPLY TO QWEST'S RESPONSE TO MTI'S
APPLICATIONS FOR INTERVENTION

Mountain Telecommunications, Inc. ("MTI"), by its attorneys, pursuant to A.R.C. R14-3-106, hereby files this reply to Qwest's response to MTI's applications to intervene in each of the above-captioned docketed proceedings.

On January 9, 2003, MTI filed with the Commission separate applications to intervene in each of the above-captioned proceedings. On January 21, 2003, Qwest submitted a response to MTI's applications. However, that response was not served on MTI or its counsel. During a procedural conference held on January 27, 2003 in Docket No. T-0105B-02-0871, it was agreed that MTI's reply to Qwest's response would be due January 31.

Qwest has stated that it does not oppose MTI's intervention in Phase III of the Wholesale Cost Docket (Docket No. T-00000A-00-0194), but that it does oppose MTI's intervention in the

pending Complaint and Show Cause proceeding (Docket No. T-0105B-02-0871). According to Qwest, MTI's intervention in the Show Cause proceeding is not permitted by Arizona law. However, that statement reflects a thorough misunderstanding of the basis for MTI's interest in that proceeding and why MTI's intervention not only is permitted by Arizona law but is compelled by the public interest.

At the heart of the Commission's Decision in the Show Cause proceeding (Decision No. 65450, issued December 12, 2002) is Qwest's failure to properly and timely implement pricing changes for unbundled network elements in accordance with the Commission's Decision No. 64922 issued June 12, 2002 in the Wholesale Cost Docket. The Commission's purpose in conducting that docket was to establish rates for unbundled network elements and interconnection which conform with the statutory requirements of the Telecommunications Act of 1996, and the FCC's pricing rules based on the Total Element Long-run Incremental Cost (TELRIC) standard. Underlying those statutory requirements and regulatory standards is a pronounced public policy in favor of the opening of incumbent local exchange carrier networks (including those of Qwest) to achieve the development of telecommunications services competition.

As a competitive local exchange carrier (CLEC) authorized by the Commission to provide telecommunications services in Arizona, MTI is reliant upon the availability at lawful rates of unbundled network elements, including Transport and Local Interconnection Service, as well as unbundled local loops, in order to provide service. As explained by MTI in its applications to intervene and in its Supplement to Applications to Intervene filed in both dockets on January 30, 2003, Qwest has violated the Commission's intentions in Decision No. 64922 in several critical respects. First, it has not properly implemented rates for Transport and Local

Interconnection Service which comply with the pricing standards codified at Section 252 of the Communications Act (47 U.S.C. § 252) and with the FCC's TELRIC pricing rules. Second, it has purported to implement its understanding of the pricing changes for Transport and Local Interconnection Service (almost all rate increases), while only partially and sporadically implementing the pricing changes for unbundled loops and for installation (almost entirely rate decreases). As MTI noted in its January 30 Supplement, Qwest has charged MTI the new loop rates for only eight percent of MTI's loops.¹

The purpose of the Show Cause proceeding is to examine the manner in which Qwest has implemented those rate changes and to hold Qwest accountable for its failure to do so in a timely manner. The impact on competition of Qwest's implementation *vel non* of the rate changes contemplated by Decision No. 64922 is a central aspect of the Show Cause proceeding. As the Commission itself stated, "[t]he inability of Qwest to make wholesale rate changes in a reasonable amount of time and to charge accurate rates to CLECs creates an unlevel playing field and results in discriminatory treatment by Qwest relative to how it treats its retail customers."²

Qwest correctly notes that the standard for intervention in Commission proceedings is contained at Arizona Administrative Code R14-3-105. R14-3-105.A states that "[P]ersons, other than original parties to the proceedings, who are directly and substantially affected by the proceedings, shall secure an order from the Commission or presiding officer granting leave to intervene before being allowed to participate" (emphasis added). Clearly, intervention applications are to be governed by the "directly and substantially affected" standard. As a purchaser of unbundled network elements from Qwest, including Transport, Local Interconnection Service, and unbundled loops, and as one of the relatively few remaining

¹ Supplement to Applications to Intervene, filed January 30, 2003, at 3.

² Decision No. 65450 at 7

financially viable CLECs operating in the State of Arizona, it is difficult to imagine any entity which will be more directly and substantially affected by Qwest's implementation of the Commission's requirements for unbundled network element pricing than MTI.

Contrary to Qwest's assertion, MTI does not intend to use this proceeding to seek an "immediate and comprehensive review of the transport rate regime just adopted by the Commission."³ What MTI does seek is cessation of the Transport and Local Interconnection Service rates recently implemented by Qwest ostensibly in compliance with Decision 64922 until such time as the issue of appropriate modeling of transport costs based on a complete record, including wire center-specific data (in Qwest's exclusive control) can be developed and analyzed in Phase III. In order to avoid the severe dislocations and disruption to competition which will result from these above cost prices, MTI has moved the Commission to enjoin Qwest from charging Transport and Local Interconnection Service rates which it developed based on incomplete data.⁴

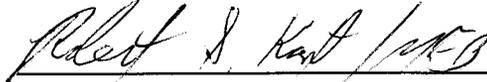
³ Qwest Response at 2.

⁴ Motion for Injunction, filed January 17, 2003.

Because Qwest's implementation of Decision No. 64922 is before the Commission in this proceeding, this may be the most appropriate forum for the Commission to address the concerns raised by MTI and to grant the relief requested. In the event that the Commission enjoins Qwest from charging the Transport and Local Interconnection Service rates reflected in the invoices received by MTI in January, and directs Qwest to continue to utilize the pre-Decision 64922 rates for those unbundled network elements pending completion of Phase III, then MTI will have no need to intervene in the instant proceeding and it will withdraw its application. MTI does plan to participate in Phase III.

Respectfully submitted,

MOUNTAIN TELECOMMUNICATIONS, INC.



Robert S. Kant
E. Jeffrey Walsh

GREENBERG TRAUIG, LLP
2375 East Camelback Road
Suite 700
Phoenix, Arizona 85016
(602) 445-8000

Its Attorneys

Of Counsel:

Mitchell F. Brecher
GREENBERG TRAUIG, LLP
800 Connecticut Avenue, NW
Washington, DC 20006
(202) 331-3100

January 31, 2003

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing Reply to Qwest's Response to MTI's Applications for Intervention on all parties of record in these proceedings by mailing a copy thereof, properly addressed with first class postage prepaid to the following:

Timothy Berg
FENNEMORE CRAIG
3003 North Central Avenue
Suite 2600
Phoenix, AZ 85012

QWEST Corporation
1801 California Street
Suite 5100
Denver, CO 80202

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

Michael W. Patten
ROSHKA, HEYMAN & DEWULF
One Arizona Center
400 East Van Buren Street
Suite 800
Phoenix, AZ 85004
Attorneys for Cox Arizona Telecom, Inc.,
e-spire™ Communications, and McLeodUSA Telecommunications Services, Inc.

Michael Grant
GALLAGHER & KENNEDY
2575 East Camelback Road
Phoenix, AZ 85016-9225
Attorneys for Electric Lightwave, Inc., COVAD
Communications, Inc. and New Edge Networks

Thomas H. Campbell
LEWIS & ROCA
40 North Central Avenue
Phoenix, AZ 85007
Attorneys for Rhythms Links, Inc. and
Time Warner Telecom of Arizona, LLC

Thomas F. Dixon, Jr.
MCI WorldCom
707 17th Street
Denver, CO 80202

Darren S. Weingard
Stephen H. Kukta
SPRINT COMMUNICATIONS CO.
1850 Gateway Drive
7th Floor
San Mateo, CA 94404-2467

Scott S. Wakefield
RUCO
2828 North Central Avenue
Suite 1200
Phoenix, AZ 85004

Raymond S. Heyman
Randall H. Warner
ROSHKA, HEYMAN & DeWULF
400 East Van Buren Street
Suite 800
Phoenix, AZ 85004

Jeffrey W. Crockett
Jeffrey B. Guldner
SNELL & WILMER
One Arizona Center
Phoenix, AZ 85004-2202

Mary E. Steele
DAVIS WRIGHT TREMAINE LLP
2600 Century Square
1501 Fourth Avenue
Seattle, WA 98101-1688
Attorneys for AT&T Communications of the Mountain States, Inc.

Marti Allbright
MPOWER COMMUNICATIONS
5711 South Benton Circle
Littleton, CO 80123

Kevin Chapman
Director-Regulatory Relations
5800 Northwest Parkway
Suite 125, Room I-S-20
San Antonio, TX 78249

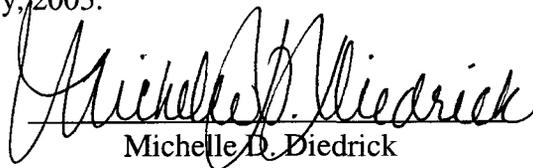
Joyce B. Hundley
United States Department of Justice
Antitrust Division
City Center Building
1401 H Street, NW
Suite 8000
Washington, D.C. 20530

Lyndon J. Godfrey
AT&T
795 Folsom Street
Suite 2104
San Francisco, CA 94107

Christopher Kempley, Chief Counsel
LEGAL DIVISION
1200 West Washington Street
Phoenix, AZ 85007

Ernest G. Johnson, Director
UTILITIES DIVISION
1200 West Washington Street
Phoenix, AZ 85007

Dated at Washington, D.C., this 30th day of January, 2003.


Michelle D. Diedrick

//113137