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BEFORE THE ARIZONA CORPORATION COMMISSION 2003 MAR 3 11

**MARC SPITZER**  
Chairman

**JAMES M. IRVIN**  
Commissioner

**WILLIAM MUNDELL**  
Commissioner

**JEFF HATCH-MILLER**  
Commissioner

**MIKE GLEASON**  
Commissioner

AZ CORP COMMISSION  
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Arizona Corporation Commission  
**DOCKETED**

MAR 03 2003

DOCKETED BY *CM*

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 TIME WARNER TELECOM OF ARIZONA'S COMMENTS ON TRANSPORT RATES AND REQUEST FOR EXPEDITED HEARING OF PHASE II OR MODIFICATION OF DECISION NO. 64922**

Qwest Corporation ("Qwest") hereby responds to Time Warner of Arizona's ("Time Warner") Comments on Transport Rates and Request for Expedited Hearing on Phase III or Modification of Decision No. 64922, filed in the above-referenced proceeding on February 20, 2003 ("Motion"). Time Warner's Motion requests that the Arizona Corporation Commission (the

1 “Commission’) “modify Decision No. 64922 to alleviate the rate shock” that Time Warner claims  
2 to have experienced as result of the transport rates adopted in that Decision. Motion at 2. This  
3 request is improper and should be denied.

4 In adopting the HAI cost model sponsored by AT&T and WorldCom in Phase II, the  
5 Commission fully considered and understood the transport rates that the model produces. The  
6 Commission expressly concluded that with the modifications required by the Commission, the  
7 rates produced by the HAI model, including the transport rates, are lawful and consistent with the  
8 FCC's pricing rules. The Commission should not reverse that finding on the merits based upon a  
9 sweeping claim, unsupported by the presentation of any evidence, that the transport rates  
10 produced by HAI have produced "rate shock." Indeed, if the Commission were to change the  
11 transport rates based merely on an assertion that the rates are improper, to be consistent, any rate  
12 ordered in Phase II that a party now asserts to be improper would have to be reconsidered by the  
13 Commission. There would be, in effect, no finality to the Commission's order.

14 Nor would it be appropriate for the Commission to bifurcate Phase III and consider the  
15 transport rates separate from the other rate elements that will be addressed in that phase. The  
16 separate hearings that would be required under that approach would cause significant  
17 inefficiencies and would needlessly waste the resources of the Commission and the parties. The  
18 more logical, efficient approach is for all rate elements, including transport, to be considered in a  
19 single, consolidated proceeding that is conducted expeditiously. The schedule set forth below  
20 that Qwest proposes meets this objective.

21 Time Warner states that Mountain Telecommunications, Inc. (“MTI”) has presented  
22 “dramatic evidence” that the transport rates established in Decision No. 64922 constitute rate  
23

1 shock. *Id.* The Commission has not conducted any *evidentiary* hearing on the validity of MTI's  
2 (and Time Warner's) claims. The Commission cannot unilaterally modify its decision without  
3 affording due process and otherwise complying with Title 40, Arizona Revised Statutes, and  
4 specifically the hearing and notice requirements set forth in A.R.S. § 40-252.  
5

6 More importantly, the Commission has already established the procedural mechanism and  
7 hearing process to re-examine transport rates and other remaining issues, i.e. Phase III. *See*  
8 Decision No. 64922 at 79 (“[W]e will adopt the HAI model’s results for purposes of pricing  
9 transport in this proceeding . . . . Although we are adopting the HAI model’s results at this time  
10 we believe that this issue should be re-examined in Phase III so that a full record may be  
11 developed.”). Qwest agrees with Time Warner that the appropriate place to consider any parties’  
12 objection to the transport rates established in Decision No. 64922 is Phase III. Phase III has  
13 already been earmarked to review a variety of remaining rates and issues (e.g., customer transfer  
14 charge, unbundled customer controlled rearrangement element (UCCRE), unbundled dark fiber  
15 (UDF), etc.). There is nothing extraordinary concerning the transport rate that merits any  
16 different method of review.  
17

18 Moreover, Qwest agrees that it would be in all parties’ best interest to expedite Phase III  
19 and hereby proposes the following schedule for doing so:  
20

21	Direct Testimony and Cost Studies:	April 14, 2003
22	Rebuttal testimony:	May 19, 2003
23	Reply testimony:	June 23, 2003
24	Hearing:	Week of July 7, 2003

25 This schedule allows the parties a reasonable amount of time to propose the necessary cost  
26 studies to be presented at that hearing. Without adequate time to prepare such costs studies, the  
Commission will not have the information or evidence it requires to conduct a thorough and

1 reasoned analysis of appropriate prices for the elements that need to be determined. The  
2 Commission has been reluctant to adopt prices where insufficient evidence or studies have been  
3 presented upon which to base its decision. Decision No. 64922 at 80-81.

4 Further, it is not appropriate to fix one rate out of context with other rates, as Time Warner  
5 suggests. Because of the necessary interrelationship of these rates under the HAI model, the  
6 Commission should consider the impact on all of these remaining rates together.

7  
8 Based on the foregoing, Qwest request that the Commission move forward with Phase III  
9 using Qwest's proposed expedited schedule, and that Phase III include the issues raised by Time  
10 Warner, MTI and others relative to the transport rates adopted in Decision No. 64922.

11 RESPECTFULLY SUBMITTED this 3<sup>rd</sup> day of March, 2003.

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