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**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

STAFF'S CLOSING BRIEF

I. INTRODUCTION

Through agreement of the parties, this phase of the proceeding was to resolve, on an interim basis, three discrete and relatively narrow issues arising from Decision Nos. 64922 and 65451, until they are addressed on a permanent basis in Phase III of this proceeding. With regard to the first issue, Staff recommends that the Commission reinstate the separate transport and entrance facility rates in effect before Decision 64922 until permanent entrance facility and transport rates can be set in Phase III. On the second issue, Staff believes these separate rates should be effective from the date of Decision 64922 or June 12, 2002. Staff does not believe that this constitutes retroactive ratemaking since the Commission is merely establishing a new separate rate for entrance facilities, because it has been determined that this rate element continues to be necessary in some cases. With regard to the final issue, Staff believes that the 60/40% allocation of switch costs between port and usage adopted in Decision 65451 is reasonable and accordingly the port rate adopted in Decision 65451 should be changed effective with the Commission's new order.

II. BACKGROUND

This Docket was opened to address issues related to Qwest Corporation's ("Qwest") pricing of wholesale products and services offered to carriers providing local service in competition with Qwest. Phase I of this proceeding addressed the issue of geographical deaveraging of unbundled

1 network element ("UNE") rates. On July 25, 2000, the Commission issued Decision No. 62753
2 adopting interim geographically deaveraged UNE rates.

3 Phase II of the Docket was opened to address issues raised by subsequent FCC orders and
4 judicial decisions, and to establish permanent geographically deaveraged rates. On June 12, 2002,
5 the Commission issued Decision No. 64922 in Phase II adopting permanent geographically
6 deaveraged wholesale rates for Qwest in Arizona. The Decision also established prices for many
7 recurring and nonrecurring charges for UNEs, collocation, transport and other ancillary services.

8 The parties agreed to defer consideration of switching issues to a separate hearing, or Phase
9 IIA of this proceeding. On December 12, 2002, the Arizona Corporation Commission issued
10 Decision No. 65451 establishing permanent wholesale switching rates to be charged by Qwest to
11 carriers providing local service in competition with Qwest.

12 Mountain Telecommunications, Inc. ("MTI") subsequently filed Applications to Intervene in
13 the Show Cause Docket and in Phase III of the Wholesale Cost Docket. MTI claimed that in January
14 2003 it received the first bills from Qwest reflecting the new UNE rates established in Decision No.
15 64922. MTI stated that the charges for transport service and local interconnection service are far
16 higher than previous charges and that the Commission could not possibly have intended such a
17 significant increase in transport rates. On January 17, 2003, MTI filed a Motion for Injunction
18 requesting that the Commission enjoin Qwest from charging unjust and unreasonable prices to MTI
19 for UNEs. On February 14, 2003, MTI also filed a Complaint arguing that the rate increases for
20 transport facilities, as well as Qwest's continued delay in implementing new lower rates for local
21 loops are inconsistent with the Commission's intent in Decision No. 64922 and violate the federal
22 statutory requirements set forth in the 1996 Telecommunications Act.

23 On February 11, 2003, Qwest filed a Motion to Reopen the Record and Modify Decision
24 65451. Qwest contended that the \$1.61 analog line side port recurring charge adopted by the
25 Commission in Decision No. 65451 should be modified because it does not represent the reasonable
26 middle ground approach that the Commission believed it was approving. According to Qwest,
27 because the Commission approved the assignment of 60 percent of switching costs to the port rate,
28 rather than the 40 percent assumed by Staff witness Dunkel in recommending the \$1.61 rate, the

1 Commission should adopt Qwest's proposed rate of \$2.44 produced by the HAI model.

2 On April 8, 2003, Qwest, MTI, AT&T Communications of the Mountain States, Inc.
3 ("AT&T"), Time Warner and the Commission Staff (collectively "the Parties") filed a Stipulation
4 Concerning Expedited Hearing on Transport and Analog Port Rates ("Stipulation"). In the
5 Stipulation, the Parties jointly requested that the Commission's Hearing Division schedule and
6 conduct an expedited hearing on the following issues:

7 Transport Rates

8 1. Should Staff's Option 1 (the transport rates prior to this Cost Docket) or
9 Staff's Option 2 (the transport rates adopted in Decision No. 64922 minus the
10 entrance facility charges where no entrance facility is provided) be adopted as the
11 rates for DS1 and DS3 transport effective until the reconsideration of these rates in
12 Phase III of the Cost Docket?

13 2. Are the revised rates that are determined as a result of the expedited hearing
14 effective as of June 12, 2002 or from the effective date of the Order adopting the
15 revised rates?

16 Analog Port Rates

17 1. What is the appropriate analog port rate using the HAI model as Adopted by
18 the Commission? Included in this issue is the appropriate allocation of switching
19 costs between the port rate and usage rates. The parties agree that reciprocal
20 compensation rates will not be addressed in the expedited hearing.

21 A Procedural Order was subsequently issued which scheduled a hearing on May 28, 2003 to
22 address the transport and analog port rate issues identified in the Stipulation. Direct testimony was
23 filed by the Parties on April 28, 2003. Rebuttal testimony was filed on May 12, 2003, and a hearing
24 was held on May 28, 2003. Following is Staff's Closing Brief.

25 **III. ARGUMENT**

26 **A. Transport Rates**

27 1. Staff Supports Adoption of Option 1 As an Interim Measure Until
28 Reconsideration of the Transport Rates in Phase III

The impacts of the new transport rates should have been fairly minor. Staff witness
Dunkel gave the following example in his direct testimony:

For example, a 15 mile DS1 circuit plus entrance facility had "before" rates that
totaled \$139.51 (\$89.42 for the entrance facility plus a \$35.99 fixed transport charge,
plus \$0.94 per mile for transport). After Phase II, the transport rate was \$148.97.
This would have been an increase of about 7 percent.

1
2 However, when the rates went into effect, MTI provided information at the time they were
3 first billed, that the actual effects of these rates were large percentage increases, much greater than 7
4 percent. Dunkel Direct, Ex. S-1, p. 5.

5 As a result of MTI's filings, Staff conducted discovery of both Qwest and MTI to determine
6 if the transport rates adopted in Decision 64922 were being applied correctly by Qwest. Both
7 Qwest's and MTI's responses indicated that many of the circuits are arranged in ways that do not
8 include an entrance facility. In MTI's case, transport lines were provided in such a way that they
9 were not previously paying entrance facilities charges. Dunkel Direct, Ex. S-1, p. 5. The rate impact
10 on such lines was very large. Id. In the 15 mile DS1 example, the rate went from \$50.09 (\$35.99
11 fixed transport charge, plus \$0.94 per mile for transport) to \$148.97, a 200% increase. Id.

12 The following two options were proposed by Staff as interim measures until the entrance
13 facility and transport rates could be reviewed again in Phase III of this proceeding. Option 1 would
14 be for the Commission to reinstate the separate entrance facility and transport rates that were in
15 effect prior to the Cost Docket. Option 2 would be for the Commission to utilize the transport rates
16 adopted in Decision No. 64922 minus the entrance facility charges from Decision 60635 where no
17 entrance facility is provided.

18 Since Staff proposed both options as interim solutions, Staff believes that either option would
19 be a reasonable interim measure until Phase III of this case. Of the two, however Staff prefers
20 Option 1 which is to reinstate the separate entrance facility and transport rates that had previously
21 been approved by the Commission in Decision No. 60635. Dunkel Direct Testimony, Staff Ex. S-
22 1 p.4 .

23 2. The Transport Rates Should be Effective as of June 12, 2002

24
25 The second issue to be addressed is the date the separate entrance facility and transport rates
26 should be effective. Staff believes that the separate entrance facility and transport rates adopted as a
27 result of this proceeding should be effective as of June 12, 2002.

28 Prior to Phase II and Decision No. 64922, Qwest charged a separate "entrance facility" rate
and separate "transport" charges. In Phase II, the separate entrance facility rate was eliminated.

1 Dunkel Direct, Ex. S-1, p. 4. The cost studies and rates inaccurately assumed that there was
2 one entrance facility for each transport rate. Id. In actuality, because transport facilities are arranged
3 in ways that do and do not require entrance facilities, a separate tariffed rate for entrance facilities is
4 needed.

5 The elimination of the separate rate for entrance facilities only impacted certain carriers such
6 as MTI, Time Warner and Covad. With elimination of the separate entrance facility rate, Qwest
7 effectively began charging MTI and other carriers for facilities they were not using. In effect, the
8 combination rate resulted in MTI and other similarly situated carriers being assessed transport
9 charges much higher than other carriers. Staff believes that it would be discriminatory to require
10 MTI and other similarly situated carriers to pay a higher rate than other carriers for transport
11 facilities. Even Qwest conceded at the hearing that they were “surprised” by the impact of the
12 combination rate on MTI and other similarly situated carriers. Tr. pp.100-101. This result was not
13 at all intended by the Commission in Decision No. 64922.

14 The new separate tariffed rate for entrance facilities should be applied back to the date of the
15 Commission’s Order, or June 12, 2002. This is necessary to ensure that MTI and other similarly
16 situated carriers pay only for services that they receive from Qwest. It is also necessary to ensure
17 that Qwest does not obtain a “windfall” for services and facilities it did actually provide.

18 Any argument that this constitutes retroactive ratemaking, is misplaced. Establishment of a
19 new separate tariffed rate for a service, is not retroactive ratemaking. Had Qwest implemented the
20 rates ordered in Decision No. 64922 in a timely manner rather than taking 6 months, the need for a
21 separate rate would have come to the Commission’s attention much earlier. Qwest should not be
22 allowed to benefit from its dilatory conduct in not implementing the rates on a timely basis.

23 **B. Analog Port Rate**

24 1. Staff Supports the 60/40% port/usage Allocation Contained in The Current Phase
25 II Order

26 Decision No. 65451 specified a port rate of \$1.61 and 60/40% allocation of switch costs
27 between the port and usage. The problem is that the \$1.61 port rate is not based upon 60% of the
28 switching costs being allocated to the port. If the \$1.61 port rate is used with usage rates that are
based on 40% of the switch cost, Qwest will not recover 100% of the switch costs. Dunkel Direct,

1 Ex. S-1, p. 6.

2 Both Qwest and Staff support adoption of a rate design that is made up of both flat rate and
3 usage based charges. AT&T and MCIWorldCom, on the other hand, sponsored joint testimony that
4 support 100% of the switching equipment being assigned to the port with a flat rate charge. The
5 Commission should reject the arguments of AT&T and MCIWorldCom since their proposed rate
6 design does not reflect fundamental cost causation principles.

7 As Staff witness Dunkel noted, the switching equipment contains traffic sensitive equipment
8 and also contains n on-traffic sensitive equipment (termed the “port”). Dunkel Direct, Ex. S-1, p. 6.
9 The non-traffic sensitive equipment (port) includes a “line card”. The line card is connected to the
10 loop facilities. Id. The number of line cards required depends on the number of loops, not the level
11 of traffic. Id. Thus, this cost is considered to be “non-traffic sensitive.” Id. On the other hand, inside
12 the switch there is what is called the “switching fabric”, which is the equipment that switches calls,
13 and is thus a “traffic sensitive cost”. Id.

14 The exact distribution between the traffic sensitive and non-traffic sensitive costs vary by
15 switch manufacturer, and other factors. Id. The number of lines served by the switch could also
16 impact the percent that is traffic sensitive versus non-traffic sensitive. Id.

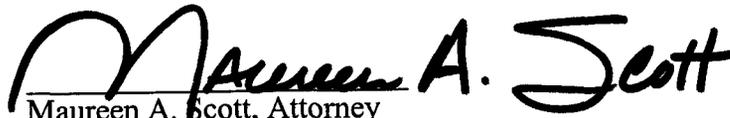
17 AT&T and MCIWorldCom argue that since the initial usage investment is made at a high
18 enough level to handle the expected usage, that usage investment is no longer a usage related costs.
19 Gillan-Chandler Direct, Ex. AT&T/MCI-1, p. 18. The Commission should reject this argument.
20 The fact that the company installs a high level of usage switching capacity at the time of initial
21 switch installation does not change the fact that this usage investment is made for the purpose of
22 switching usage. Dunkel Rebuttal, Ex. S-2, p. 3. Further, the fact that the investment is made at the
23 time of initial installation does not make the cost of that usage-related investment zero. Id. The
24 AT&T/MCIWorldCom proposal to consider the switch as 100 percent “port” and zero percent
25 “usage” is not an accurate reflection of cost causation. Dunkel Rebuttal, Ex. S-2, p. 4.

26 **IV. CONCLUSION**

27 The Commission should reinstate the separate entrance facility and transport rates in effect
28 before Decision 64922 effective June 12, 2002. The Commission should adopt an analog port rate

1 which reflects 60% allocation of the switch to the port and 40% to usage.

2 RESPECTFULLY SUBMITTED this 1st day of July, 2003.

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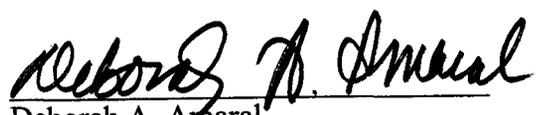
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