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Arizona Corporation Commission

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MAR 18 1999

IN THE MATTER OF U S WEST  
COMMUNICATIONS' STATEMENT OF  
GENERALLY AVAILABLE TERMS  
AND CONDITIONS.

Docket No. T-01051B-99-0068

DOCKETED BY	MJ
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**REPLY IN SUPPORT OF  
AT&T/TCG MOTION TO  
REJECT U S WEST'S SGAT**

AT&T Communications of the Mountain States, Inc. and TCG-Phoenix (collectively "AT&T") submit this reply in support of the AT&T/TCG Motion to Reject U S WEST's Statement of Generally Available Terms ("SGAT").

**I. INTRODUCTION**

The SGAT filed by U S WEST on February 5, 1999 does not comply with the Telecommunication Act of 1996. Illustrative examples of this non-compliance are set forth below, and in AT&T's Motion to Reject U S WEST's SGAT ("Motion"). The Arizona Corporation Commission may not approve an SGAT "unless such statement complies with subsection (d) of [section 252] and section 251 [of the Act] and the regulations thereunder." Not even U S WEST seriously contends that, at this stage of the proceedings, the SGAT should be approved by the Commission. Instead, U S WEST submits that the Commission should allow the SGAT to go into effect, subject to later review for approval.<sup>1</sup> This, U S WEST argues, will allow smaller carriers to obtain service through a means other than interconnection negotiation or arbitration.

Conceptually, it makes good sense to have general terms and conditions available, particularly to smaller carriers. However, making available an SGAT that is replete with terms

<sup>1</sup> U S WEST's Opposition at 20, ln. 12-13.

inconsistent with the Act will not benefit small carriers. These carriers, without resources to engage in protracted negotiations with U S WEST, are most in need of a fair, lawful, and easily enforced collection of terms and conditions. These carriers rely on the expertise and assistance of the Commission in ensuring tariff filings are lawful. An SGAT that does not comply with the Act, the FCC rules and the recent decision of the United States Supreme Court in *AT&T v. Iowa Utils. Bd.*, \_\_\_ U.S. \_\_\_, 1999 WL 24568, will definitely not benefit small carriers. AT&T submits that the Commission is authorized to reject the U S WEST SGAT, and direct U S WEST to submit an SGAT that complies with the requirements of the Act, the FCC Rules and *AT&T v. Iowa Utilities Board*.

The following comments support AT&T's Motion to reject U S WEST's SGAT as non-compliant as to specific terms and conditions.

## II. ARGUMENT

### A. Combinations of Network Elements

AT&T in its Motion pointed out that the SGAT failed to provide for combinations of network elements. The SGAT provides that U S WEST will deliver separated network elements which the CLECs must combine themselves.<sup>2</sup> U S WEST argues that CLECs are not entitled to combined network elements or the UNE platform. However, even U S WEST concedes that the Supreme Court upheld 47 C.F.R. § 51.315(b), which prohibits U S WEST from separating elements in U S WEST's network that are currently combined.<sup>3</sup> Having recognized the obligation to provide unseparated network elements, U S WEST omits this obligation from the SGAT.<sup>4</sup>

U S WEST states that it will provide unbundled elements to CLECs, "but it will not provide assembled elements."<sup>5</sup> U S WEST cannot reasonably assert that this position "reflects [a] reasonable, pro-competitive compromise."<sup>6</sup> Requiring CLECs to incur additional, unnecessary expense and use inferior means to gain access to and combine network elements

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<sup>2</sup> AT&T's Objections at 2-3; *see* SGAT, §§ 9.1.4 and 9.1.6.

<sup>3</sup> U S WEST's Opposition at 3.

<sup>4</sup> Although the Supreme Court vacated 47 C.F.R. § 51.319 (the FCC list of UNEs), this does not relieve U S WEST of the obligation to provide network elements under Section 251(c)(3).

<sup>5</sup> U S WEST's Opposition at 5.

<sup>6</sup> *Id.*

cannot, in any sense of the word, be considered “pro-competitive.”

U S WEST argues that if AT&T wants combined network elements, it can buy the finished service at the wholesale discount. This argument has been rejected by the Eighth Circuit<sup>7</sup> and the Supreme Court.<sup>8</sup> AT&T is entitled to purchase network elements to provide a finished service.<sup>9</sup> U S WEST is prohibited from separating combined network elements.<sup>10</sup> Therefore, AT&T is not required to purchase finished services for resale in lieu of combined network elements, as claimed by U S WEST in its opposition and in the SGAT.

U S WEST’s SGAT also requires CLECs to use U S WEST’s InterConnection Distribution Frame (“ICDF”) to access and combine network elements. As AT&T demonstrated in its Motion, the ICDF is just another name for the single point of termination (“SPOT”) frame. Every state commission that has considered the SPOT frame has found it to be discriminatory.<sup>11</sup> U S WEST argues that AT&T is relying on state commission decisions that address a different proposal – the SPOT frame – and AT&T provides no evidence on the ICDF proposal. U S WEST’s argument is misleading. AT&T’s understanding of the ICDF is based on its reading of the SGAT. The language of the U S WEST SGAT reveals that there is no apparent difference between the ICDF in the SGAT and the past SPOT frame proposals circulated by U S WEST.

Moreover, U S WEST is the party seeking approval of the SGAT. It has the burden of proving that the ICDF is not discriminatory, and it has not done so. The ICDF is simply an old proposal with a new name and violates the requirement that U S WEST provide nondiscriminatory access to network elements under Section 251(c)(3) of the Act.

## **B. Resale**

U S WEST responds that AT&T’s objections to the resale provisions are without merit. Yet, the U S WEST SGAT omits any requirement that U S WEST make available all retail services for resale at a wholesale discount. U S WEST argues such a provision is not necessary

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<sup>7</sup> *Iowa Utils. Bd. v. FCC*, 120 F.3d 753, 814-815 (8<sup>th</sup> Cir. 1997)

<sup>8</sup> *AT&T v. Iowa Utils. Bd.*, \_\_\_ U.S. \_\_\_, 1999 WL 24568, \*12-13. Although the Supreme Court overturned Rule 319, the FCC can and will promulgate a new list of network elements.

<sup>9</sup> *Id.*, \*13.

<sup>10</sup> *Id.*

<sup>11</sup> *See* AT&T’s Objections at 3-4.

because it is legally obligated under the Act to make available all retail services for resale at a wholesale discount.<sup>12</sup> This provides little comfort to CLECs, as U S WEST continues to selectively ignore its legal obligations under the Act and FCC rules. For example, not only does the SGAT fail to incorporate Rule 315(b), although the Supreme Court upheld the rule, U S WEST's SGAT explicitly states it will not provide combined elements. U S WEST continues to ignore its obligation to provide xDSL at wholesale rates, although the FCC required that xDSL services be made available for resale. Therefore, without a statement in the SGAT that U S WEST will make available all retail services for resale at a wholesale discount, there is some question whether U S WEST will comply with Section 251(c)(4) of the Act.

The language in U S WEST's SGAT indicates that U S WEST will await a commission order before revising the list of telecommunications services its intends to make available for resale at the wholesale discount.<sup>13</sup> Section 6.3.7 of the SGAT states that “[i]f the Commission orders additional services to be available for resale, U S WEST will revise Exhibit A to incorporate the services added by such order in this SGAT, effective on the date ordered by the Commission.” The language is contrary to the Act's requirement that U S WEST make available all retail services for resale at a wholesale discount. Additionally, there is no obligation under the Act that a CLEC make a bona fide request to obtain a resold service, as proposed by U S WEST. Such a process would necessitate negotiation and/or an arbitration with U S WEST contrary to the understood purpose of the SGAT.<sup>14</sup>

U S WEST suggests that it cannot offer new service until the Commission establishes a discount.<sup>15</sup> This is nonsense. The Commission set discounts for seven classes of services. All classes of services have a discount of 18%, except for residential service, which has a 12% discount.<sup>16</sup> It is a simple matter of placing the service in the appropriate class. This is not a complicated task, and does not require a Commission order.

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<sup>12</sup> U S WEST's Opposition at 7.

<sup>13</sup> SGAT, § 6.3.1.

<sup>14</sup> *BellSouth Corporation, et al. Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services in South Carolina*, CC Docket No. 97-208, Memorandum Opinion and Order, FCC 97-418 (rel. Dec. 24, 1987), ¶ 204. (“*BellSouth South Carolina Order*”) “[F]urther negotiation undermin[es] the premise of an SGAT[.]”

<sup>15</sup> U S WEST's Opposition at 7.

<sup>16</sup> See Docket No. U-3021-96-448 *et al.*, Opinion and Order, Decision No. 60635, at 36.

U S WEST argues that the FCC “has not yet decided whether DSL services must be offered for resale.”<sup>17</sup> This statement is incorrect. The FCC has stated:

We also declare that, pursuant to the terms of section 251(c)(4), the incumbent LEC must offer for resale, at wholesale rates, any advanced service that the incumbent offers to subscribers that are not telecommunications carriers.<sup>18</sup>

The FCC defined “advanced services,” for purposes of its order, to mean “wireline, broadband telecommunications services, such as services that rely on digital subscriber line technology (commonly referred to as xDSL) and packet-switched technology.”<sup>19</sup> There can be no dispute that U S WEST must make available xDSL for resale at a wholesale discount. The SGAT does not make xDSL services available for resale at a wholesale discount; therefore, it violates the Act and the FCC Order.

The SGAT does not provide for the resale of promotions of 90 days or less.<sup>20</sup> U S WEST argues that it is not required to provide promotions of 90 days or less for resale. Although AT&T agrees that promotional offerings of 90 days or less need not be offered for resale *at the wholesale rate*, the promotions must be offered for resale at the retail rate.<sup>21</sup> This provision of the U S WEST SGAT, therefore, violates the FCC’s order and regulations.

### **C. Pricing of Network Elements**

U S WEST argues that “to the extent that any network element at issue is not subject to unbundling under Section 251(c)(3), U S WEST is not required to charge cost-based rates under Section 252(d)(1). Instead, U S WEST has pricing flexibility if it chooses to provide that element to new entrants.”<sup>22</sup> Essentially, U S WEST argues it can price network elements any way it wants. U S WEST’s position is contrary to the Act and not supported by case law

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<sup>17</sup> *Id.* at 9.

<sup>18</sup> *Petition of U S WEST Communications, Inc. for Relief from Barriers to Deployment of Advanced Telecommunications Services*, CC Docket No. 98-26, Memorandum Opinion and Order, and Notice of Proposed Rulemaking, FCC 98-188 (rel. August 7, 1998), ¶ 18.

<sup>19</sup> *Id.*, ¶ 3 (footnote omitted). Footnote 5 describes xDSL as a “placeholder” for various types of DSL service, such as ADSL, VDSL and RADSL.

<sup>20</sup> SGAT, § 6.2.2.1. “Promotional offerings of ninety (90) days or less are not available for resale.”

<sup>21</sup> See AT&T’s Objections at 8 and n. 25.

<sup>22</sup> U S WEST’s Opposition at 14-15. U S WEST argues transport and switching are no longer UNEs. U S WEST admits the prices set forth in the SGAT for switching and shared transport are not priced at TELRIC. *Id.* at 5, n.4.

interpreting and applying the Act and the FCC Rules. The Eighth Circuit Court of Appeals upheld the FCC's definition of "network element."<sup>23</sup> The Eighth Circuit's holding was affirmed by the Supreme Court.<sup>24</sup> U S WEST is obligated to provide nondiscriminatory access to network elements pursuant to Section 251(c)(3) of the Act. Whether U S WEST provides a network element identified by the FCC pursuant to Section 251(d)(2), pursuant to a state requirement adopted pursuant to Sections 251(d)(3) or 252(e)(3), or voluntarily, if the facility or service meets the FCC's definition of network element, U S WEST is required by law to provide the network elements at cost-based rates pursuant to Section 252(d).<sup>25</sup> Section 271(c)(2)(B) specifically requires that U S WEST provide nondiscriminatory access to network elements in accordance with the requirements of 252(d)(1). U S WEST has admitted its transport and switching rates in the SGAT are not priced at TELRIC.<sup>26</sup> U S WEST's failure to price these network elements at TELRIC violates the Act and the FCC's rules.

#### **D. Collocation**

AT&T objected to the use of individual case basis ("ICB") pricing in the SGAT for collocation. AT&T identified a substantial number of rate elements that U S WEST has chosen to set on an ICB.<sup>27</sup> U S WEST responds that ICB is the only feasible method to price elements until cost studies are done.<sup>28</sup> This response establishes that U S WEST has filed its SGAT prematurely.

The FCC was clear in its *BellSouth South Carolina Order*:

We find BellSouth's SGAT deficient because its collocation rates do not include any rates for the space preparation fee. That component of cost is left to further negotiation on an individual case basis. The absence of any space preparation rates creates uncertainty for new entrants and requires further negotiation undermining the premise of an SGAT, which is to contain sufficiently specific terms and conditions such that checklist items are generally offered and available to all carriers at concrete terms, rather than left to further negotiation.<sup>29</sup>

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<sup>23</sup> *Iowa Utils Bd. V. FCC*, 120 F.2d 753, 808-810.

<sup>24</sup> The Supreme Court affirmed the Eight Circuit decision on network elements, finding the FCC's definition of network element "eminently reasonable." *AT&T v. Iowa Utils Bd.*, \_\_\_ U.S. \_\_\_, 1999 WL 24568, \*10.

<sup>25</sup> See 47 U.S.C. §§ 252(d)(1) and 271(c)(2)(B).

<sup>26</sup> U S WEST's Opposition at 5, n. 4.

<sup>27</sup> AT&T Objections at 15-16.

<sup>28</sup> U S WEST's Opposition at 18.

<sup>29</sup> *BellSouth South Carolina Order*, ¶ 204.

The FCC found the BellSouth SGAT deficient because it lacked any rates for the space preparation fee. AT&T in its objections identified 12 rates that are to be determined on an ICB basis. As the FCC correctly pointed out, incomplete terms undermine the very purpose of an SGAT. To find that U S WEST has met its obligation to provide access to network elements pursuant to Section 251(c)(3) and collocation pursuant to Section 251(c)(6), it “must have a concrete and specific legal obligation to furnish the item upon request pursuant to its SGAT.”<sup>30</sup> Lacking a concrete obligation, U S WEST’s SGAT fails to meet the requirements of the Act.

**E. Service Quality Plan Tariff**

U S WEST erroneously concludes that AT&T has admitted that the U S WEST Service Quality Plan Tariff does not apply to resellers.<sup>31</sup> In fact, AT&T believes that the terms and conditions of the U S WEST Service Quality Tariff would apply to the services that U S WEST provides to CLECs for resale. The U S WEST Service Quality Tariff contains terms and conditions under which U S WEST’s retail customers receive service. As such, those same terms and conditions must be available to CLECs when reselling U S WEST’s retail services. For U S WEST to suggest that those terms and conditions are available to its retail customers but are not available to its CLEC customers is patently discriminatory and a clear violation of Section 251(c)(4)(B).

The terms and conditions of the U S WEST Service Quality Plan Tariff are not, as U S WEST implies, a telecommunications service that U S WEST need not provide to CLECs.<sup>32</sup> The U S WEST Service Quality Plan Tariff contains the terms and conditions that govern the quality of retail services U S WEST provides to its customers. Indeed, U S WEST states:

This Tariff contains the regulations, terms conditions and charges applicable to the service quality plan for the provision of service provided by U S WEST Communications, Inc., d/b/a U S WEST Communications, hereinafter referred to as the Company.<sup>33</sup>

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<sup>30</sup> *Id.*, ¶ 81.

<sup>31</sup> U S WEST’s Opposition at 11.

<sup>32</sup> *Id.*

<sup>33</sup> U S WEST Service Quality Plan Tariff; Issued Per Docket No. E-1051-93-183, Decision No. 59421; Section 1.1, Application of Tariff. A condition in the tariff states that if U S WEST fails to provide Basic Local Exchange Service within thirty days of the customer’s application date, the customer can choose, among other options, “a cellular voucher of one hundred fifty dollars (\$150.00) for each month or partial month service was not provided beyond the thirty (30) day timeframe.”

The provisions of the tariff are an integral part of the applicable retail service.

U S WEST has taken Mr. Thayer's statement in the service quality proceeding out of context.<sup>34</sup> While U S WEST accurately reflected Mr. Thayer's statement on held orders, it failed to point out that immediately after that statement, Mr. Thayer continued by stating, "the concept is whatever assurance warranties or incentives that U S WEST is obligated to provide for lapses in service, we would want the same ability to provide to our customers".<sup>35</sup> The crux of Mr. Thayer's statement was that if cellular vouchers for held orders were available to customers obtaining services from U S WEST, then those vouchers should also be available to CLECs purchasing resold services from U S WEST. The fact that Mr. Thayer may have viewed the service quality proceeding as a means to determine the service quality assurance terms and conditions that are available to U S WEST customers in no way relieves U S WEST of its obligation today to make those same terms and conditions available to CLECs as part of services obtained from U S WEST for resale.

U S WEST attempts to divert attention from the fact that it proposed discriminatory limitations on the resale of its services by making the issue one of "service quality standards."<sup>36</sup> This is not a service quality standard issue; the issue is whether services sold to CLECs for resale will be provided pursuant to the same terms and conditions offered to U S WEST's retail customers.

**F. SGAT Section 10.1.3.4 Relating to Firm Order Confirmations ("FOCs") Is Inconsistent with FCC Rules**

U S WEST has misinterpreted the FCC's Section 271 orders on FOCs. The FCC views one of the purposes of an FOC as "providing the due date for installation" and that "the first opportunity that competing carriers may have to inform their customers of the due date is when

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<sup>34</sup> *Id.*, at 12.

<sup>40</sup> *Petition of MCIMetro Access Transmission Services, Inc. for Arbitration of The Rates, Terms, and Conditions of Interconnection With U S WEST Communications, Inc., Pursuant to 47 U.S.C. § 252(b) of the Telecommunications Act of 1996, Docket Nos. U-3175-96-479 et al., Transcript of Proceedings, Vol. VI at 966.*

<sup>36</sup> U S WEST's Opposition at 12.

the firm order confirmation notice is returned.”<sup>37</sup> U S WEST incorrectly implies that the access it provides to its appointment scheduler eliminates any need for U S WEST to provide due dates in FOCs and that “FOCs are not as important when CLECs do business with U S WEST.”<sup>38</sup> U S WEST argues that since CLECs can obtain due dates from the appointment scheduler, this Commission and the FCC need not be concerned with any due date information that is provided in an FOC.

The fatal flaw in U S WEST’s argument is that the appointment scheduler system is limited to arranging for installations of resale orders where a dispatch is required. This represents only a small percentage of orders. For the majority of orders, the CLECs must wait for U S WEST to provide an FOC to learn the installation due date. The appointment scheduler would not be used to obtain due dates for (1) resale orders where no dispatch is required, (2) number portability orders, (3) unbundled network element orders, and (4) interconnection trunk orders.

U S WEST’s argument that “U S WEST does not have a ‘retail analogue’ to the FOC”<sup>39</sup> has been rejected several times by the FCC. The FCC stated that, “for a BOC to demonstrate compliance with the nondiscriminatory standard of the Act, it must provide data for both its provision of FOC notices to competing carriers and the time it takes its retail operation to receive the equivalent of an FOC notice.”<sup>40</sup> The FCC concluded, “that the retail analogue of an FOC notice occurs when an order placed by the BOC’s retail operations is recognized as valid by its internal OSS.”<sup>41</sup> The FCC used the term “BOC” in its discussion of FOCs instead of the specific name of the BOC filing the application. U S WEST cannot argue that the FCC’s guidance did

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<sup>37</sup> *Application by BellSouth Corporation, et al. Pursuant to Section 271 of the Communications Act of 1934, as amended To Provide In-Region, InterLATA Services in Louisiana*, CC Docket No. 97-231, Memorandum Opinion and Order, FCC 97-17 (rel. Feb. 4, 1998), ¶ 35. *See also Application of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for the Provision of In-Region, InterLATA Services in Louisiana*, CC Docket No. 98-121, Memorandum Opinion and Order, FCC 98-271 (rel. Oct. 13, 1998), ¶ 120; *Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region InterLATA Services in Michigan*, CC Docket No. 97-137, Memorandum Opinion and Order, FCC 97-298, (rel. Aug. 19, 1997), ¶ 186; and *BellSouth South Carolina Order*, ¶ 122.

<sup>38</sup> U S WEST’s Opposition at 13.

<sup>39</sup> *Id.*

<sup>40</sup> *BellSouth South Carolina Order*, ¶ 126.

<sup>41</sup> *Id.*, ¶ 122 (footnote omitted).

not include U S WEST.

U S WEST's assertion that AT&T has failed to state the time and manner that U S WEST receives the retail equivalent of a FOC attempts to shift U S WEST's obligation to demonstrate compliance to AT&T.<sup>42</sup> It is U S WEST's burden to prove that it provides FOCs to CLECs in a nondiscriminatory manner. It is U S WEST that has the data on the time it takes its internal OSS to recognize an order placed by its retail operations as valid. Notwithstanding the fact that it is U S WEST's burden to provide such proof, it is AT&T's belief that U S WEST provides itself with the retail equivalent of a FOC in as little as a few seconds.

### **G. Terms and Conditions of the SGAT**

In its Opposition, U S WEST reaffirms its position that the SGAT need not provide terms and conditions that render the services and obligations contained therein to be legally and practically available.<sup>43</sup> This is directly contrary to common law contract principles, the Act and FCC rules.

An SGAT that does not make available services and impose obligations that are legally enforceable and practically available is of little use to a CLEC. A contract that is illegal or practically unenforceable has no effect.<sup>44</sup> In fact, in formulating its standard for SGATs to comply with Section 271, the FCC specifically acknowledged this principle:

Under Track B, the BOC must offer checklist items on terms such that a competitor may obtain these items if and when the competitor actually enters the local market. Thus, the standard for a Track B application is that the BOC must have a concrete and specific legal obligation to furnish the item upon request pursuant to its SGAT.<sup>45</sup>

U S WEST's view that the above standard for an SGAT is applicable only in the context of a 271 application is incorrect.

As noted by the Commission staff, the real value of an SGAT is to provide CLECs that otherwise do not have the time or resources to negotiate an interconnection agreement with

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<sup>42</sup> U S WEST's Opposition at 13, n. 10.

<sup>43</sup> U S WEST's Opposition at 18-19.

<sup>44</sup> See *Restatement (Second) of Contracts*, §33(2) and *Corbin on Contracts*, Revised Edition, Volume 2, Chapter 1, §5.32 page 176.

<sup>45</sup> *BellSouth South Carolina Order*, ¶ 81.

U S WEST a less time consuming, less expensive way to interconnect with U S WEST.<sup>46</sup> As the staff recognized, some CLECs are not able to go through the adversarial, laborious process U S WEST has required of AT&T and others to arrive at an arbitrated interconnection agreement. Implicit in this approach, however, is the CLEC's appropriate reliance on specific tenets, namely, that the SGAT complies with the requirements of the Act and FCC rules and that U S WEST is subject to well-defined and legally enforceable terms ensuring delivery of the services described in the SGAT. None of these tenets are met by the U S WEST SGAT.

Contrary to U S WEST's assertion, the conflicts and areas of ambiguity within the SGAT are fertile ground for protracted future disputes. Ineffective dispute resolution processes such as those proposed by U S WEST are worse than none at all, for they give the illusion that an effective remedy is available. By relegating all disputes to AAA arbitration, prohibiting the award of punitive damages, limiting U S WEST's liability, and not providing a full continuum of deadlines for resolution, U S WEST has stacked the deck against new entrants. Unlike a new competitor, U S WEST is not greatly burdened by prolonged dispute resolution proceedings. Delay allows U S WEST to maintain its competitive advantage in the local service market. Thus, the vigor with which U S WEST argues that all of the ambiguities and conflicts can be handled through the dispute resolution procedures in the SGAT is hardly surprising.<sup>47</sup> This position, however, is not acceptable to new entrants.

Indeed, an area of dispute is already apparent, based simply on comments on the SGAT from the Commission staff. An important concept relied on by the Commission staff in concluding that a CLEC adopting the SGAT would not be disadvantaged was the pick and choose provision. The FCC's pick and choose rule requires that interconnection or network elements be made available "without unreasonable delay."<sup>48</sup> As the Commission staff explained in its comments, a fundamental safeguard for a CLEC adopting the SGAT is the ability to "mix and match among the provisions of the different agreements approved by the Commission."<sup>49</sup>

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<sup>46</sup> Commission Staff's Comments on U S WEST's Statement of Generally Available Terms and Conditions, filed March 10, 1999, at 4.

<sup>47</sup> U S WEST's Opposition at 11.

<sup>48</sup> 47 C.F.R. § 51.809.

<sup>49</sup> Commission Staff's Comments on U S WEST's Statement of Generally Available Terms and Conditions, at 5-6.

However, by its terms, U S WEST's SGAT requires any CLEC to take the whole SGAT. There is no process other than protracted negotiation and arbitration whereby the "mixing and matching" of terms and conditions can take place. The FCC has stated this is inconsistent with the purpose of an SGAT.<sup>50</sup>

Finally, U S WEST attempts to minimize AT&T's concerns over specific contract terms by characterizing them as "valid contract terms" or "routine."<sup>51</sup> If the SGAT represented a freely negotiated contract among equals, as opposed to a unilateral contract by a monopoly with a CLEC, the terms in question might be viewed as valid and routine. However, as recognized by the Act, the FCC and the Arizona Commission, the imbalance in respective bargaining and economic positions between U S WEST and a CLEC make it imperative that great care be taken to ensure that the CLEC is not competitively disadvantaged. U S WEST is attempting to protect its dominant position in the market via the terms and conditions of the SGAT. Given the inequality in bargaining power under these circumstances, such business terms are neither "valid" nor "routine."

### III. CONCLUSION

AT&T requests that the Commission reject U S WEST's SGAT because it does not comply with the Telecommunications Act of 1996. Rejecting this non-compliant collection of terms and conditions will ultimately better serve the competitive local exchange carriers attempting to enter the local service market.

If the Commission is not inclined to reject U S WEST's SGAT, AT&T alternatively requests that the Commission adopt the staff recommendation allowing the SGAT to go into effect subject to the conditions outlined by staff which include: (1) the Commission's continuing authority under § 252(f)(4) to review and disapprove non-compliant sections of the SGAT; (2) a clear directive from the Commission that allowing the SGAT to take affect cannot be interpreted as approval for purposes of any filing by U S WEST under section 271; (3) that U S WEST cannot rely on the SGAT in the Section 271 case, and to the extent U S WEST chooses to do so, the Commission must review those SGAT provisions in the Section 271 case; (4) any future change to the SGAT must receive Commission review and approval; and (5) that U S WEST be

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<sup>50</sup> *BellSouth South Carolina Order*, ¶ 204.

required to file cost studies in support of any new rates contained in the SGAT.

RESPECTFULLY SUBMITTED this 18th day of March, 1999.

**AT&T COMMUNICATIONS OF  
THE MOUNTAIN STATES, INC. and  
TCG PHOENIX**

By: Joan S. Burke  
Joan S. Burke  
Osborn Maledon, P.A.  
2929 North Central Ave., 21<sup>st</sup> Floor  
Phoenix, AZ 85012-2794  
(602) 640-9356

Richard S. Wolters  
Maria Arias-Chapleau  
AT&T  
1875 Lawrence Street, Suite 1575  
Denver, Colorado 80202  
(303) 298-6741

ORIGINAL AND TEN COPIES of the foregoing  
hand-delivered for filing on March 18, 1999, to:

Docket Control  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, AZ 85007

ONE COPY of the foregoing  
hand-delivered on March 18, 1999, to:

Mr. Jerry Rudibaugh  
Chief Hearing Officer  
Hearing Division  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, AZ 85007

---

<sup>51</sup> U S WEST's Opposition at 19.

COPY of the foregoing mailed on March 18, 1999, to:

Vince C. DeGarlais  
Andrew D. Crain  
Charles W. Steese  
U S WEST Communications, Inc.  
1801 California Street, #5100  
Denver, CO 80202

Timothy Berg  
Janice Procter-Murphy  
Fennemore Craig  
3003 North Central Avenue, Suite 2600  
Phoenix, Arizona 85012-2913

Maureen Arnold  
U S WEST Communications, Inc.  
3033 North Third Street, Room 1010  
Phoenix, AZ 85012

Robert Munoz  
WorldCom, Inc.  
225 Bush Street, Suite 1900  
San Francisco, CA 94014

Scott Wakefield  
Deborah R. Scott  
Residential Utility Consumer Office  
2828 North Central Ave., #1200  
Phoenix, AZ 85004

Karen Johnson  
Penny Bewick  
Electric Lightwave, Inc.  
4400 NE 77<sup>th</sup> Ave.  
Vancouver, WA 98662

Michael M. Grant  
Gallagher and Kennedy  
2600 North Central Avenue  
Phoenix, AZ 85004-3020

Thomas L. Mumaw  
Snell & Wilmer L.L.P.  
One Arizona Center  
Phoenix, AZ 85004-0001

Mark Dioguardi  
Tiffany and Bosco, P.A.  
500 Dial Tower  
1850 North Central Avenue  
Phoenix, AZ 85004

Douglas G. Bonner  
Alexandre B. Bouton  
Swidler & Berlin, Chartered  
3000 K Street, N.W., Suite 300  
Washington, D.C. 20007

Donald A. Low  
Sprint Communications Company, L.P.  
8140 Ward Parkway 5E  
Kansas City, MO 64114

Joseph Faber  
Teleport Communications Group, Inc.  
1350 Treat Blvd., Suite 500  
Walnut Creek, CA 94596

Michael W. Patten  
Lex J. Smith  
Brown & Bain, P.A.  
P. O. Box 400  
Phoenix, AZ 85001-0400

Bill Haas  
Richard Lipman  
McLeod USA  
6400 C Street SW  
Cedar Rapids, IA 54206-3177

Charles Kallenbach  
American Communications Services, Inc.  
131 National Business Parkway  
Annapolis Junction, MD 20701

Carrington Phillip  
Fox Communications, Inc.  
1400 Lake Hearn Drive, N.E.  
Atlanta, GA 30319

Joyce Hundley  
United States Dept. of Justice  
Antitrust Division  
1401 H Street NW, Suite 8000  
Washington, DC 20530

Richard Smith  
Director of Regulatory Affairs  
Cox Communications  
2200 Powell Street, Suite 795  
Emeryville, CA 94608

Thomas H. Campbell  
Lewis and Roca  
40 North Central Avenue  
Phoenix, AZ 85004

Kath Thomas  
Brooks Fiber Communications  
1600 South Amphlett Blvd., #330  
San Mateo, CA 94402

Barry Pineles  
GST Telecom, Inc.  
4001 Main Street  
Vancouver, WA 98663

Thomas F. Dixon  
MCI Telecommunications Corporation  
707 17<sup>th</sup> Street, #3900  
Denver, CO 80202

Rex Knowles  
NEXTLINK  
111 E. Broadway, Suite 1000  
Salt Lake City, UT 84111

  
Pauline J. Campbell