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COMMISSIONER-CHAIRMAN  
TONY WEST  
COMMISSIONER  
CARL J. KUNASEK  
COMMISSIONER



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STUART R. BRACKNEY  
ACTING EXECUTIVE SECRETARY

ARIZONA CORPORATION COMMISSION

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DATE: March 19, 1999

DOCUMENT CONTROL

DOCKET NO.: T-01051B-99-0068

TO ALL PARTIES:

Enclosed please find the recommendation of Hearing Officer Barbara M. Behun. The recommendation has been filed in the form of an Order on:

U S WEST COMMUNICATIONS, INC.  
(SGAT)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Hearing Officer by filing an original and ten (10) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00** p.m. on or before:

MARCH 29, 1999

The enclosed is NOT an order of the Commission, but a recommendation of the Hearing Officer to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Working Session and Open Meeting to be held on:

MARCH 30, 1999 AND MARCH 31, 1999

For more information, you may contact Docket Control at (602) 542-3477 or the Hearing Division at (602) 542-4250.

Arizona Corporation Commission

DOCKETED

MAR 19 1999

*Stuart R. Brackney*  
STUART R. BRACKNEY  
ACTING EXECUTIVE SECRETARY

DOCKETED BY	JM
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BEFORE THE ARIZONA CORPORATION COMMISSION

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JIM IRVIN  
COMMISSIONER-CHAIRMAN  
TONY WEST  
COMMISSIONER  
CARL J. KUNASEK  
COMMISSIONER

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

DOCKET NO. T-01051B-99-0068

DECISION NO. \_\_\_\_\_

**ORDER**

Open Meeting  
March 30 and 31, 1999  
Phoenix, Arizona

**BY THE COMMISSION:**

On February 5, 1999, U S WEST Communications, Inc. ("U S WEST") filed with the Arizona Corporation Commission ("Commission") a Statement of Generally Available Terms and Conditions ("SGAT") pursuant to Section 252(f) of the Telecommunications Act of 1996 ("Act"), for the purpose of fulfilling its obligations under Sections 251, 252 and 271 of the Act and applicable rules and regulations. According to U S WEST, the SGAT sets forth the terms, conditions and pricing under which U S WEST will offer and provide to any requesting competitive local exchange carrier ("CLEC") network interconnection, access to unbundled network elements, ancillary services, and telecommunications services available for resale. The SGAT, if authorized, provides CLECs an alternative to negotiating an individual interconnection agreement with U S WEST or adopting an existing approved interconnection agreement between U S WEST and another CLEC pursuant to Section 252(i) of the Act.

On February 16, 1999, AT&T Communications of the Mountain States, Inc. and TCG-Arizona (collectively "AT&T") filed a Motion to Reject U S WEST's SGAT. On February 19, 1999, Sprint Communications Company L.P. ("Sprint") filed a Response to U S WEST's SGAT, generally agreeing with and joining AT&T's Motion. On February 19, 1999, e-spire™ Communications, Inc. ("e-spire™") and MCI WorldCom, Inc. ("MCIW") joined in AT&T's Motion. On February 25, 1999, Electric Lightwave, Inc. ("ELI") joined in AT&T's Motion.

1 AT&T's Motion alleged that U S WEST's SGAT failed to comply with the Act and the  
2 Federal Communications Commission's ("FCC") implementing rules and regulations, and in  
3 particular the requirements of Sections 251, 252(d) and 271 of the Act, and should be rejected.  
4 AT&T claimed that although there has not been sufficient time to analyze every provision of the  
5 SGAT, there are a number of obvious deficiencies, including, the absence of a U S WEST obligation  
6 to provide combinations of network elements; unlawful resale restrictions; prices that fail to comply  
7 with Section 252(d)'s cost-based standards; failure to provide for nondiscriminatory interconnection  
8 and network elements; and other unlawful contractual restrictions. AT&T requested that the  
9 Commission reject the SGAT and order U S WEST to refile a compliant SGAT.

10 On February 26, 1999, Interstate Wireless, Inc. dba Handy Page ("Interstate") filed a Motion  
11 to reject the SGAT. Interstate claimed that the SGAT discriminates against carriers not party to the  
12 SGAT, that there is a disparity between different types of carriers. Interstate requested that the  
13 Commission set a hearing open to all classes and types of carriers that are covered by Interconnection  
14 Agreements, to establish an SGAT applicable to all carriers, including CLECs, and cellular, PCS, and  
15 paging service providers.

16 On March 8, 1999, U S WEST filed an Opposition to AT&T's Motion. U S WEST stated  
17 that the SGAT is an option available for obtaining interconnection, unbundled network elements,  
18 ancillary services and resale from U S WEST. U S WEST stated that its "ability to meet the  
19 requirements of Section 271, or its ability to rely on its SGAT to support its application, is not at  
20 issue in this docket." ("Opposition, p. 2, l. 17-18.) U S WEST defended its SGAT, claiming both  
21 that it is necessarily general, not tailored to a particular carrier, and that uncertainty exists in the  
22 contract so that CLECs may have some input and control over the provision of service.

23 On March 10, 1999, the Commission's Utilities Division Staff ("Staff") filed Comments on U  
24 S WEST's SGAT. Staff indicated that it has been unable to review the SGAT in its entirety. Staff  
25 recommended that the Commission allow the SGAT to take effect without Commission approval;  
26 that the Commission should retain authority under Section 252(f)(4) to continue review of the SGAT;  
27 that allowing the SGAT to take effect should not be interpreted as approval for Section 271 purposes,  
28

1 as approval for Section 271 purposes will be determined within the context of U S WEST's pending  
2 Section 271 application; that the SGAT should be considered modified to the extent necessary to  
3 comply with prior or future Commission Decisions; that any future change and request to withdraw  
4 the SGAT should be subject to Commission review and approval; and that U S WEST should be  
5 required to file cost studies in support of any new rates contained in the SGAT so that the  
6 Commission can determine whether the rates comply with Section 252(d) of the Act.

7 On March 18, 1999, AT&T filed a Reply, restating that the SGAT should be rejected. In the  
8 alternative, AT&T requested that Staff's recommendations be adopted.

9 The SGAT cannot be completely and thoroughly reviewed in the time period permitted under  
10 the Act. Therefore, subject to the conditions stated below, we will permit the SGAT to take effect,  
11 while continuing our review of it. Our action in permitting the SGAT to take effect, as modified  
12 below, shall not be interpreted as approval of the SGAT for Section 271 purposes. Any review and  
13 approval of an SGAT for Section 271 purposes shall be conducted within the context of U S WEST's  
14 pending Section 271 application docket. U S WEST will be required to file cost studies in support of  
15 any new rates contained in the SGAT, for Commission determination whether the rates comply with  
16 Section 252(d) of the Act.

17 The SGAT shall be considered modified to the extent necessary to comply with the following:

- 18 The Act
- 19 Applicable Federal and State rules and regulations and appellate decisions now in  
effect, and as are in effect throughout the contract period
- 20 Applicable prior and future Commission Decisions
- 21 The United States Supreme Court's Ruling in *AT&T v. Iowa Utilities Board*, No. 97-  
826, Slip Op. (U.S. Jan 25, 1999)

22 For example, the United States Supreme Court has upheld the FCC's interpretation of the "pick and  
23 choose" rule. Therefore, the SGAT shall be subject to the "pick and choose" rule.

24 \* \* \* \* \*

25 Having considered the entire record herein and being fully advised in the premises, the  
26 Commission finds, concludes, and orders that:

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**FINDINGS OF FACT**

1. On February 5, 1999, U S WEST filed an SGAT.
2. On February 16, 1999, AT&T filed a Motion to Reject the SGAT, which was joined by Sprint, e-spire™, MCIW and ELI.
3. On February 26, 1999, Interstate filed a Motion to Reject the SGAT.
4. On March 8, 1999, U S WEST filed an Opposition to AT&T's Motion.
5. On March 10, 1999, Staff filed Comments on U S WEST's SGAT.
6. On March 18, 1999, AT&T filed a Reply.
7. The parties and the Commission do not have sufficient time to completely and thoroughly review the SGAT within the mandated time-period.
8. The Commission will permit the SGAT to take effect, as modified by:
  - The Act
  - Applicable Federal and State rules and regulations and appellate decisions now in effect, and as are in effect throughout the contract period
  - Applicable prior and future Commission Decisions
  - The United States Supreme Court's Ruling in *AT&T v. Iowa Utilities Board*, No. 97-826, Slip Op. (U.S. Jan 25, 1999)
9. The Commission retains authority to continue review of the SGAT.
10. U S WEST must file cost studies in support of any new rates contained in the SGAT for Commission determination whether the rates comply with Section 252 (d) of the Act.
11. The Hearing Division is directed to issue a procedural schedule in furtherance of the review of the SGAT.

**CONCLUSIONS OF LAW**

1. U S WEST is a public service corporation within the meaning of Article XV of the Arizona Constitution.
2. U S WEST is an ILEC within the meaning of 47 U.S.C. § 252.
3. The Commission has jurisdiction over U S WEST and the subject matter of the Petition.
4. The Commission's resolution of the issues pending herein is just and reasonable, consistent with the Act, the applicable FCC Rules and Order, the Interconnection and Arbitration

1 Rules, and is in the public interest.

2 **ORDER**

3 IT IS THEREFORE ORDERED that the SGAT shall be permitted to take effect, as modified  
4 to the extent necessary to comply with the following:

- 5 The Telecommunications Act of 1996
- 6 Applicable Federal and State rules and regulations and appellate decisions now in  
effect, and as are in effect throughout the contract period
- 7 Applicable prior and future Commission Decisions
- 8 The United States Supreme Court's Ruling in *AT&T v. Iowa Utilities Board*, No. 97-  
826, Slip Op. (U.S. Jan 25, 1999)

9 IT IS FURTHER ORDERED that Commission action in this docket shall not be interpreted as  
10 approval of the SGAT for the purpose of compliance with Section 271 of the Telecommunications  
11 Act of 1996, as approval for Section 271 purposes will be determined within the context of U S  
12 WEST's pending Section 271 application.

13 IT IS FURTHER ORDERED that the Commission retains jurisdiction to continue to review  
14 the SGAT.

15 IT IS FURTHER ORDERED that U S WEST shall file cost studies in support of any new  
16 rates contained in the SGAT for Commission determination whether the rates comply with Section  
17 252(d) of the Act.

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IT IS FURTHER ORDERED that the Hearing Division shall establish a procedural schedule consistent with this Decision.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

COMMISSIONER-CHAIRMAN

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, STUART R. BRACKNEY, Acting Executive Secretary of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this \_\_\_\_ day of \_\_\_\_\_, 1999.

STUART R. BRACKNEY  
ACTING EXECUTIVE SECRETARY

DISSENT \_\_\_\_\_  
BMB:bbs

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