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**LEWIS
AND
ROCA**
LLP
LAWYERS

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BEFORE THE ARIZONA CORPORATION COMMISSION

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**RENZ D. JENNINGS
CHAIRMAN**

Arizona Corporation Commission
REGISTERED

**MARCIA WEEKS
COMMISSIONER**

1996

**CARL J. KUNASEK
COMMISSIONER**

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IN THE MATTER OF THE PETITION OF TCG)
PHOENIX FOR ARBITRATION PURSUANT)
TO SECTION 252 (b) OF THE)
TELECOMMUNICATIONS ACT OF 1996)
TO ESTABLISH AN INTERCONNECTION)
AGREEMENT WITH US WEST)
COMMUNICATIONS, INC. PURSUANT)
TO SECTION 252 (b) OF THE)
TELECOMMUNICATIONS ACT OF 1996)

DOCKET # U-3016-96-402
DOCKET # E-1051-96-402

**EXCEPTIONS OF MCIMETRO ACCESS TRANSMISSION SERVICES INC.,
TO PROPOSED OPINION AND ORDER**

MCImetro Access Transmission Services, Inc. hereby offers the following
exception to the recommended Opinion and Order in the above proceeding:

1. Section 3 (a) Prices for Unbundled Elements, page 12

The Telecommunications Act of 1996 ("the Federal Act") requires state
Commissions to establish "just and reasonable" rates for unbundled network elements
that are nondiscriminatory and based on the cost of providing that element without
reference to a rate of return or any other rate-based proceeding.¹ The rates may
include a reasonable profit.²

¹ See 47 U.S.C. 252 (d)(1)(A)

² See 47 U.S.C. 252(d)(1)(B)

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2 While MCImetro understands the strict time lines imposed by the Federal Act on
3 Commissions to resolve arbitration petitions and commends the Commission for
4 trying to meet those deadlines, those time difficulties do not alleviate a Commission
5 of its duty to establish pricing that complies with either the Federal Act or its own
6 Interconnection Rules. The method that has been chosen - averaging the proposed
7 prices of the participants - fails to establish rates that meet the requirements of the
8 Federal Act and if applied to other proceedings will lead to the adoption of
9 discriminatory rates.

10 In this proceeding, TCG proposed that the unbundled loops should be priced at
11 the proxy level set for Arizona by the Federal Communications Commission of
12 \$12.85 and that the price include the costs of conditioning the loops. US West
13 proposed a rate of \$30.67 for an unbundled loop. By averaging the two proposals, the
14 arbitrator has proposed an interim rate of \$21.67 for unbundled loops. The averaging
15 of proposed rates cannot lead to prices that are just and reasonable and based on the
16 cost of providing that service. In addition, the process of averaging could lead to the
17 adoption of discriminatory rates in other proceedings.

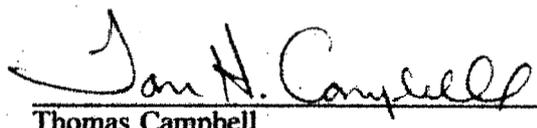
18 For example, if a new entrant proposed a loop rate \$1 lower than the FCC proxy
19 and that rate was averaged with US West's proposed rate, the new entrant would
20 receive a rate that would be 50 cents less than that awarded TCG. On the other hand,
21 if the new entrant proposed a rate higher than the FCC proxy or if US West proposed
22 a rate \$1 higher than its current \$30.67, the new entrant would be required to pay a
23 rate that would be 50 cents higher than TCG. The possibility for such diverse,
24 unsubstantiated rates for the same unbundled loop element or facility is
25 discriminatory and amounts to a barrier to entry.
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In addition, the averaging of proposed rates creates incentives for the new entrants and incumbents to propose rates that do not reflect the reality of the marketplace. For example, averaging creates an incentive for new entrants to submit unrealistically low offers while giving the incumbent an incentive to boost its proposed rates as high as possible. The net effect is a rate that does not reflect the economic realities of the marketplace. The most likely scenario is that if the rates are too high, new entrants will not enter the marketplace until a permanent pricing proceeding has been completed. The presence of a "true-up" does not necessarily cure the defects of averaging proposals to establish interim rates. If a new entrant fears that they will have to pay more than the averaged amount, they may pass on or delay entering the market until a more stable environment has been established, thus delaying the advent of competition.

In order to insure that competition in Arizona is not unnecessarily delayed while a permanent cost proceeding is pending, MCImetro urges this Commission to reject the "averaged rates" set forth in the Proposed Order and adopt the original rates proposed by TCG until permanent rates are established.

Respectfully submitted,



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9 ATTORNEYS FOR MCI METRO ACCESS
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11 Original and ten (10) copies
12 of the foregoing hand-delivered
13 this 28th day of October, 1996, to:

14 Docket Control - Utilities Division
15 Arizona Corporation Commission
16 1200 W. Washington Street
17 Phoenix, Arizona 85007

18 COPY of the foregoing hand-delivered
19 this 28th day of October, 1996, to:

20 Gary Yaquinto, Director
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25 _____
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