BEFORE THE ARIZONA CORPORATION COMMISSION

CARL J. KUNASEK  
CHAIRMAN  
JIM IRVIN  
COMMISSIONER  
WILLIAM A. MUNDELL  
COMMISSIONER

IN THE MATTER OF INVESTIGATION INTO U S WEST COMMUNICATIONS, INC.'S COMPLIANCE WITH CERTAIN WHOLESALE PRICING REQUIREMENTS FOR UNBUNDLED NETWORK ELEMENTS AND RESALE DISCOUNTS.

PROCEDURAL ORDER

BY THE COMMISSION:

On January 28, 2000, the Arizona Corporation Commission ("Commission") Staff filed a Motion to Reopen Docket or Open a New Sub-Docket ("Motion"). On February 7, 2000, AT&T Communications of the Mountain States, Inc. and TCG Phoenix (collectively, "AT&T") filed a Response to Staff's Motion. On February 8, 2000, Cox Arizona Telcom L.L.C. ("Cox") filed Comments on Staff's Motion. On February 14, 2000, U S WEST Communications, Inc. ("U S WEST") filed a Response to Staff's Motion. On February 15, 2000, MCI WorldCom, Inc. ("MCI") filed a Response to Staff's Motion. On February 18, 2000, Sprint Communications Company, L.P. ("Sprint") filed a Joinder in Comments of AT&T and MCI.

AT&T, Cox, MCI, and Sprint all supported Staff's Motion. U S WEST also supported the Motion but did request a new docket be established. As a result, the above-referenced new docket was opened.

Our March 30, 2000 Procedural Order ordered that all parties shall file on or before 4:00 p.m. on April 21, 2000 recommendations for additional phases and the corresponding issues along with any deadlines that need to be met as a result of a specific legal requirement.

Our March 30, 2000 Procedural Order further ordered that all parties shall file responsive comments to the April 21, 2000 recommendations on or before 4:00 p.m. on May 5, 2000.

In its recommendations, Staff reiterated its position that the Commission should examine issues raised as a result of: 1) the United States Supreme Court’s decision in AT&T v. Iowa Utilities Board, 119 S.Ct. 721 (1999); 2) the District Court’s decision on the Commission’s arbitration order
regarding the costs of resold retail and wholesale services, \textit{U S WEST v. Jennings}, 46 F. Supp.2d 1004 (D.Ariz. 1999); and 3) the Federal Communications Commission’s ("FCC") order lifting the FCC’s previous stay of the FCC’s rule requiring geographic deaveraging of wholesale rates and order requiring U S WEST to establish rates for line sharing.

According to Staff, the Commission has not yet undertaken an examination of unbundled network element ("UNE") and interconnection rates established by it on May 5, 1998 for their compliance with the reinstated pricing provisions of the Telecommunications Act of 1996 under \textit{AT&T v. Iowa Utilities Board}, 119 S.Ct. 721 (1999) nor issues arising from the FCC’s UNE Remand Order which was released on November 5, 1999 which addressed issues remanded to it in \textit{AT&T v. Iowa Utilities Board}. According to Staff, the FCC concluded that the following network elements must be unbundled:

1. the loop including high capacity lines, xDSL-capable loops, dark fiber and inside wire
2. subloops
3. network interface devices ("NID")
4. circuit switching
5. packet switching
6. interoffice transmission facilities including shared transport where unbundled local circuit switching is provided
7. signaling and call-related databases such as Line Information, Toll Free Calling, Number Portability, Calling Name, Operator Services/directory Assistance, Advanced Intelligent Network ("AIN"), and AIN platform and architecture
8. operational support systems.

Staff supports addressing all issues arising from the FCC’s UNE Remand Order in Phase II of this proceeding.

As Phase I has been designated to establish “interim” geographically deaveraged UNE rates to comply with Section 51.507(f) of the FCC’s rules and regulations, Staff also advocated the establishment of permanent geographically deaveraged UNE and other wholesale rates, as appropriate, should be undertaken in Phase II of this proceeding.
Staff stated that rates in addition to the UNE rates which should be reviewed for compliance with the reinstated FCC rules include those established by the Commission for interconnection, reciprocal compensation, including transport and termination, and the wholesale discounts. Staff stated that the review of U S WEST’s existing wholesale rates for compliance with the reinstated FCC rules should be done within the context of Phase II of this proceeding.

Additionally, Staff stated that the FCC’s Line Sharing Order amended its unbundling rules to require incumbent LECs to provide unbundled access to a new network element, the high frequency portion of the local loop. Staff recommends that these issues also be included in Phase II of this proceeding.

The Arizona District Court in U S WEST v. Jennings, 46 F.Supp 2d 1004 (D.Ariz. 1999), remanded several issues to the Commission for reexamination. Several issues were appealed to the Ninth Circuit Court of Appeals. However, Staff stated that the issues not being addressed by the Ninth Circuit which the Commission should examine at this point include: 1) the need to establish additional resale discount rates, after considering the range of cost savings for different categories of services, 2) the customer transfer charge 3) an appropriate compensation mechanism for Internet Service Providers and 4) UNE platform rates.

Staff also recommends that the Commission review the new rates contained in U S WEST’s revised Statement of Generally Available Terms and Conditions ("SGAT") in this proceeding. Staff stated that this is consistent with Decision No. 61624, which allowed U S WEST’s SGAT to take effect pending further review by the Commission pursuant to Section 252(f)(4) of the 1996 Act. AT&T and MCI also support this review of the new rates contained in the SGAT. Additionally, Staff stated that there are also many non-cost provisions in the SGAT that have not yet been reviewed by the Commission for compliance with the 1996 Act. Staff therefore requests that the Commission review both the cost and non-cost provisions of the SGAT for compliance with the 1996 Act within Phase II.

Staff also opined that this proceeding should also have a Phase III to cover other issues such as issues raised in the FCC’s Advanced Services First Report and Order (Collocation) and a review of both the cost and non-cost provisions of the SGAT, to the extent they have not already been reviewed.
in Phase II of this proceeding.

    On April 21, 2000, AT&T, MCI WorldCom, and Sprint ("Joint Commentors") state that the
Commission must establish cost-based recurring and nonrecurring charges for purchasing combined
network elements. They also argue that the Commission must also establish appropriate charges for
obtaining separate network elements and combining them, whether the combining is performed by U
S WEST at the request of the CLEC or the CLEC elects to combine the elements itself.

    Under U S WEST v. Jennings, the associated appeal, and eliminating any non-cost issues, the
Joint Commentors state the only two issues before the Commission for consideration are the
customer transfer charge and the resale discount.

    The Joint Commentors set forth the different FCC orders that they assert that the Commission
should address: the Advanced Services Order, the UNE Remand Order, and the Line Sharing Order.
Additionally, the Joint Commentors state that the SGAT contains a number of rate elements that are
under development and some rates have not been verified as based on forward-looking costs.

    The Joint Commentors also opine that the Commission must order and establish cost-based
rates for situations where a CLEC has only one point of interface and that CLECs should not be
charged for tandem transmission rates between the host and remote.

    The Joint Commentors recommend that the Commission review the costs of the loop,
including the high frequency portion of the loop, switching and transport in Phase II. Additionally, as
part of Phase II, the Commission should establish rates for the new network elements identified in the
UNE Remand Order and the direct costs identified in the Line Sharing Order.

    The Joint Commentors state that a third phase can review collocation rates, and a fourth phase
the resale discount and any remaining costs issues.

    On April 24, 2000, Covad Communications Company ("Covad") and New Edge Networks
("New Edge") submitted their recommendations regarding additional issues. Covad and New Edge
believe that the Commission should price the following items and elements: line sharing, sub-loop
elements, loops, dark fiber, packet switching UNEs, and U S WEST's SGAT.

    Covad and New Edge suggest that line sharing costs be addressed as quickly as possible in
Phase II given the anticipated demand for line sharing and its rapid implementation.
On April 21, 2000, Rhythms Links, Inc. ("Rhythms") filed comments that generally concur with the AT&T list of issues, but Rhythms places the highest priority on three issues: loop pricing, including loop conditioning pricing, line sharing pricing, and sub-loop pricing.

On April 21, 2000, NEXTLINK Arizona, Inc. supports and joins in the Recommendation for Phases and Corresponding Issues filed by AT&T, TCG Phoenix, MCI WorldCom, and Sprint.

On April 21, 2000, Electric Lightwave, Inc. ("ELI") joined in AT&T and TCG Phoenix's list of additional costing issues.

On April 24, 2000, US WEST filed its comments for the scope of the proceeding. In the second phase, US WEST stated that the Commission should address the rates for line sharing and for new network elements identified in the FCC's Third Report and Order. The Commission could also address matters raised by FCC orders issued since the initial cost docket.

US WEST also argued that the issues raised by the remand of US WEST v. Jennings should be addressed in the Commission docket that was created for that matter as a different group of parties appeared in that proceeding.

US WEST also stated that issues relating to the 271 Docket should be addressed in the SGAT docket that has already been created.

On May 5, 2000, US WEST recommended that the next phase of this docket should be divided into three parts to address the following three groups of related topics: Part I: DS1 and DS3 capable loops, shared transport, dark fiber, custom routing; Part II: Line Sharing and collocation; Part III: Signaling and call related database and resolution of all remaining SGAT issues not already resolved in the 271 docket.

In its May 5, 2000 comments, US WEST also sets forth its responses to individual issues raised by the Interexchange carriers.

On July 18, 2000, the Commission issued a decision on Phase I of this matter. Also on July 18, 2000, the 8th Circuit Court of Appeals issued Decision No. 96-3321 in Iowa Utilities Board, et al v. Federal Communications Commission and United States of America.

As a result, it is appropriate for the parties to comment on any recommended changes in issues/timeframes as a result of the recent Court of Appeals Decision referenced above.
IT IS THEREFORE ORDERED that all parties shall file on or before 4:00 p.m. on August 4, 2000 any recommended changes in issues/timeframes as a result of the recent Court of Appeals Decision referenced above.

IT IS FURTHER ORDERED that any responsive comments to the August 4, 2000 recommendations shall be filed on or before 4:00 p.m. on August 18, 2000.

IT IS FURTHER ORDERED that the Arbitrator(s) may rescind, alter, amend, or waive any portion of this Procedural Order either by subsequent Procedural Order or by ruling at arbitration.

DATED this 24th day of July, 2000.

JERRY L. RUDIBAUGH
CHIEF ADMINISTRATIVE LAW JUDGE

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