DOCKET NO. T-00000A-00-0194

QWEST CORPORATION'S MOTION FOR RECONSIDERATION OF THE PROCEDURAL ORDER ISSUED DECEMBER 14, 2000

I. INTRODUCTION

Qwest Corporation ("Qwest"), submits this motion requesting the Arbitrator to reconsider part of the Procedural Order issued December 14, 2000 ("Procedural Order"). Specifically, Qwest seeks reconsideration of the Arbitrator's ruling that Phase II of this proceeding shall include a review of whether the rates the Commission established for unbundled network elements ("UNEs") in Decision No. 60635 comply with the FCC's pricing rules. As demonstrated below, the Commission already has determined that the UNE rates it established in Decision No. 60635 are consistent with the FCC's pricing requirements. Accordingly, the review of those rates that the Arbitrator has ordered in this docket would be duplicative and would improperly prolong Phase II and impose substantial, unnecessary burdens on the Commission and the parties.

The Order requiring a review of the UNE rates from Decision No. 60635 rests on the Arbitrator's conclusion that "[i]t appears that the Commission has not itself determined that the UNE rates it set in Decision No. 60635 comply with FCC pricing rules." Procedural Order at 2,
That conclusion is incorrect. A review of Decision No. 60635 clearly demonstrates that the Commission evaluated the requirements of the FCC's pricing rules and concluded that the UNE rates it ordered comply with those requirements. The decision is replete with references to the FCC's pricing rules, and the Commission's Conclusions of Law deliberately recite the FCC's pricing methodology as the basis for the UNE rates: "The prices for unbundled network elements are intended to recover the costs of a forward-looking, least cost, efficient network, not embedded costs." Decision No. 60635, Conclusion of Law No. 9 (emphasis added).

The Commission's conclusions that the UNE rates from Decision No. 60635 are consistent with the FCC's pricing rules were echoed by Commission Staff in the appeal of those rates to the United States District Court for the District of Arizona. In that appeal, Staff emphatically defended the UNE rates as being fully consistent with the FCC's pricing rules, including the FCC requirement that prices be based upon total element long run incremental costs ("TELRIC"). Moreover, the federal district court that decided the appeal expressly concluded that the Commission had determined the UNE price for the 2-wire unbundled loop by applying the FCC's TELRIC methodology. U S WEST Communications, Inc. v. Jennings, 46 F. Supp. 2d 1004, 1012 (D. Ariz. 1999).

These statements and conclusions demonstrate that there is no need to conduct a review of the existing UNE rates to determine if they comply with the FCC's pricing rules. The Commission, the Staff, and the federal district court already have conducted that review, and they have concluded uniformly that the rates meet the FCC's requirements. In addition to being unnecessary, a review of the UNE rates from Decision No. 60635 would substantially expand the
size and scope of this proceeding and would significantly delay the date by which the
Commission could conclude Phase II. The parties would have to create new cost studies and
prepare extensive new testimony, all of which would require several months to complete. Under
these circumstances, the hearing could not realistically be completed before next summer.

For these reasons and the reasons set forth below, Qwest respectfully requests that the
Arbitrator reconsider the portion of the Procedural Order that includes in Phase II a review of the
UNE rates from Decision No. 60635.

Alternatively, if the Arbitrator adheres to her initial view that the UNE rates should be
revisited, Qwest requests that the Arbitrator adopt the approach taken recently by a Hearing
Commissioner in a similar proceeding before the Colorado Commission. As described below, in
that cost proceeding, the Hearing Commissioner ruled that the rates from the Colorado
Commission's generic cost docket order issued in 1997 are "presumptively valid," but that the
competitive local exchange carriers ("CLECs") will have the opportunity to make a prima facie
showing that the rates are not correct. If the Commission were to follow that approach in this
docket, it would have the proper effect of giving weight to the UNE rates from Decision 60635,
avoiding unnecessary duplication of the substantial time and resources that the Commission and
the parties invested in the earlier docket, and allowing the CLECs an opportunity to present their
contentions that some rates are incorrect. Accordingly, if the Arbitrator decides that the
Commission should revisit UNE rates to determine if they comply with the FCC's pricing rules,
any reconsideration should be consistent with the procedures recently adopted in the Colorado
order.
II. DISCUSSION

A. The Commission, the Staff, and a Federal District Court have Determined that the UNE Rates from Decision No. 60635 Comply with the FCC’s Pricing Rules.

A brief review of the FCC’s pricing rules, the evidence presented in Docket No. U-3021-96-448 et al., the Commission’s reasoning in Decision No. 60635, the Staff’s representations to a federal judge, and the federal court’s ruling affirming one of the critical UNE rates leaves no doubt that contrary to the statement in the Procedural Order, the Commission already has determined that the existing UNE rates comply with the FCC’s requirements and that another review of those rates would be duplicative and wasteful.

On August 8, 1996, the FCC issued its First Report and Order implementing the local competition provisions of the Telecommunications Act of 1996 (“the Act”). The First Report and Order includes provisions for pricing interconnection services and UNEs that are intended to implement the requirement in section 252(d)(1) of the Act that rates be "just and reasonable," "based on cost," and "nondiscriminatory." At the heart of the FCC’s pricing rules is the requirement that state commissions set prices based on "forward-looking long-run economic cost." First Report and Order ¶ 672 (emphasis added). According to the FCC, this requirement means that prices must be "based on the TSLRIC of the network element, which we will call Total Element Long Run Incremental Cost (TELRIC), and will include a reasonable allocation of forward-looking joint and common costs." Id. In adopting this pricing methodology, the FCC reasoned that an approach "based on forward-looking, economic costs best replicates, to the extent possible, the conditions of a competitive market." First Report and Order ¶ 679.

To determine the forward-looking costs that are to be used in a TELRIC analysis, the FCC adopted a "scorched node" approach that calculates costs based on the use of an incumbent local exchange carrier's ("ILEC's") existing wire centers:

We, therefore, conclude that the forward-looking pricing methodology for interconnection and unbundled network elements should be based on costs that assume that wire centers will be placed at the incumbent LEC's current wire center locations, but that the reconstructed local network will employ the most efficient technology for reasonably foreseeable capacity requirements.

First Report and Order ¶ 685. The FCC also specifically rejected the use of an ILEC's embedded costs to determine the rates for interconnection services and UNEs. First Report and Order ¶ 705.²

Consistent with the FCC's requirements, the UNE cost studies that the parties presented in Docket No. U-3021-96-448 et al. were based on TELRIC. As the "starting point" for determining the cost of UNEs, the Commission relied on the Hatfield model that AT&T Communications and MCImetro Access Transmission Services presented. Decision No. 60635 at 6-7. AT&T's and MCI's witnesses emphasized that the Hatfield model complies with TELRIC and the FCC's pricing rules. For example, AT&T witness, R. Glen Hubbard, testified that "[t]he Hatfield model meets both the criteria of economically efficient pricing principles and the

² The FCC's pricing rules were stayed and eventually vacated by the United States Court of Appeals for the Eighth Circuit on jurisdictional grounds. See Iowa Utils. Bd. v. FCC, 120 F.3d 753 (8th Cir. 1997). However, in AT&T Corp. v. Iowa Utilities Bd., 525 U.S. 366 (1999), the United States Supreme Court reversed the Eighth Circuit's ruling that the FCC had exceeded its jurisdiction in promulgating the pricing rules, and it remanded the case to the Eighth Circuit for a review of the merits of the rules. On remand, the Eighth Circuit vacated several of the pricing rules on the grounds that they were not consistent with the Act. Iowa Utils. Bd. v. FCC, 219 F.3d 744 (8th Cir. 2000). However, the Eighth Circuit later stayed its order vacating the pricing rules pending another potential review by the Supreme Court. As Qwest demonstrated in its response to Staff's Motion for Clarification of Procedural Order, the parties in Docket No. U-3021-96-448 et al. presented cost studies that were based on the FCC's pricing rules, including the FCC's requirement of a TELRIC pricing methodology, even though the rules were not in effect at the time of the docket. See Qwest Corporation's Response to Staff's Motion for Clarification of Procedural Order and for Extension of the deadline for Filing Testimony at 3-5.
criteria set forth by the FCC." See Direct Testimony of R. Glen Hubbard at 56 lines 3-13.
(Docket Nos. U-3021-96-448 et. al.); see also Direct Testimony of Stephen E. Siwek at 4-5
(Docket Nos. U-3021-96-448, et. al.) ("The methodology underlying the Hatfield Model fully
implements the definition of TELRIC adopted by the FCC."); Direct Testimony of R. Glen
Hubbard at 46 (Docket Nos. U-3021-96-448 et. al.) ("Whether or not the FCC Order continues to
be stayed, the methodology adopted by the FCC largely is consistent with the economic
principles I have described in this testimony. The Commission thus may safely adopt AT&T's
proposals, secure in the knowledge that they are consistent with the FCC Order if it is upheld and
consistent with proper economic theory. .").

Throughout Decision No. 60635, the Commission describes the TELRIC-based evidence
upon which it based its rate determinations and explains how its determinations comply with the
FCC's pricing rules. The Commission summarizes this overall compliance with the FCC's rules
in Conclusion of Law No. 9: "The prices for unbundled network elements are intended to
recover the costs of a forward-looking, least cost, efficient network, not embedded costs."
Decision No. 60635 at 39. Similarly, in Conclusion of Law No. 6, the Commission expressly
states that its decision is consistent with the FCC's rules, leaving no doubt that the Commission
determined that the UNE rates it ordered comply with the FCC's pricing requirements: "The
Commission's resolution of the issues pending herein is just and reasonable, consistent with the
Act, the FCC Order and Rules, the Commission's Rules, and all applicable law, and is in the
public interest." Decision No. 60635 at 39 (emphasis added). At other places in its decision, the
Commission uses language and rationales from the FCC's pricing rules to explain its UNE
pricing decisions:
At page 5 of Decision No. 60635, the Commission states that "[t]he unbundled loop prices are based upon a forward-looking, least cost, efficient network, in order to stimulate economic efficiency." (emphasis added)

In discussing the depreciation lives to use for determining UNE rates, the Commission states that it is "determining the appropriate depreciation lives to be used in determining the costs of a forward-looking, least cost, efficient network consistent with the Act, Commission rules, and all other applicable law." Decision No. 60635 at 10 (emphasis added).

In addressing the appropriate level of overhead expenses to include in the UNE rates, the Commission observed that "[t]he FCC anticipated that common costs related to elements would be less than common costs associated with TSLRIC." Decision No. 60635 at 13.

Discussing the appropriate network design to assume for the purpose of establishing UNE rates, the Commission concluded that "an existing system built and reinforced over time would use multiples of the sheath mileage necessary in a forward-looking, least cost, efficient network." Decision No. 60635 at 15 (emphasis added).

The Commission rejected the fill factors that U S WEST proposed for the feeder network that would underlie the UNE rates, stating that "the actual fill rate of the U S WEST network is not appropriate with a forward-looking, least cost, efficient network." Consistent with the FCC's pricing rules, the Commission explained further: "It must be recognized that we are utilizing a forward-looking, least cost, efficient network model in a scorched node environment." Decision No. 60635 at 16-17 (emphasis added).

The Commission also rejected the construction method that U S WEST used in its cost study for placing outside plant, choosing the method used in the Hatfield model instead. The Commission explained that its decision relating to this issue was based upon its application of TELRIC: "Differences between the U S WEST model's method of construction and the Hatfield Model's method often are resolved when realizing that the Hatfield Model is based upon the TELRIC method, using the most efficient technology, rather than the method developed over history in a non-competitive environment. Therefore, the Commission will adopt the Hatfield Model's method for calculating placement costs." Decision No. 60635 at 19.

Despite its desire to have the Commission revisit the UNE rates from Decision No. 60635, the Staff could not have been clearer in telling the United States District Court for the District of Arizona that those rates comply with the FCC's pricing rules. Staff stated unequivocally that "[t]he rates for unbundled network elements established by the Commission comply with all of [the FCC's] rules." Post Hearing Brief of the Arizona Corporation.
Commission on the Impact of the Recent Supreme Court Ruling in AT&T Corp. v. Iowa Utilities Board at 6 (emphasis added) (Brief attached hereto as Exhibit 1). Staff stated further that the UNE rates comply with the rate structure rules set forth in Sections 51.507 and 51.509 and were established pursuant to a forward-looking economic cost-based pricing methodology." Id. And Staff also emphasized to the federal court that the Commission based the UNE rates on "the most efficient telecommunications network configuration and technology, and the forward-looking economic cost of the network." Id. In Staff's mind, as these representations to a federal judge demonstrate, there was no doubt whatsoever that the Commission deliberately and strictly complied with the FCC's pricing rules in setting the rates for UNEs.

On appeal, presented with the parties' TELRIC-based cost studies, the Commission's repeated references in Decision No. 60635 to the FCC's pricing requirements, and the Staff's strong assertions that the Commission followed the FCC's pricing rules, the federal district court, not surprisingly, affirmed the UNE rate for the two-wire unbundled loop. U S WEST Communications, Inc. v. Jennings, 46 F. Supp. 2d 1004, 1012 (D. Ariz. 1999). In doing so, the court recognized the FCC's requirement of TELRIC-based pricing and specifically acknowledged that the Commission had applied that pricing methodology. Id. at 1009, 1012.

In summary, it is abundantly clear that the Commission carefully considered and relied upon the FCC's pricing rules in establishing the UNE rates in Decision No. 60635. The contrary conclusion in the Procedural Order is incorrect, and the Arbitrator should, therefore, amend that Order to establish that Phase II will not include reconsideration of those rates.

B. Verizon's Rates in Massachusetts do not Provide any Justification for Revisiting the UNE Rates the Commission Set in Decision No. 60635.

In support of their argument for revisiting the UNE rates, Staff and WorldCom, Inc. cited
concerns that the United States Department of Justice expressed about Verizon's UNE rates in Massachusetts in connection with Verizon's application for long distance relief in that state. However, there is no basis for drawing any comparisons between the appropriateness of Verizon's rates in Massachusetts and the rates this Commission set for Arizona.

The TELRIC of providing UNEs is largely dependent upon state-specific factors relating to the cost of providing network elements. For example, states that have large rural areas and significant population dispersions have higher UNE costs and higher UNE rates than states that have more centralized populations and smaller geographic areas. These state-specific differences in rate structures are explained by the fact that it is simply more expensive to build networks that reach into rural areas and provide service to significant numbers of customers located in remote areas. States that are smaller in size and that have more centralized populations allow for cost savings that can be achieved through economies of scale. These economies often are unavailable or less pronounced in states with substantial geographic territories and rural populations.

Arizona and Massachusetts are good examples of how state-specific conditions affect UNE rates. Arizona is, of course, a large state with substantial rural areas that have decentralized populations. By contrast, Massachusetts is among the smaller states, and its population is, for the most part, highly centralized. As a result of these differences, the investment needed to provide UNEs in Arizona is likely to be substantially higher than the investment required in Massachusetts. Accordingly, the UNE rates in these two states are not comparable, and any attempt to cite the Massachusetts rates as evidence that the Arizona rates are too high is necessarily flawed from the start.

Furthermore, the concerns the Department of Justice expressed in its evaluation regarding Verizon's Massachusetts' rates are simply not present in this case. The Department of Justice raised four basic concerns with Verizon's rates. First, the Department of Justice noted that while
state commissions may reasonably adopt different UNE rates across an incumbent LEC's region, there was no explanation for the magnitude of the difference between Verizon's rates in Massachusetts and other states in Verizon's region. Application of Verizon New England, Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Enterprise Solutions), and Verizon Global Networks Inc. for Authorization to Provide In-Region, InterLATA Services in Massachusetts, CC Docket No. 00-176, Evaluation of the United States Department of Justice at 19 n. 67.

In Qwest's region, by contrast, while some states with more urban population centers have adopted UNE rates that are lower than those in Arizona, other comparable states have adopted rates that are entirely consistent with -- and sometimes higher -- than those in Arizona. For example, in Idaho, the average 2-wire loop rate is $25.52. In Montana, the Commission approved a 2-wire loop rate of $27.41 in the interconnection agreement between then-U S WEST and AT&T. In Wyoming, the Commission endorsed 2-wire loop rates of $19.05 for the base rate area, $31.83 for zone 1, and $40.11 for zone 2, and $58.43 for zone 3; it approved an average loop rate of $25.65 in the interconnection arbitration between then-U S WEST and AT&T. Finally, in Colorado, Qwest's deaveraged 2-wire loop rates are $19.65 in the base rate area, $26.65 in density zone 1, $38.65 in density zone 2, and $84.65 in density zone 3. CLECs in Colorado challenged these rates, alleging that the Colorado Commission failed to state explicitly in its orders that it used the TELRIC approach. Like the Arizona federal court that upheld the rates in Decision No. 60635, a Colorado federal court upheld these Colorado rates as explicitly following TELRIC principles. Furthermore, the court noted that since all parties presented TELRIC studies, just like the parties before the Arizona Commission, and the Commission mentioned its adoption of forward-looking cost principles, just as the Arizona Commission did,
the Colorado rates necessarily followed TELRIC. See U.S. WEST Communications, Inc. v. Hix,
Civil Action No. 97-D-152 (consolidated), Order at 6 (D. Colo. June 23, 2000) ("Since both
parties presented evidence and cost studies to the [Colorado Commission] that purported to be
compliant with TELRIC, and the CPUC repeatedly stated in its orders that it was reviewing
TELRIC data and establishing forward looking prices, this Court concludes that the Commission
applied TELRIC principles in its decisions"). Thus, far from being aberrational, the UNE rates
the Commission approved in Decision No. 60635 are consistent with rates in other states as well
as with TELRIC principles.

Second, the Department of Justice noted that several CLECs had raised "facially
reasonable challenges" to the UNE rates in Massachusetts, such as the alleged failure to pass on
an initial switch vendor discount. Department of Justice Evaluation at 19 n. 67. Here, in stark
contrast, neither Staff nor any CLEC has alleged that any particular input or aspect of the
Commission's rate-setting methodology fails to comply with TELRIC. Thus, there is an absence
of any "facially reasonable challenge" to the rates approved in Decision No. 60635.

Third, the Department of Justice noted that Verizon reduced rates for the UNE-platform
used to serve residential lines and concluded that this reduction could signal that UNE rates for
business platform lines are not cost-based. Id. There has been no comparable change or
disparate treatment in Qwest's Arizona UNE rates for residential and business consumers.

Fourth, the Department of Justice expressed concern with a Verizon tariff filing, made
after its Section 271 application, in which Verizon lowered certain UNE rates in Massachusetts
to correspond to New York rates without providing back-up documentation or demonstrating that
those rates are cost-based for Massachusetts. Department of Justice Evaluation at 19-20. Again,
there has been no comparable tariff change by Qwest.

Finally, although not discussed in the Department of Justice Evaluation, the Verizon Massachusetts' rates apparently were not subject to federal court review. As discussed above, Qwest's Arizona rates have been, and those rates were upheld as consistent with federal law.

In short, none of the reasons the Department of Justice cited for questioning Verizon's Massachusetts' rates applies here. The Arbitrator, therefore, should reconsider any reliance on the Department of Justice's evaluation of Verizon's Massachusetts' rates.

C. Revisiting the UNE Rates will Significantly Expand the Scope of Phase II and Delay Completion of this Proceeding.

As Qwest pointed out in its brief in response to Staff's Motion for Clarification of Procedural Order, the proceeding that led to the UNE rates ordered in Decision No. 60635 included testimony from more than 20 witnesses, more than 900 hundred pages of pre-filed testimony, live testimony spanning 8 hearing days, more than (approximately) 22 cost studies comprising thousands of pages, and extensive briefing by the parties. If Phase II of this docket includes revisiting the UNE rates, much of this effort and investment of time and money from the previous docket will have to be repeated or started anew. Qwest will have to prepare new cost studies, many witnesses likely will be added to the proceeding, and the length of the hearing will be significantly expanded. The cost, measured in terms of time, personnel, and money, will increase enormously.

In addition, if the UNE rates are added, the completion of Phase II will be delayed by many months. Qwest and the Staff had been anticipating that the Phase II hearing would take place this Spring. If the rates for UNEs are added to Phase II, however, Qwest will not be able to complete all of the necessary cost studies until March 2001 at the earliest. See Affidavit of
Jerrold L. Thompson ¶ 2-3 (Attached as Exhibit II). Preparation of cost studies for all of the UNE rates already approved in Decision No. 60635 is a significant undertaking that requires numerous Qwest employees. Id. ¶ 3. In addition, Qwest is currently in the process of preparing cost studies and testimony for rate proceedings previously scheduled in several other states. Id. ¶ 3-4. Indeed, these proceedings alone will require Qwest to prepare more than 250 cost studies. Id. ¶ 4. Qwest simply cannot commit to providing additional cost studies in Arizona before March 2001.

Under even an expedited schedule for submitting testimony, this would mean that the Phase II hearing would take place, at the earliest, next summer. This delay will mean that the network elements and interconnection services for which there are not permanent prices in place will continue to lack pricing for an extended period of time. This uncertainty in the market is not beneficial to Qwest or to the CLECs.

In other words, there is a significant price to pay for requiring the parties and the Commission to revisit the UNE rates from Decision No. 60635. While the price might be worth paying if the Commission did not consider the FCC's pricing rules in establishing the UNE rates, that is simply not the case. Because the Commission applied the FCC's rules and ordered rates that have been found to be lawful, there is no legitimate need for imposing the substantial burdens that will result from revisiting the UNE rates.

In their arguments that preceded the Procedural Order, the CLECs suggested that when it issued the rates in Decision 60635, the Commission intended that the rates would be temporary in nature and would be revisited within a fairly short time. However, a closer reading of comments from the Commission during the public hearing of January 8, 1998 indicates that the
Commission intended to revisit the rates "if necessary" and if the rates somehow proved to be wrong. See e.g., January 8, 1998 Hearing Transcript at p. 315, lines 12-18. There is no evidence and not even a plausible claim that the rates are wrong -- based on incorrect calculations or improper application of pricing principles, for example -- and, therefore, the potential need to revisit rates that the Commission referred to in 1997 has not materialized.

D. Alternatively, the Procedural Order Should Establish that the Existing UNE Rates Presumptively Comply with the FCC's pricing Rules and that the Burden of Demonstrating Non-Compliance is on the CLECs.

If the Arbitrator does not modify the Procedural Order to eliminate revisiting the UNE rates from the previous docket, Qwest requests, in the alternative, that the Arbitrator modify the Order to establish that: (1) the UNE rates presumptively comply with the FCC's pricing rules; and (2) the CLECs have the burden of overcoming that presumption and demonstrating that the rates are not consistent with the FCC's rules. This approach would avoid unnecessary litigation over existing rates that are clearly lawful and reduce the enormous demands on time and resources that would result from revisiting all the existing rates, while still giving the CLECs the opportunity to attempt to demonstrate that some rates should be reconsidered.

In a similar docket that is pending in Colorado, the Hearing Commissioner recently issued a procedural order that adopts this approach. While stating that the rates the Colorado Commission set in 1997 in its generic cost docket follow "FCC-mandated TELRIC principles" and "thus are presumptively valid," the order nevertheless allows parties to challenge in the pending docket any rate "that they believe is not consistent with the FCC pricing directives." In the Matter of U S WEST Communications, Inc.'s Statement of Generally Available Terms and Conditions, Docket No. 99A-577T, Decision No. R00-1487-I at ¶¶ 17-18 (Pub. Utils. Comm'n. of Co. Dec. 29, 2000) (Attached as Exhibit III). Under the order, a party seeking to revisit a rate from the generic cost docket "will need some sort of prima facie showing that the given rate
element is not priced correctly." \textit{Id.} ¶ 19. The order establishes that Qwest does not bear the
burden of "rejustifying rates" from the cost docket and, therefore, is not required to address those
rates in its direct case. \textit{Id.} ¶ 18. Instead, the burden of contesting the existing rates is on the
challenging parties who are to assert any challenges they have in their responses to Qwest's
direct case. \textit{Id.}

While there is no reason for this Commission to revisit the UNE rates from Decision No.
60635, if the Arbitrator decides that the Commission should do so, there are several reasons why
the Colorado approach is appropriate.

First, there are substantial similarities between the Colorado docket and this docket. Both
dockets are intended to establish rates for UNEs and interconnection products and services for
which rates were not previously established, and those rates are to be included in Qwest's
Statement of Generally Available Terms and Conditions ("SGAT"). In addition, the Arizona and
Colorado commissions established the existing rates from the generic costs in approximately the
same time period – the Colorado Commission issued its rates in July 1997, and this Commission
issued Decision 60635 several months later, in January 1998. Further, federal courts reviewed
rates from both generic cost dockets and, with some exceptions, affirmed the rates as being in
compliance with the FCC's pricing rules.

Second, the Colorado approach properly accords substantial weight to rates that were
thoroughly litigated and evaluated and that were largely upheld by a federal district court. In
assigning that weight, the Colorado order appropriately preserves the value of the substantial
time and resources that the Colorado Commission and the parties invested in the generic cost
docket and the appeal in which the rates from that docket were reviewed. As a result, the order
eliminates unnecessary duplication of investment and effort from the original cost docket. This
approach is clearly preferable to the duplicative effort and delay that would result from requiring
the parties to revisit all UNE rates from Decision 60635 regardless whether there has been any
showing that those rates fail to comply with the FCC's pricing rules.

Third, while giving weight to the existing rates, the Colorado approach still provides the CLECs with a procedure for challenging those rates. Accordingly, if there were a rate that did not comply with the FCC's pricing guidelines, the Colorado order would give the Commission the opportunity to address that rate and to correct it.

III. CONCLUSION

For the reasons stated, Qwest respectfully requests that the Arbitrator reconsider the Procedural Order and establish that the Phase II hearing will not include revisiting the UNE rates from Decision No. 60635. Alternatively, the Arbitrator should modify the Procedural Order to establish that the UNE rates presumptively comply with the FCC's pricing rules and that the CLECs have the burden of demonstrating non-compliance with those rules.
showing that those rates fail to comply with the FCC's pricing rules.

Third, while giving weight to the existing rates, the Colorado approach still provides the 
CLECs with a procedure for challenging those rates. Accordingly, if there were a rate that did 
not comply with the FCC's pricing guidelines, the Colorado order would give the Commission 
the opportunity to address that rate and to correct it.

III. CONCLUSION

For the reasons stated, Qwest respectfully requests that the Arbitrator reconsider the 
Procedural Order and establish that the Phase II hearing will not include revisiting the UNE rates 
from Decision No. 60635. Alternatively, the Arbitrator should modify the Procedural Order to 
establish that the UNE rates presumptively comply with the FCC's pricing rules and that the 
CLECs have the burden of demonstrating non-compliance with those rules.
RESPECTFULLY SUBMITTED this 11th day of January, 2001.

QWEST CORPORATION

By: Timothy Berg
Theresa Dwyer
FENNEMORE CRAIG, P.C.
3003 North Central, Suite 2600
Phoenix, Arizona 85012-2913
(602) 916-5421
(602) 916-5999 (fax)

Kathryn E. Ford
QWEST CORPORATION
1801 California Street
Suite 4900
Denver, Colorado 80202
(303) 672-2776
(303) 298-4576 (Fax)

John M. Devaney
PERKINS COIE LLP
607 Fourteenth Street, N.W.
Suite 800
Washington, D.C. 20005-2011
(202) 628-6600
(202) 434-1690 (fax)

Attorneys for Qwest Corporation

ORIGINAL and 10 copies of the foregoing hand-delivered for filing this 11th day of January, 2001 to:

Docket Control
ARIZONA CORPORATION COMMISSION
1200 West Washington
Phoenix, Arizona 85007

///
COPY of the foregoing hand-delivered
This 11th day of January 2001, to:

Maureen Scott
ARIZONA CORPORATION COMMISSION
Legal Division
1200 West Washington
Phoenix, Arizona 85007

Deborah R. Scott
Director, Utilities Division
ARIZONA CORPORATION COMMISSION
1200 West Washington
Phoenix, Arizona 85007

COPIES (3) of the foregoing hand-delivered
this 11th day of January 2001, to:

Jane Rodda, Acting Chief Arbitrator
Hearing Division
ARIZONA CORPORATION COMMISSION
1200 West Washington
Phoenix, AZ 85007

COPY of the foregoing e-mailed and
sent by regular mailed this 11th day of
January, 2001, to:

Steven J. Duffy
RIDGE & ISAACSON, P.C.
3101 North Central Avenue, Ste. 1090
Phoenix, Arizona 85012-2638

Richard S. Wolters
AT&T
1875 Lawrence Street, Room 1575
Denver, CO 80202-1847

Michael W. Patten
BROWN & BAIN
P.O. Box 400
Phoenix, AZ 85001-0400

Michael Grant
Todd C. Wiley
GALLAGHER & KENNEDY
2575 E. Camelback Rd.
Phoenix, AZ 85016-9225
Seattle, WA 98101-1688
Mary S. Steele
Davis Wright Tremaine, LLP
2600 Century Square
1501 Fourth Avenue
Seattle, WA 98101-1688

Dennis Ahlers
Senior Attorney
Eschelon Telecom, Inc.
730 Second Avenue South, Suite 1200
Minneapolis, MN 55402

Steve Sager, Esq.
McLeodUSA Telecommunications Service, Inc.
215 South State Street, 10th Floor
Salt Lake City, Utah 84111

Marti Allbright, Esq., Esq.
Mpower Communications Corporation
5711 South Benton Circle
Littleton, CO 80123

Penny Bewick
New Edge Networks
PO Box 5159
3000 Columbia House Blvd.
Vancouver, Washington 98668

Michael B. Hazzard
Kelley Drye and Warren
1200 19th Street, NW
Washington, DC 20036

Janet Livengood
Z-Tel Communications, Inc.
601 South Harbour Island
Suite 220
Tampa, Florida 33602

__________________________________________________________________________
IN THE UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

U S WEST COMMUNICATIONS, INC. a Colorado Corporation, ) No. CIV 97-0026 PHX-OMP
 Plaintiff, ) CIV 97-0027 PHX-OMP
 v. ) CIV 97-0394 PHX-OMP
) CIV 97-1723 PHX-OMP
) CIV 97-1856 PHX-OMP
) CIV 97-1927 PHX-OMP
) CIV 97-2025 PHX-OMP
) CIV 97-2324 PHX-OMP
) CIV 98-0342 PHX-OMP
) CIV 98-0626 PHX-OMP
) CIV 98-0629 PHX-OMP
) (Consolidated)

RENZ D. JENNINGS1, MARCIA WEEKS, )
AND CARL J. KUNASEK, as members )
of the ARIZONA CORPORATION )
COMMISSION, and TCG PHOENIX, a )
general partnership, )
 )
Defendants.

AND CONSOLIDATED MATTERS

POST HEARING BRIEF OF
THE ARIZONA CORPORATION COMMISSION
ON THE IMPACT OF THE RECENT SUPREME COURT
RULING IN AT&T CORP. v. IOWA UTILITIES BOARD

Defendants Jim Irvin, Carl J. Kunasek and Tony West, as members of the Arizona
Corporation Commission (hereinafter referred to as the “Commission”), by their attorneys, file
this post-hearing brief on the impact of the United States Supreme Court’s recent decision in

1 The Commission notes that Renz D. Jennings was succeeded as corporation commissioner on January 1, 1999, by Tony West.
AT&T Corp. v. Iowa Utilities Board, No. 97-826, 1999 WL 24568 (S.Ct. Jan. 25, 1999) on the
issues presented for review in this case.

I. INTRODUCTION.

On January 25, 1999, the United States Supreme Court issued its ruling in AT&T Corp. v. Iowa Utilities Board. The United States Supreme Court reversed the Eighth Circuit Court of Appeals on a number of issues, including the Eighth Circuit’s ruling that the States had exclusive jurisdiction over intrastate pricing issues under Section 252(d) of the Telecommunications Act of 1996 (“1996 Act”). The United States Supreme Court made similar jurisdictional rulings with regard to dialing parity, the rural interconnection exemption and state review of preexisting interconnection agreements. Essentially, the Supreme Court found that while States were given authority to implement many of these provisions of the 1996 Act, the Federal Communication Commission (“FCC”) had authority pursuant to Section 201(b) of the 1934 Act to adopt rules governing these State determinations.

In addition, the United States Supreme Court reversed the Eighth Circuit’s rulings regarding the FCC’s interpretation of the “pick and choose” rule and the obligation of incumbent local exchange carriers (“ILECs”) to make available to competitive local exchange carriers (“CLECs”) already combined network elements. Finally, the United States Supreme Court vacated 47 C.F.R. Section 51.319 which contains the list of unbundled network elements that the ILECs (in this case U S WEST) is required to make available to competitors.

The Court should allow the Commission to address the impact of the Supreme Court’s ruling in the first instance. Pursuant to the parties’ interconnection agreements, the parties may bring any issues back to the Commission when there has been a subsequent judicial opinion which would have an impact upon the agreement’s provisions, operation or interpretation. Thus, the parties may at any time ask the Commission to reopen the records in the affected Commission proceedings to determine the impact of the Supreme Court’s ruling. In the unlikely event no party petitions the Commission for review of any issues impacted by the Supreme Court’s ruling, the Commission and/or FCC will commence a review on their own motion.
Allowing the Commission to address the impact of the Supreme Court’s decision in the first instance would provide a record on these issues which the Court would not have the benefit of at this time. In addition, if the Court proceeds to examine the Supreme Court’s ruling without the benefit of a Commission record, the Court would be forced to substitute its judgment for that of the Commission on many issues. It is further unlikely that the Court could affirmatively rule in some instances until the FCC issued its orders on remand.

However, should the Court elect to proceed at this time and consider the impact of the Supreme Court’s ruling in the first instance, the Court should affirm the majority of the Commission’s rulings. As discussed in more detail below, the non-price issues in this case are for the most part not affected by the Supreme Court’s ruling since the FCC rules that were vacated by the Eighth Circuit Court of Appeals and subsequently reinstated by the Supreme Court’s ruling, were largely the FCC’s pricing rules promulgated pursuant to Section 252(d) of the 1996 Act. Second, the Commission’s ratemaking determinations are for the most part also unaffected, as discussed further below, because the Commission followed many of the FCC’s pricing rules despite the fact that they were subsequently vacated by the Eighth Circuit Court of Appeals.

II. THE COURT SHOULD ALLOW THE COMMISSION TO ADDRESS THE IMPACT OF THE SUPREME COURT’S RULING IN THE FIRST INSTANCE.

The Court should allow the Commission to address the impact of the United States Supreme Court’s ruling in AT&T Corp. v. Iowa Utilities Board in the first instance. The interconnection agreements at issue generally provide for incorporation of any subsequent administrative and/or judicial opinions. See, e.g., AT&T – U S WEST Interconnection Agreement, provisions 24 and 27. The parties may, and should, bring any issues impacted by the United States Supreme Court’s ruling in AT&T Corp. v. Iowa Utilities Board back to the FCC and Commission for resolution. The Court should, therefore, first allow the Commission and FCC to consider the impact of the Supreme Court’s rulings. This would also create a record for the Court to use as the basis of any subsequent appeal on these issues. Such an approach would give due recognition to the Commission’s expertise in these matters since the framework of the

Several other factors support the Court’s allowing the Commission to consider these issues in the first instance. First, it has been over three years now since passage of the 1996 Act. It has also been almost three years since the FCC’s local competition rules were first adopted. Much has transpired in this three year period creating much uncertainty with respect to how, in particular, the FCC will decide to proceed on these issues. Not only are there still pending petitions for reconsideration before the FCC on some of these issues, but the FCC has stated that it is likely to commence a rulemaking in the near future on at least that portion of the Supreme Court’s ruling vacating 47 C.F.R. Section 51.319. In addition to this issue, the Commission believes that it is probable that the FCC will also commence a proceeding to address other issues impacted by the Supreme Court’s ruling. It is likely that the FCC will allow state commissions some leeway on these issues given the passage of significant time since adoption of its original rules and the desire to avoid upsetting the competitive momentum already in progress. Moreover, there are also appeals pending before the Eighth Circuit dealing with the substance of the FCC’s pricing rules which the Eighth Circuit will now have to address since the United States Supreme Court has ruled that the FCC has the authority to issue pricing rules under Section 252(d) of the 1996 Act.

Second, if the Court proceeds at this time, it will have to substitute its judgment for that of the Commission on some issues. There would be no administrative record for the Court to examine. Given all of these considerations, the Court should allow the Commission to address the impact of the Supreme Court’s ruling in the first instance.

If the Court determines to address the United States Supreme Court’s ruling in the context of the instant appeal, the Court should find that the Commission’s determinations are in compliance with the 1996 Act and reinstated FCC rules. As discussed in more detail below, the Commission followed many of the FCC’s pricing rules, even though they had been vacated by the Eighth Circuit Court of Appeals. The only exception to this was the Commission’s
determination to use statewide averaging in setting initial unbundled network element rates, rather than at least three density zones as required by FCC rules. In all other respects, the Commission believes that it operated within the broad pricing guidelines established by the FCC, even though not required to do so at the time.

III. IF THE COURT DECIDES TO CONSIDER THE IMPACT OF THE SUPREME COURT'S RULING IN MAKING ITS DETERMINATION, THE COURT MUST STILL AFFORD THE COMMISSION'S RATEMAKING DETERMINATIONS SUBSTANTIAL DEFERENCE.

Notwithstanding the United States Supreme Court’s jurisdictional ruling, the Court must still give the Commission’s ratemaking determinations substantial deference. State commissions have original jurisdiction to establish rates under Section 252(d) of the 1996 Act. Section 252(d) of the 1996 Act states in relevant part:

(d) PRICING STANDARDS.—

(1) INTERCONNECTION AND NETWORK ELEMENT CHARGES. Determinations by a State commission of the just and reasonable rate for the interconnection of facilities and equipment for purposes of subsection (c)(2) of section 251, and the just and reasonable rate for network elements for purposes of subsection (c)(3) of such section—

(A) shall be—

(i) based on the cost (determined without reference to a rate-of-return or other rate-based proceeding) of providing the interconnection or network element (whichever is applicable), and

(ii) nondiscriminatory, and

(B) may include a reasonable profit.

(Emphasis added).

Moreover, State commissions also have original jurisdiction under the 1996 Act to establish rates for wholesale discounts and reciprocal compensation and transport and termination. See 47 C.F.R. Sections 252(e)(2)(A) and 252(e)(3). Where the Act gives the agency original jurisdiction over an area, substantial deference is afforded to the State commission’s findings. U S WEST v. MFS, 1998 WL 350588 (W.D. Wash. 1998), AT&T Op. Br. App. Ex. 3.
Consequently, although the United States Supreme Court may have reversed the Eighth Circuit on a number of jurisdictional issues, including the FCC's authority to adopt pricing rules to govern State commission pricing determinations, it is the State commissions under Section 252(e) of the 1996 Act that have the responsibility to actually determine the rates to be charged. Thus, while State commissions are now bound to follow the FCC's broad pricing rules or guidelines in the future, State commissions still have considerable discretion within those broad guidelines to balance the positions of the various parties and come to an appropriate resolution. See \textit{AT&T Corp. v. Iowa Utilities Board}, slip op. at 16 (the state commissions will apply the FCC standards and "implement that methodology, determining the concrete result in particular circumstances.").

The FCC has no authority to actually set or establish any rates under the plain language of Section 252(d). Therefore, the State commissions' ratemaking determinations under the 1996 Act are entitled to substantial deference.

\textbf{IV. IF THE COURT DECIDES TO ADDRESS THE UNITED STATES SUPREME COURT'S DECISION, THE COURT SHOULD AFFIRM THE UNBUNDLED NETWORK ELEMENT RATES ESTABLISHED BY THE COMMISSION SINCE THEY ARE IN COMPLIANCE WITH THE 1996 ACT AND FCC RULES.}

The FCC's pricing rules for unbundled network elements are contained at 47 C.F.R., Subpart F, Sections 51.101 through 51.515. The rates for unbundled network elements established by the Commission comply with all of these rules. First, under Section 51.503, the rates established by the Commission are just, reasonable and nondiscriminatory. They comply with the rate structure rules set forth in Sections 51.507 and 51.509 and were established pursuant to a forward-looking economic cost-based pricing methodology. In addition the rates for unbundled network elements do not vary on the basis of the class of customers served by the requesting carrier, or on the type of services that the requesting carrier purchasing such elements uses them to provide.

The rates also comply with Section 51.505 of the FCC rules. The rates established by the Commission were based upon the most efficient telecommunications network configuration and technology, and the forward-looking economic cost of the network.
As noted at p. 7 of the Commission’s Order in the Consolidated Cost Docket (Decision 60635, p. 7, U S WEST Op. Br. App. Ex. 21), the Commission rejected U S WEST’s model platform because it was based in part upon embedded costs and technology. The Commission used the Hatfield Model platform as a starting point in its analysis to determine the cost of unbundled elements. Id. The Hatfield Model was sponsored by AT&T and MCI. Both AT&T and MCI argued that the Hatfield Model was in compliance with the 1996 Act and FCC Rules. Id. at 6. Indeed, the Commission’s Order notes that the Hatfield Model “considers the demographics and geography of each state in forecasting element costs, and was used by the FCC in the determination of proxy prices.” Id.

Moreover, the model inputs chosen by the Commission were also all based upon the forward-looking costs involved. First, as the FCC rules require at 51.505(b)(2), the Commission utilized a forward-looking cost of capital which reflected the “increased risk” to U S WEST associated with competition. The cost of capital adopted by the Commission was very close to that recommended by the arbitrators. On the other hand, the CLECs urged the Commission to use U S WEST’s historical cost of capital which does not comply with the FCC rules.

Second, the depreciation rates utilized by the Commission were also forward-looking as required by 51.505(b)(3) of the FCC rules. In addition, they are the “economic” depreciation rates produced by the Technology Futures, Inc. study, with some adjustments. The CLECs once again urged the Commission to use U S WEST’s historical depreciation rates which do not comply with the FCC rules. In addition, the depreciation rates advocated by the CLECs for copper were not based upon “economic” lives, as required by the FCC rules, but instead reflected the plant’s “physical” life.

Third, the Commission also utilized a forward-looking allocation of common costs. The Commission was not required to adopt the 10 percent default allocation contained in its rules or in the Hatfield Model, that value having been successfully rebutted by U S WEST.

In addition, all of the other input values adopted by the Commission were based upon forward-looking costs or considerations. Further, as required by Rule 51.505(d), the Commission did not consider embedded costs, retail costs, opportunity costs or revenues to
subsidize other services. The Commission’s unbundled network element rates also comply with Rule 51.505(e) of the FCC rules. The Commission gave full and fair effect to the economic cost based pricing methodology described in that section and provided notice and an opportunity for comment to affected parties with a written factual record sufficient for purposes or review.

The Commission’s loop rate also complies with Section 51.509 of the FCC’s rules. In addition the Commission’s unbundled network element rates comply with Section 51.511 of the FCC’s rules having been based upon the forward-looking economic cost of each element. In summary, should the Court address the impact of the Supreme Court’s decision on the issues presented, it should find that the Commission’s unbundled network element rates comply with the FCC rules.


The wholesale discount rates established by the Commission also comply with the FCC’s pricing rules. The Commission’s Order, (Decision No. 60635 at p. 36, U S WEST Op. Br. App. Ex. 21), states that it found MCI’s method to be the most reasonable in calculating the avoided cost discount. MCI estimated costs which reasonably would be avoided in selling at wholesale. (Id. at p. 36). According to MCI, its method comported with the FCC’s rules and was consistent with the 1996 Act. (Recommended Opinion and Order (“ROO”), p. 32, U S WEST Resp. Br. App. Ex. 34) According to MCI, it had followed the FCC’s guidance in its proposal for which categories of costs are avoidable by an economically efficient carrier selling at wholesale, and the percentage of each category which is avoidable. MCI applied the percentage avoidable to each category of publicly available U S WEST cost data for 1995, yielding a percentage of its total costs, which would be avoidable. Id. MCI based the discount on U S WEST’s embedded costs, using actual expenditures rather than TSLRIC. Id.

The Recommended Opinion and Order further explained that U S WEST had disputed the MCI study and had recalculated MCI’s discount, resulting in a weighted discount of 14.09 percent. (p. 33, U S WEST Resp. Br. App. Ex. 34).
While both the arbitrators and the Commission found MCI's method to be the most reasonable in calculating the avoided cost discount, they found certain of the concerns expressed by U S WEST to be valid. First, property taxes should not have been excluded from the denominator of the MCI avoided cost ratio. In addition, MCI's assumption that 90 percent of all marketing type costs was not accepted. The Commission and arbitrators found that marketing costs should be discounted by 75.44 percent, as advocated in U S WEST's prefiled testimony. These adjustments alone resulted in the arbitrators modifying MCI's proposed discount to 20.22 percent.

The Commission made further adjustments bringing the discount to 18 percent for all services other than residential. An additional adjustment was made by the Commission to the residential discount to reflect evidence contained in the record that advertising costs were much lower, and other factors. As the Commission's Response Brief discussed, the Commission's adjustments resulting in wholesale rates which were well within the wide range of wholesale discounts contained in the record of the Commission's proceeding. (Commission's Resp. Br. pgs. 39-40).

The Court must afford substantial deference to the Commission's determinations given the Commission's original jurisdiction to set wholesale discounts under 252(d) of the 1996 Act. The Commission utilized the overall methodology advocated by MCI, which MCI claimed was consistent with FCC rules. The adjustments made by the Commission were well within its discretion under the 1996 Act and FCC rules. The Court should find that the Commission's wholesale discount determinations comply with the 1996 Act and FCC rules. While the Supreme Court's decision means that the FCC may adopt rules guiding the State commission's determination and specifying the methodology to be used by the State, it is the responsibility of the State, not the FCC, to actually set the rates, taking into account the positions of the various parties before it, and making any adjustments deemed appropriate.
VI. IF THE COURT DECIDES TO ADDRESS THE IMPACT OF THE UNITED STATES SUPREME COURT DECISION, THE COURT SHOULD REMAND THE GEOGRAPHIC DEAVERAGING ISSUE TO THE COMMISSION FOR FURTHER REVIEW GIVEN THE SUPREME COURT RULING.

The Commission believes that the Court should affirm the portion of the Commission's Decision which used statewide average costs to determine unbundled network elements since it complies with the 1996 Act. Other District Courts have correctly found that the 1996 Act does not require geographic deaveraging, the CLECs arguments to the contrary notwithstanding. MCI Telecommunications Corp. v. U S WEST Communications, Inc., No. C97-1508R, Slip op. at 33 (W.D. Wash. July 21, 1998), MCI Op. Br. App. Ex. 25. The 1996 Act requires only that unbundled network rates be cost-based, and the Commission complied with the 1996 Act's requirement in this regard.

The particular costing methodology used, including the degree of averaging contained therein, is a factual matter within the discretion of the Commission based upon its expertise and specialized knowledge in this area. In this regard, it was appropriate for the Commission to consider the impacts of its Decision, including any arbitrage opportunities presented by statewide averaged retail rates, in determining the degree of averaging to require. As long as the Commission's methodology complied with the cost-based requirement of the 1996 Act, which it did, the degree of averaging is not relevant and other District Courts have so found. See MCI Metro Access Transmission Services, Inc. v. GTE Northwest, Inc., No. C97-742WD, slip op. at 4 (W.D. Wash. July 7, 1998), MCI Op. Br. App. Ex. 21.

Nonetheless, the Commission acknowledges that the United States Supreme Court's decision which results in the reinstatement of the FCC's pricing rules, require a State commission to use at least three density-related zones when establishing unbundled network element rates. See 47 C.F.R. 51.507(f). The FCC Rules, 47 C.F.R. 51.507(b) states in relevant part:

State commissions shall establish different rates for elements in at least three defined geographic areas within the state to reflect geographic cost differences.

(1) To establish geographically-deaveraged rates, state commissions may use existing density-related zone pricing plans.
described in Section 69.123 of this chapter, or other such cost-related zone plans established pursuant to state law.

(2) In states not using such existing plans, state commission must create a minimum of three cost-related rate zones.

While the Commission essentially found, like the FCC, that the concept of geographic deaveraging had considerable merit, and stated its intent to consider this issue in an upcoming proceeding, the Commission has not yet commenced such a proceeding. The Commission deferred this issue since it wanted to consider retail rate deaveraging at the same time.\(^2\).

Clearly, the Supreme Court's ruling resulting in reinstatement of 47 C.F.R. Section 51.507(b) requires that this issue be reevaluated by the FCC and State commissions.

In light of the Supreme Court's ruling, the Court should remand the geographic deaveraging issue back to the Commission for further examination.

VII. IF THE COURT DECIDES TO CONSIDER THE IMPACT OF THE SUPREME COURT'S RULING, IT SHOULD ALSO AFFIRM THE COMMISSION'S OTHER PRICING DETERMINATIONS SINCE THEY ARE CONSISTENT WITH THE 1996 ACT AND THE FCC PRICING RULES.

The Commission's other ratemaking determinations are consistent with the 1996 Act and the FCC's pricing rules. To the extent there may be some variance, i.e., tariffed non-recurring charges, the Commission did not have an adequate record or evidence before it and therefore had to adopt a rate that it believed to be the most reasonable, pending submission by U S WEST of a new cost study. To date, U S WEST has not submitted a new study to the Commission on this issue. See Commission's Response Brief, p. 39-40.

\(^2\) The Commission's decision in this matter ordered its Hearing Division to "set a proceeding to determine whether it is appropriate to geographically deaverage rates ..." Decision No. 60635 at p. 41, U S WEST Op. Br. App. Ex. 21. Additionally, no party has asked the Commission to commence a proceeding to deaverage unbundled network element rates.
VIII. IF THE COURT DECIDES TO CONSIDER THE IMPACT OF THE UNITED STATES SUPREME COURT’S RULING IT SHOULD AFFIRM THE COMMISSION’S DETERMINATIONS REGARDING NON-PRICE ISSUES SINCE FOR THE MOST PART THEY WERE NOT IMPACTED BY THE SUPREME COURT’S RULINGS.

The United States Supreme Court’s ruling should have little to no impact on the remaining non-price issues in this case. Therefore, the Court should affirm the Commission’s determinations on non-price issues. However, if there is any question given the Supreme Court’s ruling, the Court should remand the issue(s) to the Commission for further consideration of the ruling’s impact upon the Commission’s determinations.

Non-pricing issues impacted by the United States Supreme Court’s ruling include the degree of unbundling required by Section 251(d)(2) of the 1996 Act, the proper interpretation of 47 U.S.C. Section 252(i) (the “pick and choose” requirement), the obligation of the ILECs to offer unbundled network elements on a combined basis, and issues relating to dialing parity, the rural interconnection exemption and the obligation of State commission’s to review preexisting interconnection agreements. Of these issues, only two before the Court are implicated as a result of the United States Supreme Court’s decision, i.e., the degree of unbundling required (Rule 319) and the combination of unbundled network element issue.

With respect to the unbundled network element issue, it is the Commission’s understanding that U S WEST has agreed to continue to honor all existing contracts with regard to the seven unbundled network elements required by 47 C.F.R. 51.319 until the FCC completes its proceeding on remand on this issue. See Exhibit 1. Thus, if the Court addresses the Supreme Court’s ruling, it should find that the action of the Supreme Court vacating Rule 319 has no impact on existing contracts at this time.

The Commission believes the Court should also find that the Supreme Court’s actions vacating Rule 319 has no impact on any other issues in this case, including the Commission’s determinations to: (1) not require subloop unbundling other than on a BFP basis, (2) to require U S WEST to unbundle dark fiber as a separate network element, and to (3) to require U S WEST provide vertical features as a separate network element. First, it is the Commission’s interpretation of U S WEST’s letter to the FCC contained in Exhibit 1, that U S WEST has
agreed to honor all existing contracts to the extent that they are impacted by the Supreme Court’s ruling until the FCC issues an order on remand. Second, until the FCC acts on remand to give further guidance to State commissions on the proper interpretation of the “necessary and impair” standard, the most the Court should do is remand the issues for further consideration by the Commission in light of the Supreme Court’s decision.

Finally, the rebundling issue is already before the Commission; and the Court should allow the Commission to address this issue in the first instance.

VIII. CONCLUSION.

The Court should allow the Commission to determine the impact of the Supreme Court’s ruling in the first instance. If the Court, however, decides to consider the impact of the Supreme Court’s ruling on the issues presented, it should affirm the majority of the Commission’s determinations since they comply with both the 1996 Act and the FCC’s rules. The Court should remand the geographic deaveraging issue to the Commission for further consideration, as well as any Commission determinations it believes do not comply with the Supreme Court’s ruling or the reinstated FCC rules.

RESPECTFULLY SUBMITTED this 14th day of February, 1999.

By:

Christopher C. Kempley
Maureen A. Scott
Janice M. Alward
Legal Division
1200 West Washington
Phoenix, Arizona 85007
(602) 542-3402

Attorneys for the Arizona Corporation Commission
CERTIFICATE OF SERVICE

I, Maureen A. Scott, hereby certify that on the 16th day of February, 1999, the original and a copy were filed with:

Richard H. Weare
Clerk/District Court Executive
United States District Court
230 North First Avenue
Phoenix, Arizona 85025

The Honorable Owen M. Panner*
Judge of the United States District Court
1207 U. S. Courthouse
1000 SW Third Avenue
Portland, Oregon 97204

On the 16th day of February, 1999, a copy of the foregoing was served on the persons listed below by U. S. First-Class mail, postage pre-paid, to the last known business address:

Timothy Berg
Theresa Dwyer
Fennemore Craig, P.C.
3003 North Central Avenue, Suite 2600
Phoenix, Arizona 85012
Attorneys for U S WEST Communications

Michael D. Warden
Christopher D. Moore
SIDLEY & AUSTIN
1722 Eye Street, N.W.
Washington, D.C. 20006
Attorneys for AT&T and TCG Phoenix

Andrew D. Hurwitz
Joan S. Burke
Osborn Maledon, P.A.
2929 North Central Avenue, Suite 2100
Post Office Box 36379
Phoenix, Arizona 85012-2794
Attorneys for AT&T and TCG Phoenix

*Copy sent via Federal Express
Steven J. Duffy
Ridge & Isaacson, P.C.
3101 North Central Avenue, Suite 432
Phoenix, Arizona 85012-2638
Attorneys for Sprint Communications Company, L.P.

David P. Murray
A. Renee Callahan
Willkie Farr & Gallagher
Three Lafayette Centre
1155 21st Street, N.W., Suite 600
Washington, D.C. 20036-3384
Attorneys for Sprint Communications Company, L.P.

L. Norton Cutler
Thomas M. Dethlefs
U S WEST Law Department
1801 California Street, Suite 5100
Denver, Colorado 80802

Lex J. Smith
Michael W. Patten
Brown & Bain, P.A.
2901 North Central Avenue
Post Office Box 400
Phoenix, Arizona 85001-0400
Attorneys for e-spire™ Communications, Inc.
(f/k/a American Communications Services, Inc.)

Douglas G. Bonner
Morton J. Posner
Swidler & Berlin, Chartered
3000 K Street N.W., Suite 300
Washington, D.C. 20007
Attorneys for GST; MFS

J. Jeffrey Mayhook
Vice President, Legal & Regulatory Affairs
GST NET (AZ), Inc.
4001 Main Street
Vancouver, Washington 98663

Thomas H. Campbell
Lewis and Roca
40 North Central Avenue
Phoenix, Arizona 85003
Attorneys for MCI Telecommunications Corporation
and MCImetro Access Transmission Services, Inc.
Patricia LeeRepo  
Jeffrey B. Guldner  
Snell & Wilmer  
One Arizona Center  
400 East Van Buren  
Phoenix, Arizona 85004-0001  
Attorneys for Brooks Fiber

Arthur G. Garcia, AUSA  
U.S. Attorney's Office  
4000 U.S. Courthouse  
230 North First Avenue  
Phoenix, Arizona 85025-0085  
United States Attorney for the District of Arizona

Benjamin M. Lawsky  
U.S. Department of Justice  
Civil Division, Room 906  
901 E. Street, NW, P.O. Box 883  
Washington, D.C. 20044

By: Maureen A. Scott
February 9, 1999

Mr. Lawrence E. Strickling
Chief of Common Carrier Bureau
Federal Communications Commission
1919 M Street NW, Room 500
Washington, DC 20554

Dear Mr. Strickling:

Following the Supreme Court decision in AT&T v. Iowa Utilities Board, 1999 WL 24568 (January 25, 1999) questions have arisen regarding the status of various interconnection rules, the appropriate definition of unbundled network elements and most importantly the status of existing interconnection obligations between the incumbent local exchange carriers and competitors seeking access to their networks.

U S WEST strongly believes an orderly process is necessary and in the public interest to avoid turmoil and uncertainty for both incumbents and new entrants while the 8th Circuit and the Commission address the full impact of the Supreme Court’s decision. In an effort to offer a workable interim solution, U S WEST strongly urges the FCC to conduct an expedited rulemaking addressing the critical need to define and apply the “necessary and impair” standard and not to take any interim actions that would disturb the current relationships between U S WEST and its competitors while that rulemaking is in progress. U S WEST desires to provide stability for the FCC, its competitors and itself during this interim period. Therefore, while the FCC completes its anticipated rulemaking addressing these interconnection issues and related unbundling obligations and in the absence of interim rules, U S WEST commits to the following. First, U S WEST will honor existing contracts with respect to the availability and pricing of unbundled network elements until the FCC adopts its order setting forth new interconnection rules, network element definitions and ILEC obligations. Second, any new competitive carriers seeking interconnection during this period may opt into our existing contracts subject to appeals or dispute resolution. Finally, U S WEST will extend the term of any contracts that are about to expire until the end of the year in order to allow time for the FCC’s new rules to be in place.

Please contact me if you have any questions regarding these interim commitments in conjunction with our proposal.

Sincerely,

Katherine L. Fleming

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Exhibit 1

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** TOTAL PAGE.02 **
BEFORE THE ARIZONA CORPORATION COMMISSION

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

IN THE MATTER OF INVESTIGATION INTO)
QWEST CORPORATION'S COMPLIANCE )
WITH CERTAIN WHOLESALE PRICING )
REQUIREMENTS FOR UNBUNDLED )
NETWORK ELEMENTS AND RESALE )
DISCOUNTS. )

DOCKET NO. T-00000A-00-0194

AFFIDAVIT OF JERROLD L. THOMPSON

STATE OF COLORADO )
COUNTY OF DENVER )

I, Jerrold L. Thompson, being of lawful age and having been duly sworn, depose and state:

1. My name is Jerrold L. Thompson. My business address is 1801 California Street, Room 4450, Denver, Colorado 80202. I am employed by Qwest Corporation as Executive Director, Service Costs in the Policy and Law Department. My responsibilities include overseeing and participating in the preparation and presentation of the cost studies that Qwest submits in regulatory proceedings in its 14-state region. The cost studies for which I have responsibility include studies that estimate the costs of the interconnection products and services and unbundled network elements ("UNEs") that Qwest provides to competitive local exchange carriers pursuant to the Telecommunications Act of 1996.
2. The purpose of this Affidavit is to explain the reasons why Qwest requires until March 1, 2001 to complete the cost studies that are required by the Hearing Officer's Procedural Order of December 14, 2000 in this docket. The Order states that:

   It appears that the Commission has not itself determined that the UNE rates it set in Decision No. 60635 comply with FCC pricing rules. Phase II of this proceeding is the proper time to perform such review. It does not make sense to be establishing permanent geographically de-averaged UNE rates without such review.

Qwest believes that the premise of this Order – that the Commission did not determine whether the UNE rates from Decision No. 60635 comply with the FCC’s pricing rules – is incorrect and, therefore, has asked the Hearing Officer to reconsider her decision to review the UNE rates. If the Hearing Officer does not change her ruling, Qwest believes that other parties will view the ruling as an opportunity to re-litigate all of the Commission’s conclusions in Decision No. 60635 relating to UNE rates and, therefore, will propose new cost studies for all UNE prices previously determined. Qwest does not believe that this is an appropriate or necessary undertaking.

However, in order to protect its interests, if the Hearing Officer does not change her ruling, Qwest will have to present new cost studies for all of the UNEs previously considered by the Commission, as well as the new elements not previously considered by the Commission.

3. The development of cost studies for all of the UNEs previously determined by the Commission and the new UNEs not previously determined by the Commission is a very large undertaking that requires many employees' time and resources. In addition, Qwest is currently extremely busy developing cost studies for dockets in other states that had been previously ordered and scheduled. Because cost studies are in the process of being prepared through the month of February for these other states, the earliest possible date for filing cost studies for Arizona would be March 1, 2001.
4. States where Commissions have set filing dates include Colorado, Washington, Montana, and Utah. New Mexico has recently issued an order with a possible filing date of January 26 that Qwest is also preparing for. In all, over 250 cost studies will need to be completed between now and March 1, not including studies for Arizona.

SUBSCRIBED AND SWORN to before me this 9th day of January, 2001.

[Signature]

Notary Public

My Commission Expires:

[Stamp]
EXHIBIT III

Decision No. R00-1437-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 99A-5777

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

PROCEDURAL ORDER

Mailed Date: December 29, 2000

I. STATEMENT, FINDINGS, AND CONCLUSIONS

A. Statement

1. The hearing commissioner ("commissioner") requested additional filings from the parties before setting a hearing date and other procedures. See Decision No. R00-1280-I. Pursuant to that order, Qwest: Communications, Inc. ("Qwest"); Commission Staff ("Staff"), the Office of Consumer Counsel ("OCC"); AT&T Communications of the Mountain States, Inc. and TCG Colorado ("AT&T"); Worldcomm, Inc. ("Worldcom"); ICG Telecom Group, Inc. ("ICG"); Jato Communications Corp. ("Jato"); and XO Colorado LLC, Covad Communications Company, Pac-West Telecom Inc., and New Edge Networks Inc. ("Joint Respondents") made filings. Staff filed a motion for enlargement of time to file its statement. Qwest also filed a Reply in Clarification, and leave to file the same.

2. The parties' comments concern two things: what, exactly, is at issue in this docket, and when those issues will
be heard. Answering the first question obviously affects any schedule set in answer to the second. Accordingly, a discussion of the nature, issues and scope of this docket will be followed by the schedule that will govern this proceeding. Before that, a summary of the respective positions.

3. Qwest's Statement of Elements and Proposed Procedural Schedule contains an Exhibit A that catalogs the elements and services. Qwest's claims are ripe for pricing in this docket. Qwest's exhibit breaks down many of the items into sub-elements and sub-services. Qwest responds to concerns that it is premature to embark on pricing in this docket by asserting that the FCC has already defined the new unbundled network elements ("UNEs") that will largely be at issue here. Qwest also objects to revisiting the Commission-established rates from Docket No. 96S-331T. In the end, Qwest proposes a procedural schedule leading to a hearing beginning April 23, 2001.

4. Every other party disagrees with this proposal in some fashion.

5. Staff argues that there is no need to expedite this proceeding, and that a review of the reasonableness of the prices can occur once the terms and conditions are established. Noting that the Statement of Generally Available Terms ("SGAT") is changing, Staff urges Qwest's testimony to address expected terms and conditions which it desires to apply to terms and
conditions not yet resolved in Docket No. 97I-198T. Staff further requests that Qwest be required to file not only its cost studies, but also all supporting schedules and workpapers supporting the cost study. Staff urges the Commission to treat the revised SGAT as a new filing and to consider a 180-day procedural schedule consistent with a standard rate case. That would lead to a hearing in early June 2001, with an initial Commission decision in late July 2001.

6. The OCC urges a phased-hearing approach where only services settled in Dockkett No. 97I-198T are at issue in the first hearing. Otherwise, the OCC contends, parties will duplicate efforts, or litigate matters that need not be litigated. The OCC urges a three-phase hearing: the first phase beginning with Qwest's filing concerning and pricing testimony for already agreed-to matters on December 22, 2000; a second phase beginning in January 2001 once interconnection, co-location and resale are concluded; and a third phase beginning after the workshops on UNES and loops are complete in Docket No. 97I-198T. The OCC also objects to Qwest's discovery cut-off dates.

7. AT&T urges the Commission to take up costing and pricing only on issues that have been resolved through the workshop process in 97I-198T, and not to attempt ratesetting for not-yet resolved disputed topics. AT&T thus prefers a phased treatment. AT&T further argues that all rates from Docket
No. 96S-331T should be put at issue here. AT&T notes that Qwest has put some of the Docket No. 96S-331T rates at issue already through altering some of the offerings from Docket No. 96S-331T.

9. Worldcom portrays itself of two minds. On the one hand, it desires permanent pricing and quickly; on the other, it counsels a methodical examination of all prices. Worldcom argues against forging ahead on pricing elements not-yet agreed to in the workshops; in Docket No. 97I-198T. It also sees the need to revisit Docket No. 96S-331T prices, citing the lack of competitive entry to date as evidence of their insufficiency.

9. Jato deems Qwest's proposed schedule "speedy" and cautions against undue haste. It nevertheless argues for a December 22, 2000 due date for Qwest's initial testimony, with an opportunity then for the parties to assess the necessary time to complete this hearing. Jato urges the Commission to include Docket No. 96S-331T rates at issue here because those prices are obsolescent.

10. ICG opposes a single hearing to examine the costs and prices at issue here. Instead, ICG supports postponing setting a schedule here until all the Docket No. 97I-198T workshops have concluded. In the alternative, ICG will accede to a phased approach where the first phase takes up items that have been dealt with in Docket No. 97I-198T workshops. ICG
proposes moving resale, interconnection, colocation, unbundled loops, enhanced extended loops (“EELs”), UNE-P, and bona fide request (“BFR”) rates to later phases of this proceeding.

11. Joint Respondents favor a two-phased hearing schedule because of the ongoing changes to the SGAT. The Joint Respondents believe that more-settled SGAT service elements can be priced in Phase 1, while the evolving elements of the SGAT should not be priced until Phase 2. Joint Respondents also propose an actual schedule for the hearing—Phase 1 to begin on May 14 and Phase 2 to be scheduled in September 2001. Phase 1 could include SGAT sections 6 and 10, along with dark fiber, colocation, EEL and unbundled dedicated interoffice transport (“UDIT”). Phase 2 would involve unbundled loops, multiplexing, subloop, transport, UNE-P and line sharing. Finally, Joint Respondents suggest it would be inequitable to allow Qwest alone to put rates at issue, and that Docket No. 96-S-331T rates must be at issue here.

12. Qwest's reply endorses the phased hearing approach, if necessary, and argues against delay in scheduling a hearing.

13. Having considered these filings, and comments at the November 8, 2000 scheduling conference, the hearing commissioner finds as follows:
14. The Commission is charged in this docket with certifying that Qwest provides nondiscriminatory access to network elements under terms, rates, and conditions that are just and reasonable. See 477 U.S.C. §§ 251(c)(3), 252(a)(1).

The FCC directs that prices should be based on the total element long-run incremental cost ("TELRIC") of providing those elements. 47 C.F.R. § 51.501. Qwest's burden, then, is to establish that its SGAT offerings are priced according to TELRIC principles. Qwest must ultimately convince the FCC of this fact. In this portion of the § 271 process, the FCC has shown considerable deference to state commissions' certification that rate elements—be they interim or "permanent"—follow TELRIC pricing.¹

15. Just because the SGAT is an evolving document does not mean that this hearing concerning costing and pricing should not go forward. By its very nature the SGAT will be an ever-changing document. In the same way, TELRIC-pricing of SGAT elements is, almost by definition, obsolete by the time the Commission passes judgment on it. Such is the challenge of having to do static analysis on a dynamic process.

¹ See, e.g., In the Matter of Application by Bell Atlantic New York for Authorization under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York, Memorandum Opinion and Order, CC Docket No. 99-295, ¶¶ 63, 77-80, 237-262 (Dec. 22, 1999); In the Matter of Application of SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas, Memorandum Opinion and Order, CCC Docket 00-65, ¶¶ 82-90; 231-242 (June 30, 2000).
16. It appears from the parties' filings that a phased hearing approach can be accomplished. No party expressly or convincingly argued for postponing pricing a specific rate element in Qwest's attachment. Therefore, a Phase 1 hearing will proceed involving, at the very least, the rate elements contained in Qwest's Statement of Elements, with the exception of the UNE-Ps on page 11 described as "Items not in SGAT." But that is not all that can be at issue in Phase 1.

17. Rates set in Docket No. 96S-331T are not, at first glance, out of bounds in this proceeding. Neither is the Commission disposed to revisit all rates set in that docket. Though aging, the Commission set rates from Docket No. 96S-331T following FCC-mandated TELRIC principles. A federal court reviewed those rates, and largely upheld the Commission's rates. These TELRIC rates are thus presumptively valid.

18. That said, the Commission will permit parties to challenge rates from Docket No. 96S-331T. At this point, blanket statements about what Docket No. 96S-331T rates could be put at issue here are not possible. In its direct case, Qwest will not bear the burden of rejustifying rates from Docket No. 96S-331T. In response, parties are free to contest any Docket No. 96S-331T rate that they believe is not consistent with FCC pricing directives.
19. Discovery and inevitable disputes will end up defining what Docket No. 96S-331T rates make their way back before the Commission. Any party seeking to revisit a Docket No. 96S-331T rate will need some sort of prima facie showing that the given rate element is not priced correctly. For instance, a party may be able to show that Colorado’s price for a given rate element is much higher than similar rate elements in other states. That would get a Docket No. 96S-331T rate in play. Correspondingly, a showing that a rate element in Colorado is priced similarly in other states would militate against revisiting a given Docket No. 96S-331T rate.

20. Contentions that ongoing changes to the SGAT warrant postponing this docket are unavailing. It is the hearing commissioner’s understanding that SGAT changes are not so dramatic that rate elements, and their attendant components, cannot be priced now. As has been noted, costing and pricing--in this docket and into the future--is an iterative process. This means that there will always be reason to postpone, if the predicate is certainty and finality in the terms and conditions of the SGAT. It means, too, that our schedule must remain flexible especially in light of ongoing workshops on

\[\text{\textsuperscript{2}}\text{ Take a generic rate element "A" through SGAT changes, it could change to A' or A'', but it is not changing into rate element B. Therefore, costing and pricing of rate element A, with the need for potential future modification to cost and price rate element A' will not result in unnecessary work.}\]
collocation, unbundled loops, sub-loops, BRLs, line sharing, and UNE-Ps.

21. Staff's suggestion that Qwest make available all supporting documents and workpapers associated with its cost studies is well-taken. Qwest shall make available all supporting documents and workpapers to any requesting party to this docket, including Staff, at the same time it files its answer testimony. Qwest is not required to file the same with the Commission. By making these supporting schedules and workpapers available earlier, Qwest will expedite the discovery process and allow a more timely hearing.

22. The contents and timing of a Phase 2 hearing cannot be ascertained at this time. Certainly, terms and conditions of rate elements not-yet considered in Docket No. 971-198T workshops would seem to fall into this category. Likewise, rate elements for which Qwest offers testimony in Phase 1 could conceivably "slip" into Phase 2 should they undergo extensive revision in the SGAT. Those are issues for down the road.

B. Procedural Dates

1. The schedule for the prefiling of testimony and exhibits and for hearing before the Commission shall be:

<table>
<thead>
<tr>
<th>Qwest Direct Testimony</th>
<th>January 15, 2001</th>
</tr>
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<tbody>
<tr>
<td>Intervenor Answer Testimony</td>
<td>March 16, 2001</td>
</tr>
<tr>
<td>Reply and Cross-Answer Testimony</td>
<td>April 6, 2001</td>
</tr>
</tbody>
</table>
Prehearing Conference May 3, 2001, 9:15 a.m.
Phase I Hearing May 7, 2001, 9:30 a.m.

C. Discovery

Discovery shall be conducted in accordance with Rule 77 of the Commission's Rules of Practice and Procedure, 4 Code of Colorado Regulations 723-1-777. Each party filing testimony shall make available to all other parties all workpapers supporting that testimony. These workpapers shall be available upon the filing of that testimony with the Commission. No discovery requests or responses shall be filed with the Commission or served upon the Commission's designated advisory staff.

D. Trial Data Certificates

1. To facilitate discussions during the May 3, 2001, prehearing conference, the parties, individually or jointly, shall file trial data certificates on or before April 30, 2001. Trial data certificates should include the following:

   a. Stipulations between parties;
   b. Witness list;
   c. Exhibit list;
   d. Estimate of cross-examination time for each witness;

Hearing will begin on May 7, 2001, at 9:30 a.m. and continue each day thereafter until completed, subject to the needs of the Commission.
e. Any other matter a party desires to bring to the Commission's attention, including specific legal citations or points of law.

E. Other Matters

1. Prefiled exhibitts shall be designated by letters of the alphabet; exhibits introduced at hearing shall be designated by numbers.

2. Service of testimony, discovery responses, discovery requests, and testimony shall be by hand delivery, facsimile transmission, or electronic transmission for parties in the Denver metropolitan area. Delivery to all others shall be by overnight mail or any of the preceding methods.

II. ORDER

A. It is Ordered That:

1. The procedural requirements discussed above are hereby adopted as the requirements for the present proceeding.

2. The hearing shall commence:


TIME: 8:30 a.m.

PLACE: Commission Hearing Room A
Office Level 2 (OL2)
Logan Tower
1580 Logan Street
Denver, Colorado.

The hearing shall continue as necessary.
3. **Trial data certificates** in a form consistent with the above discussion shall be filed on or before May 3, 2001.

4. Staff's Motion for leave to file one day late is granted.

5. Qwest Corporation's Motion for Leave to Reply is granted.

B. This Order is effective immediately upon its Mailed Date.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

RAYMOND L. GIFFORD
Hearing Commissioner

ATTEST: A TRUE COPY

Bruce N. Smith
Director