EXCEPTIONS OF TIME WARNER TELECOM OF ARIZONA, LLC

Time Warner Telecom of Arizona, LLC ("TWTC") respectfully takes exception to one aspect of the Recommended Opinion and Order ("RO"). The RO concludes that Qwest's proposed collocation decommissioning policy provides reasonable protections for CLEC collocators with respect to the reusability of collocation facilities (RO at 49, ll. 16-17). The RO does not indicate whether this statement is an approval of the decommissioning charges contained in that policy. The decommissioning policy describes procedures by which a CLEC can vacate its collocation space. The policy also proposes to charge CLECs for such decommissioning.

TWTC respectfully requests that lines 16 and 17 be stricken from the final Order, that Qwest be required to negotiate, not dictate, this new decommissioning policy with
CLECs and that Qwest be required to file and obtain approval of an appropriate TELRIC-based cost study to support any decommissioning charges.

TWTC is a CLEC with nationwide operations. Its customers, operations, and facilities in Arizona are largely the legacy facilities of GST Telecom acquired by TWTC in January of this year. Nationally, TWTC delivers “last-mile” broadband data, dedicated Internet access and voice services in more than 42 metropolitan areas.

Qwest seeks to impose unilaterally a decommissioning policy and to charge CLECs fees that have not been reviewed and approved by this Commission nor even included in cost studies in this proceeding. Specifically, Qwest witness Mr. Kennedy described three recent collocation policies including a decommissioning policy. Kennedy Rebuttal Testimony, p. 17; and Exhibit RFK-1. Pursuant to this decommissioning policy, Qwest will assess certain payments on CLECs vacating collocation space, including a “Network System Administration Fee” and “Decommissioning Assessment Fee.”

Qwest witness, Mr. Hubbard, adopted the testimony of Mr. Kennedy during the hearing. Mr. Hubbard was uncertain how this policy was derived and what role the CLECs played in the development of this policy. Transcript, p. 318, l. 14 through p. 319, l. 18. Mr. Hubbard made it clear that this decommissioning policy supercedes existing interconnection agreements with CLECs. Transcript, p. 313, ll. 9-20.

Qwest argues, and the RO seems to adopt, the notion that if a new Qwest policy conflicts with an existing interconnection agreement, the terms of the existing agreement would prevail. That is not TWTC’s point. In the case of the decommissioning policy, Qwest is adding to the interconnection agreement on a unilateral basis, not changing an existing provision. In other words, there is no decommissioning language in the current
TWTC/Qwest interconnection agreement, but Qwest seeks to add such language. A unilateral amendment adding a new provision to an existing interconnection agreement is inappropriate whether that amendment is in conflict with an existing interconnection agreement provision or a new provision that was not agreed to by the CLEC.

Mr. Hubbard did not know how the prices were determined and whether there are cost studies in support of those prices filed in this proceeding. Transcript, p. 314, ll. 7-15. Questioning of subsequent witnesses confirmed that there are no cost studies supporting these decommissioning prices filed in this docket, nor is Qwest seeking approval of these prices in this proceeding. Transcript, pp. 738-739.

Apparently, Qwest believes it can impose these charges without Commission approval. In fact, Qwest, prior to Commission approval or even the initiation of the hearing in this proceeding, tried to impose these prices on TWTC in Arizona. Transcript, p. 315, ll. 21-24; see also WorldCom Exhibit 3 – attached to these Exceptions at Tab A. Such behavior is anti-competitive and an example of why it is so difficult for local exchange competition to emerge and flourish in Arizona.

The Commission must stop Qwest from implementing new policies that effectively amend existing Commission approved interconnection agreements without CLEC or Commission approval. The Commission also must stop Qwest from assessing rates and charges on CLECs that have not been approved by the Commission. Qwest’s new decommissioning policy is but one of many “policies” that have been imposed unilaterally and, according to Qwest, must be followed by a CLEC. In fact, Qwest’s position on this and other policies is take it or leave it, and, if you don’t like it, the CLEC bears the burden of seeking an amendment to its interconnection agreement. See July 11,
2001 letter attached at Tab B. Simply stated, Qwest’s view of the world turns contractual law on its head. Moreover, Qwest’s position is violative of Section 252 of the Federal Telecommunications Act, which requires negotiation and, if necessary, arbitration of disputed terms and conditions for collocation.

TWTC respectfully requests that the final order in this proceeding include an explicit prohibition on Qwest from implementing new policies such as decommissioning unless or until such policies are mutually negotiated or approved by the Commission. In addition, TWTC urges the Commission to reject Qwest’s proposed decommissioning policy including charging fees for decommissioning until:

1. Decommissioning provisions have been approved by this Commission through the approval of a negotiated or arbitrated amendment to interconnection agreements, and;

2. The proposed prices for decommissioning have been reviewed and approved by the Commission during an appropriate hearing.

RESPECTFULLY SUBMITTED this 12th day of December, 2001.

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