IN THE MATTER OF INVESTIGATION INTO US WEST COMMUNICATIONS, WHOLESALE PRICING REQUIREMENTS FOR UNBUNDLED NETWORK ELEMENTS AND RESALE DISCOUNTS

DOCKET NO. T-0000A-00-0194

JOINDER OF COMMISSION STAFF IN AT&T'S MOTION TO STRIKE POST HEARING "STATEMENT" SUBMITTED BY QWEST AND REPLY TO QWEST'S RESPONSE

On March 8, 2002, the Commission's Hearing Division issued a Supplement to its Recommended Opinion and Order ("Supplemental ROO") in Phase II of this Docket. The Hearing Division gave parties until March 18, 2002 to file any exceptions to the Supplemental ROO. Several parties filed exceptions including Staff, AT&T Communications of the Mountain States, Inc. ("AT&T"), WorldCom, Inc. ("WorldCom") and Qwest Corporation ("Qwest"). Attached to Qwest's Exceptions was a 10 page Statement by Harry M. Shooshan III, president and co-founder of Strategic Policy Research, Inc., a communications policy consulting firm located in Bethesda, Maryland. Mr. Shooshan's statement contains a myriad of policy arguments, and new supporting "facts" in support of Qwest's position in this case.

On March 29, 2002, AT&T filed a Motion requesting that the Commission strike the post hearing "Statement" of Harry M. Shooshan, III, since it was filed after the record had closed and the parties did not have an opportunity to cross-examine Mr. Shooshan on the Statement. Staff concurs with the Motion to Strike the post-hearing Statement of Harry M. Shooshan, III, since Mr. Shooshan's Statement was not timely filed and attempts to introduce and argue new facts not
in evidence, all of which if allowed would severely prejudice the Staff and other parties in this Docket.

For instance, on page 3 of his Statement, Mr. Shooshan refers to specific rate reductions in access charges in the FCC CALLS Plan and states that “decisions the FCC and this Commission have made regarding access charges are important in this Docket because UNEs (especially UNE-Ps) provide long distance carriers with a cheaper alternative to carrier access. Statement at p. 3.¹ There is nothing in the record to support this statement; and Staff disagrees with it. Mr. Shooshan also states that while $25.95 (Qwest’s proposed statewide average) may be too high, $12.62 (the ALJ’s proposed statewide average) is difficult to defend under any circumstances. He then states on page 9 that “his chief concern about the ALJ’s draft order in its current form is that . . . the recommended UNE loop rate was calculated precisely to come out just below the already low 1 FR.” There is absolutely nothing in the record in support of this anecdotal statement. On page 4 of his Statement, Mr. Shooshan then goes on to state that “Qwest must be given additional flexibility in the price regulation plan in order to maintain the balance that was struck.” Mr. Shooshan also states that his own preference would be that “you not drive UNE prices down to levels where it would be necessary to reopen what I believe is a very progressive price regulation plan.”

Staff reminds Qwest that the balance that was struck in the Qwest Rate Case was with regard to Qwest’s retail rates charged to end-users, with the exception of intrastate access charges. All other wholesale rates were subject to other proceedings, including the Wholesale Pricing Docket. There was absolutely no agreement “struck” regarding the rates for UNEs or other wholesale prices which are subject to the FCC’s TELRIC pricing rules.

Ironically, Qwest chastises AT&T and WorldCom for asserting that local competition is being thwarted to gain additional concessions from the BOCs. Yet, it appears that it is actually Qwest that is attempting to gain additional concessions from the Commission by implying that UNE rates contained in the ROO are set below “cost” and that there will be no facilities-based

¹ Not surprisingly, Qwest makes no mention of Mr. Shooshan’s Direct Testimony in the last Qwest Rate Case where he argued that intrastate access charges should be reduced to interstate levels over the term of the Plan, which would have resulted in a significant reduction over the level of reductions eventually contained in the Settlement Agreement.
competition as a result and that the Rate Case Settlement will have to be reopened to redo the
balance that was struck.

Many of the concerns raised in Mr. Shooshan's statement are based upon facts or assumptions which are not in the record of this proceeding. In addition to those noted above, one need only read page 6 to see that Mr. Shooshan is relying upon statements made in articles that were issued after the record had closed in this proceeding. For Mr. Shooshan to come in at this late date, after testimony has been submitted and essentially present himself as an expert witness on these issues, with the other parties having no opportunity to cross-examine Mr. Shooshan, defies all notions of fair play.

In its Reply, Qwest argues that Mr. Shooshan is merely attempting to provide general public comment. Qwest Response at p. 1. Staff finds this statement to be preposterous. If Mr. Shooshan was really attempting to provide general public comment, his Statement would not have been attached to Qwest's Exceptions. The Statement would have been separately filed in the Docket, on behalf of Strategic Policy Research, the entity in which he is a stakeholder. Qwest, having attached it as an Exhibit to its Exceptions, is attempting to give the Statement the weight accorded to regularly filed testimony in this Docket. This is inappropriate and the damage done and prejudice to Staff and other parties cannot be undone except through striking Mr. Shooshan's Statement.

Staff is also incredulous at Qwest's position that Mr. Shooshan's Statement is not being offered to support any party's model in this docket, but it is merely being submitted to "counter the notion that the public interest requires that TELRIC be ignored or distorted to produce the lowest rates possible." Not coincidentally, this is Qwest's exact position in the underlying docket, i.e., that the ROO ignores TELRIC costs and is distorted to produce the lowest rates possible.

Qwest's reliance on Mr. Poston's appearances on behalf of Arizonans for Competition in Telephone Service in various Commission proceedings to support its actions is also misplaced. Mr. Poston has always appeared separately on behalf of Arizonans for Competition for Telephone Service. His statements have never been, to Staff's knowledge, appended as an
Exhibit in support of any CLEC's position. Qwest's having attached Mr. Shooshan's Statement as an exhibit amounts to nothing more than an attempt to introduce late-filed testimony which cannot be subject to cross-examination by any party.

For all of the reasons outlined above, Staff joins in the AT&T Motion to Strike Mr. Shooshan's Statement.

RESPECTFULLY submitted this 10th day of April, 2002.

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