BEFORE THE ARIZONA CORPORATION COMMISSION

MARC SPITZER
Chairman

JAMES M. IRVIN
Commissioner

WILLIAM MUNDELL
Commissioner

JEFF HATCH-MILLER
Commissioner

MIKE GLEASON
Commissioner

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

ARIZONA CORPORATION COMMISSION,
Complainant,

v.

QWEST CORPORATION,
Respondent.

DOCKET NO. T-00000A-00-0194

DOCKET NO. T-01051B-02-0871

Qwest Corporation ("Qwest") hereby responds to two separate Application(s) for Intervention filed in the above-referenced proceedings by Mountain Telecommunications, Inc. ("MTI") on January 8, 2003 (the "Applications"). As captioned, MTI's applications separately seek intervention in the next scheduled phase (Phase III) of the Commission's ongoing investigation of Qwest's compliance with Commission wholesale pricing requirements, as well as
immediate intervention in the Commission’s recently-initiated Order to Show Cause proceeding addressing Qwest’s procedures for wholesale rate implementation. As explained below, Qwest does not oppose MTI’s intervention in Phase III of the Commission’s Wholesale Cost Docket but believes the appropriate time for intervention will be when the Commission issues a procedural order for that phase of the docket.

However, Qwest strongly opposes MTI’s companion Motion to intervene in the Commission’s pending Complaint and Order to Show Cause proceeding (Docket NO. T-0105B-02-0871). As explained below, Arizona law does not authorize intervention by MTI. Moreover, overriding policy concerns also warrant limitation of both the parties and issues addressed in this proceeding, consistent with the scope set forth in Staff’s complaint. MTI’s application to intervene in that proceeding, therefore, should be denied.

1. **The Issues Identified by MTI in Its Application Do Not Support a Grant of Intervention in the OSC proceeding.**

In its Application, MTI correctly points out that in Decision 64922, the Commission adopted the results of the HAI model for use in establishing transport rates, while deferring re-examination of modeling mechanisms for transport rates until Phase III of the Wholesale Cost Docket proceeding. MTI apparently seeks intervention in the OSC to utilize this proceeding to request an immediate and comprehensive review of the transport rate regime just adopted by the Commission.

Pursuant to Arizona Administrative Code ("A.A.C.") R14-3-105, intervention may be granted only if the applicant for intervention demonstrates that its interests are "directly and substantially affected" by the proceeding. The rule further provides that "[n]o application to intervene shall be granted where by so doing the issues theretofore presented will be unduly broadened...." *Id.*
The Commission established the wholesale rate implementation OSC for an important, albeit narrow purpose: to evaluate Qwest's actions, and related procedures, associated with implementation of the Commission's June 12, 2002 Order. There are several straightforward reasons why Commission expansion of the OSC is inappropriate and potentially counterproductive.

As a threshold matter, the Complaint and OSC does not place at issue the validity of the Commission's recently-approved rate structure, including transport rates. The issue raised by MTI – that Commission-approved Direct Trunk Transport rates "are far higher than the previously-applicable charges for that service"¹ – is an issue already slated for review in the next scheduled phase of the wholesale cost docket. Qwest has correctly calculated and billed MTI for the DTT transport rate in question, consistent with the Commission’s Order. Indeed, MTI does not contend otherwise. Accordingly, MTI offers no compelling rationale why to the extent necessary, re-examination of these rates should not occur in Phase III, as will be the case for other designated issues.

Second, contrary to MTI’s contention, the new transport rates in question have not been “imposed by Qwest.” As the Commission and its Staff are well aware, these rates are the result of an extensive and time-consuming evaluation of numerous wholesale rates generated by competing cost models submitted by parties in Phase II of this proceeding. The Commission’s Order explicitly addressed concerns raised by the parties regarding using the HAI model to set applicable transport rates and determined that:

We believe that consistency requires adoption of the HAI model’s results for both loop costs and transport. As Qwest points out, any UNE pricing inquiry necessarily involves some cost averaging among different kinds of facilities. Even loop costs within a given zone require averaging of costs for different loop lengths within that zone. Accordingly, we will adopt the HAI model’s results for purposes of pricing transport in this proceeding...Although we are adopting the HAI model’s results at this time, we believe

¹ Application, pg. 3, emphasis in original.
that this issue should be re-examined in Phase III so that a full record may be developed.\(^2\)

As the above discussion indicates, in its Order the Commission considered the effect of implementing the rates under discussion, made a decision, and also set forth a specific procedural framework for re-examination. Qwest also points out that Commission Staff did not object to the approach taken by the Order for calculating transport rate charges. Prior to the resolution contained in the Commission’s Order, this issue was debated extensively during a January 25, 2002 Oral Argument held to address issues identified in briefs that were not included in a proposed order in the proceeding. During that oral argument, Staff offered no objection to Qwest’s position on this matter.\(^3\)

Third, from a practical perspective, MTI’s Application to intervene in the OSC should be rejected because such intervention would transform a focused “show cause” proceeding into a potentially open-ended process for reconsideration of rates authorized during Phase II. Since there simply is no basis for treating transport rates differently than numerous other rates identified for re-examination or full consideration in Phase III, procedural due process requires that this issue, like others so designated, be considered pursuant to the Commission’s existing schedule.

Finally, MTI’s standing to raise these issues in the context of the OSC is questionable. As the record indicates, concerns regarding Commission treatment of the rates in question have been under discussion for over a year. In spite of the apparent importance of these rates to MTI’s business, the company did not intervene in Phase II, was not involved in hearings, and offered the Commission no input during the proceedings on this issue. Its extraordinary request that this issue be addressed immediately and in the context of an OSC proceeding intended to address wholly distinct legal and factual matters is inconsistent with the Commission’s directives and would set an undesirable precedent for future proceedings of this nature. In particular, allowing MTI to intervene here would reduce the incentive of potential intervenors in future cost

\(^2\) Decision No. 64922, pg. 79.

\(^3\) See Hearing Transcript, Docket T-00000A-00-194, January 25, 2002, pg. 118.
proceedings to intervene and raise issues in a timely, efficient, and orderly manner.

2. Qwest Does Not Oppose MTI's Intervention in Phase III of the Wholesale Cost Proceeding

As noted above, Qwest does not oppose MTI's proposed intervention in Phase III of the wholesale cost proceeding. The Commission has established that proceeding for, among other purposes, re-examination of the issues raised by MTI. Qwest believes that the Commission's approach is reasonable, and should not be altered at this time.

Based on the foregoing, MTI has not demonstrated and cannot demonstrate that there is a legal or policy basis supporting its extraordinary request to intervene in the OSC docket. At the appropriate time – when a schedule is set for Phase III – the Commission should grant MTI's request for intervention in the Phase III docket, where these issues may be fully addressed by all parties.

DATED this 7th day of January, 2003.

QWEST CORPORATION
Mark Brown
3033 N. 3rd Street
Phoenix, AZ 85012
Telephone (602) 630-1181

-and-

FENNEMORE CRAIG

By

Timothy Berg
Theresa Dwyer
3003 North Central Avenue, #2600
Phoenix, AZ 85012-2913

Attorneys for Qwest Corporation
ORIGINAL and 15 copies of the foregoing hand-delivered for filing this 24th day of January, 2003 to:

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

COPY of the foregoing hand-delivered this 24th day of January, 2003 to:

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

Lyn Farmer
Hearing Division
ARIZONA CORPORATION COMMISSION
1200 West Washington
Phoenix, Arizona 85007

Ernest Johnson
Utilities Division
ARIZONA CORPORATION COMMISSION
1200 West Washington
Phoenix, Arizona 85007

COPY of the foregoing mailed this 24th day of January, 2003 to:

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

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

Michael W. Patten
ROSHKA HEYMAN & DEWULF
400 North Fifth St., Ste. 1000
Phoenix, AZ 85004-3906
1. Michael Grant
   Todd C. Wiley
   GALLAGHER & KENNEDY
   2575 E. Camelback Rd.
   Phoenix, AZ 85016-9225

2. Thomas H. Campbell
   LEWIS & ROCA
   40 N. Central Avenue
   Phoenix, AZ 85007

3. Brian S. Thomas
   TIME WARNER TELECOM
   520 SW Sixth Ave., Suite 300
   Portland, OR 97204-1522

4. Thomas F. Dixon
   WORLDCOM
   707 17th Street
   Denver, CO 80202

5. Eric S. Heath
   SPRINT COMMUNICATIONS CO.
   100 Spear Street, Suite 930
   San Francisco, CA 94105

6. Scott S. Wakefield
   RUCO
   1110 West Washington, Suite 220
   Phoenix, AZ 85007

7. Ray Heyman
   ROSHKAT HEYMAN & DeWULF
   400 North 5th Street, Suite 1000
   Phoenix, AZ 85004

8. Rex M. Knowles
   XO Communications, Inc.
   111 E. Broadway, Suite 1000
   Salt Lake City, UT 84111

9. Megan Doberneck
   COVAD COMMUNICATIONS COMPANY
   7901 Lowry Boulevard
   Denver, Colorado 80230

10. Lisa Crowley
    COVAD COMMUNICATIONS COMPANY
    4250 Burton Drive
    Santa Clara, CA 95054
1 Greg Kopta  
DAVIS WRIGHT TREMAINE LLP  
200 Century Square  
1501 Fourth Avenue  
Seattle, WA 98101-1688  

4 Mary S. Steele  
DAVIS WRIGHT TREMAINE, LLP  
2600 Century Square  
1501 Fourth Avenue  
Seattle, WA 98101-1688  

7 Dennis Ahlers  
Senior Attorney  
ESCHELON TELECOM, INC.  
730 Second Avenue South, Suite 1200  
Minneapolis, MN 55402  

10 Steve Sager, Esq.  
MCLEODUSA TELECOMMUNICATIONS SERVICE, INC.  
215 South State Street, 10th Floor  
Salt Lake City, Utah 84111  

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

15 Penny Bewick  
NEW EDGE NETWORKS  
PO Box 5159  
3000 Columbia House Blvd.  
Vancouver, Washington 98668  

18 Michael B. Hazzard  
KELLEY DRYE AND WARREN  
1200 19th Street, NW  
Washington, DC 20036  

21 Janet Livengood  
Z-TEL COMMUNICATIONS, INC.  
601 South Harbour Island  
Suite 220  
Tampa, Florida 33602  

24 Andrea Harris  
ALLEGIANCE TELECOM  
2101 Webster  
Suite 1580  
Oakland, CA 94612  
