DOCKET NO. T-00000A-00-0194

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

and

DOCKET NO. T-0105B-02-0871

COMPLAINT
AND
ORDER TO SHOW CAUSE

ARIZONA CORPORATION COMMISSION
Complainant,

v.

QWEST CORPORATION,
Respondent

REPLY TO QWEST'S RESPONSE TO MTI'S
APPLICATIONS FOR INTERVENTION

Mountain Telecommunications, Inc. ("MTI"), by its attorneys, pursuant to A.R.C. R14-3-106, hereby files this reply to Qwest's response to MTI's applications to intervene in each of the above-captioned docketed proceedings.

On January 9, 2003, MTI filed with the Commission separate applications to intervene in each of the above-captioned proceedings. On January 21, 2003, Qwest submitted a response to MTI's applications. However, that response was not served on MTI or its counsel. During a procedural conference held on January 27, 2003 in Docket No. T-0105B-02-0871, it was agreed that MTI's reply to Qwest's response would be due January 31.

Qwest has stated that it does not oppose MTI's intervention in Phase III of the Wholesale Cost Docket (Docket No. T-00000A-00-0194), but that it does oppose MTI's intervention in the
pending Complaint and Show Cause proceeding (Docket No. T-0105B-02-0871). According to
Qwest, MTI’s intervention in the Show Cause proceeding is not permitted by Arizona law. However, that statement reflects a thorough misunderstanding of the basis for MTI’s interest in
that proceeding and why MTI’s intervention not only is permitted by Arizona law but is
compelled by the public interest.

At the heart of the Commission’s Decision in the Show Cause proceeding (Decision No.
65450, issued December 12, 2002) is Qwest’s failure to properly and timely implement pricing
changes for unbundled network elements in accordance with the Commission’s Decision No.
64922 issued June 12, 2002 in the Wholesale Cost Docket. The Commission’s purpose in
conducting that docket was to establish rates for unbundled network elements and
interconnection which conform with the statutory requirements of the Telecommunications Act
of 1996, and the FCC’s pricing rules based on the Total Element Long-run Incremental Cost
(TELRIC) standard. Underlying those statutory requirements and regulatory standards is a
pronounced public policy in favor of the opening of incumbent local exchange carrier networks
(including those of Qwest) to achieve the development of telecommunications services
competition.

As a competitive local exchange carrier (CLEC) authorized by the Commission to
provide telecommunications services in Arizona, MTI is reliant upon the availability at lawful
rates of unbundled network elements, including Transport and Local Interconnection Service, as
well as unbundled local loops, in order to provide service. As explained by MTI in its
applications to intervene and in its Supplement to Applications to Intervene filed in both dockets
on January 30, 2003, Qwest has violated the Commission’s intentions in Decision No. 64922 in
several critical respects. First, it has not properly implemented rates for Transport and Local
Interconnection Service which comply with the pricing standards codified at Section 252 of the Communications Act (47 U.S.C. § 252) and with the FCC’s TELRIC pricing rules. Second, it has purported to implement its understanding of the pricing changes for Transport and Local Interconnection Service (almost all rate increases), while only partially and sporadically implementing the pricing changes for unbundled loops and for installation (almost entirely rate decreases). As MTI noted in its January 30 Supplement, Qwest has charged MTI the new loop rates for only eight percent of MTI’s loops.\(^1\)

The purpose of the Show Cause proceeding is to examine the manner in which Qwest has implemented those rate changes and to hold Qwest accountable for its failure to do so in a timely manner. The impact on competition of Qwest’s implementation \textit{vel non} of the rate changes contemplated by Decision No. 64922 is a central aspect of the Show Cause proceeding. As the Commission itself stated, “[t]he inability of Qwest to make wholesale rate changes in a reasonable amount of time and to charge accurate rates to CLECs creates an unlevel playing field and results in discriminatory treatment by Qwest relative to how it treats its retail customers.”\(^2\)

Qwest correctly notes that the standard for intervention in Commission proceedings is contained at Arizona Administrative Code R14-3-105. R14-3-105.A states that “[P]ersons, other than original parties to the proceedings, who are directly and substantially affected by the proceedings, shall secure an order from the Commission or presiding officer granting leave to intervene before being allowed to participate” (emphasis added). Clearly, intervention applications are to be governed by the “directly and substantially affected” standard. As a purchaser of unbundled network elements from Qwest, including Transport, Local Interconnection Service, and unbundled loops, and as one of the relatively few remaining

\(^1\) Supplement to Applications to Intervene, filed January 30, 2003, at 3.

\(^2\) Decision No. 65450 at 7
financially viable CLECs operating in the State of Arizona, it is difficult to imagine any entity which will be more directly and substantially affected by Qwest's implementation of the Commission's requirements for unbundled network element pricing than MTI.

Contrary to Qwest's assertion, MTI does not intend to use this proceeding to seek an "immediate and comprehensive review of the transport rate regime just adopted by the Commission."3 What MTI does seek is cessation of the Transport and Local Interconnection Service rates recently implemented by Qwest ostensibly in compliance with Decision 64922 until such time as the issue of appropriate modeling of transport costs based on a complete record, including wire center-specific data (in Qwest's exclusive control) can be developed and analyzed in Phase III. In order to avoid the severe dislocations and disruption to competition which will result from these above cost prices, MTI has moved the Commission to enjoin Qwest from charging Transport and Local Interconnection Service rates which it developed based on incomplete data.4

3 Qwest Response at 2.
4 Motion for Injunction, filed January 17, 2003.
Because Qwest’s implementation of Decision No. 64922 is before the Commission in this proceeding, this may be the most appropriate forum for the Commission to address the concerns raised by MTI and to grant the relief requested. In the event that the Commission enjoins Qwest from charging the Transport and Local Interconnection Service rates reflected in the invoices received by MTI in January, and directs Qwest to continue to utilize the pre-Decision 64922 rates for those unbundled network elements pending completion of Phase III, then MTI will have no need to intervene in the instant proceeding and it will withdraw its application. MTI does plan to participate in Phase III.

Respectfully submitted,

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January 31, 2003
CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing Reply to Qwest’s Response to MTI’s Applications for Intervention on all parties of record in these proceedings by mailing a copy thereof, properly addressed with first class postage prepaid to the following:

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