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

ARIZONA CORPORATION COMMISSION,

COMPLAINANT,

VS.

QWEST CORPORATION,

RESPONDENT.

MOUNTAIN TELECOMMUNICATIONS, INC.

COMPLAINANT,

VS.

QWEST CORPORATION,

RESPONDENT.

BY THE COMMISSION:


In Decision No. 65450 (December 12, 2002), the Commission issued a Complaint and Order
to Show Cause in this proceeding against Qwest in the above-captioned Docket No. T-01051B-02-0871 (the “Show Cause Docket”). That Decision ordered Qwest to appear and show cause as to “(1) why its failure to implement the rates required by Decision No. 64922 is not unreasonable, (2) why its implementation of rates in the other states with pending 271 applications at the FCC ahead of Arizona is not unreasonable, and (3) why its failure to notify the Commission of the delay and seek relief from the Order is not unreasonable.”

**Procedural Schedule in the Show Cause Docket**

A Procedural Conference was conducted in the Show Cause Docket on January 27, 2003 to discuss procedural issues and scheduling of the hearing in that case. On February 3, 2003, Qwest, AT&T Communications of the Mountain States, Inc. (“AT&T), and the Commission’s Utilities Division Staff (“Staff”) submitted a Joint Stipulation Regarding the Procedural Schedule. Based on the Joint Stipulation, the following schedule shall be established for the Show Cause Docket:

- **Staff Direct Testimony**: March 27, 2003
- **Intervenor Direct Testimony**: April 11, 2003
- **Qwest Rebuttal Testimony**: May 8, 2003
- **Staff and Intervenor Reply**: May 30, 2003
- **Hearing Commences**: June 9, 2003

**Intervention Requests by Mountain Telecommunications, Inc.**

On January 10, 2003, Mountain Telecommunications, Inc. (“MTI”) filed Applications to Intervene in the Show Cause Docket and in “Phase III” of the Wholesale Cost Docket. MTI claims that it is reliant on UNEs purchased from Qwest at the rates established by the Commission in the Wholesale Cost Docket. According to MTI, in January 2003 it received the first bills from Qwest reflecting the UNE rates determined in Decision No. 64922. MTI states that the charges from Qwest for transport service and local interconnection service are far higher than the previously applicable charges and that such charges are inconsistent with the Commission’s intent of encouraging local competition. MTI argues that it should be permitted to intervene in the Show Cause Docket to

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1 The parties should be aware that the Commission has an Open Meeting scheduled for June 10 and 11, 2003. In the event the hearing does not conclude on June 9, 2003, a break in the hearing may be required to accommodate the Open Meeting schedule.
challenge the reasonableness of the transport rates and the competitive damage that will occur if Qwest’s transport and local interconnection rates are permitted to remain in effect.

On January 21, 2003, Qwest filed a Response to MTI’s Application to Intervene. Qwest argues that, although it does not oppose MTI’s intervention in the Phase III Wholesale Cost Docket proceeding, MTI should not be permitted to intervene in the Show Cause Docket. Qwest contends that it has correctly calculated and billed MTI for the DTT transport rate in question, in accordance with Decision No. 64922. Qwest asserts that permitting MTI’s intervention request would inappropriately transform the Show Cause Docket into a potentially open-ended process or reconsideration of rates authorized in Phase II of the Wholesale Cost Docket. Qwest points out that MTI did not intervene in the Phase II proceeding, nor did it offer input to the Commission on this issue. Qwest argues that, since the transport rates questioned by MTI have already been slated for reconsideration in Phase III, MTI should not be permitted to intervene in the Show Cause Docket for purposes of challenging the legitimacy of the transport rates.

On January 29, 2003, MTI filed a Supplement to the Applications to Intervene to “clarify the reasons for its interest in these proceedings.” MTI claims that its intervention in the Show Cause Docket is justified because, although Qwest has imposed substantial increases for transport and local interconnection services, Qwest’s downward rate adjustments for other UNEs, including unbundled loops, has been “sporadic and selective.”

On January 31, 2003, MTI filed a Reply to Qwest’s Response to MTI’s Applications for Intervention. MTI reiterates many of the same arguments raised in its earlier pleadings. MTI contends that the impact on competition of Qwest’s implementation of the rate changes determined in Decision No. 64922 is a central aspect of the Show Cause Docket. MTI states that it seeks cessation of the transport and local interconnection service rates implemented by Qwest until the Commission addresses the appropriate modeling of transport costs in Phase III of the Wholesale Cost Docket.

**MTI’s Motion for Injunction**

On January 17, 2003, MTI filed a Motion for Injunction requesting that the Commission enjoin Qwest from charging “unjust and unreasonable prices to MTI for [UNEs].” MTI further requested that the Commission stay the effective date for pricing transport facilities until the
Commission issues a final decision with respect to transport pricing issues. The basis of MTI’s request is that the transport and local interconnection rates imposed by Qwest starting in January 2003 are substantially higher than the rates previously in place for those services. MTI contends that it meets the requirements for injunctive relief because: it is likely to prevail on the merits; absent relief it will suffer irreparable harm; other parties will not suffer substantial injury if relief is granted; and there is a strong public interest in maintaining competition for local telecommunications services.

On February 3 and 4, 2003, AT&T and Qwest, respectively, filed Responses in Opposition to MTI’s request for an injunction. AT&T and Qwest argue that MTI’s request represents a collateral attack on Decision No. 64922 and the requested relief is beyond the scope of the Commission’s authority. Qwest contends that the Show Cause Docket is an inappropriate forum for a grant of injunctive relief because that proceeding is intended to address Qwest’s actions related to implementation of UNE rates established by the Commission, not as a means to challenge the merits of the Commission’s Decision. Both AT&T and Qwest assert that the appropriate forum for consideration of MTI’s claims is in the Phase III portion of the Wholesale Cost Docket, as stated in Decision No. 64922.

On February 18, 2003, MTI filed a Reply to the Responses of AT&T and Qwest. MTI argues that the Commission has ample authority pursuant to its general supervisory powers to grant the requested injunctive relief. MTI reiterates the arguments raised in its Motion for Injunction, and claims that the Commission was unaware of the magnitude of the cost effect on small competitors when Decision No. 64922 was issued. MTI asserts that it has satisfied the criteria for injunctive relief, and stresses that imposition of the increased transport facilities charges will make it uneconomical for MTI to continue to provide competitive local telecommunications service in Arizona.

On February 21, 2003, Time Warner Telecom of Arizona (“Time Warner”) filed a pleading entitled “Comments on Transport Rates and Request for Expedited Hearing of Phase III or Modification of Decision No. 64922.” Time Warner states that it has experienced the same substantial increase in transport rates cited by MTI. Time Warner contends that the transport rate increase constitutes “rate shock” and that the Commission did not have the benefit of evidence
regarding the impact on small CLECs at the time Decision No. 64922 was issued. Time Warner requests that the Commission modify Decision No. 64922 to alleviate rate shock or, in the alternative, that the Commission expedite Phase III of the Wholesale Cost Docket so that the transport rates are reviewed promptly.

On March 3, 2003, Qwest filed a Response to Time Warner’s Comments. Qwest argues that there is no basis for amending Decision No. 64922 as suggested by MTI and Time Warner regarding transport issues. Qwest recommends that, rather than bifurcating transport issues in Phase III of the Wholesale Cost Docket, the entire Phase III proceeding should be expedited, with a hearing beginning on July 7, 2003.

MTI’s Complaint

On February 14, 2003, MTI filed a Complaint in the above-captioned Docket No. T-01051B-03-0092 (“Complaint Docket”) raising the same allegations contained in its prior pleadings. MTI argues that the rate increases for transport facilities, as well as Qwest’s continued delay in implementing new lower rates for local loops, are inconsistent with the Commission’s intent in Decision No. 64922 and violate the federal statutory requirements set forth in the 1996 Telecommunications Act (47 U.S.C. §252(d)(1)(A)). Concurrent with its Complaint, MTI filed a Motion for Preliminary Injunction, raising the same arguments discussed above with respect to the detrimental effect of imposing the higher transport rates and MTI’s satisfaction of the elements for injunctive relief.

TNS Request for Payment

On May 9, 2002, a Procedural Order was issued in Phase II of the Wholesale Cost Docket directing Qwest, AT&T and WorldCom, Inc. (“WorldCom”) to provide year 2000 customer location data to TNS Telecoms (“TNS”) in order for TNS to process the data and run it through the HAI model. The Procedural Order also directed AT&T/WorldCom and Qwest to each pay one-half of TNS’ data processing costs. To date, Qwest has paid only $5,000 of TNS’ bill to Qwest for $15,000.

On November 8, 2002, Qwest filed a Request for Expedited Clarification of the May 9 Procedural Order. Qwest claims that the Procedural Order did not contemplate that the parties would be required to pay for the work done by TNS without being provided the underlying information and
documentation that supports the TNS analysis. Qwest states that “it is wholly reasonable that Qwest be provided with the data as a condition of its obligation [to] make further payment to TNS.”

On November 15, 2003, AT&T filed a Response in Opposition to Qwest’s Request for Expedited Clarification. AT&T argues that Qwest’s request for clarification is untimely, having been filed nearly six months after the issuance of the May 9, 2002 Procedural Order, and nearly five months after the issuance of the Commission’s Order in Decision No. 64922 which approved the cost estimates provided by TNS. AT&T also asserts that Qwest’s Motion is procedurally improper and lacks substantive merit because TNS processed the data in accordance with the Procedural Order, and provided the same information to all parties including Qwest.

On November 25, 2003, Qwest filed a Reply to AT&T’s Response. Qwest restates the arguments raised in its Motion and claims that it attempted to work cooperatively with TNS to analyze and understand the work TNS performed to incorporate the 2000 Arizona customer location data into the HAI model. Qwest claims that, absent TNS’ provision of the underlying data behind its 2000 customer location run, Qwest should be released from any obligation to make additional payment to TNS.

On February 11, 2003, TNS submitted a letter requesting the Commission and Staff to assist in obtaining payment from Qwest of the remaining $10,000 due for the data processing undertaken by TNS in accordance with the directive set forth in the May 9, 2002 Procedural Order.

**AT&T’s Motion for Pro Hac Vice Admission of Richard S. Wolters**

On February 20, 2003, local counsel for AT&T filed a Motion and Consent of Local Counsel for Pro Hac Vice Admission of Richard S. Wolters in the Show Cause Docket. The Motion represents that Mr. Wolters has completed all requirements under the Arizona Supreme Court’s rules for admission pro hac vice.

No party objected to Mr. Wolters’ request for pro hac vice admission in this proceeding.

IT IS THEREFORE ORDERED that a hearing shall be scheduled in the Show Cause Docket for June 9, 2003, at 10:00 a.m., at the offices of the Commission.

IT IS FURTHER ORDERED that Staff’s Direct Testimony shall be filed by no later than March 27, 2003.
IT IS FURTHER ORDERED that Intervenor Direct Testimony shall be filed by April 11, 2003.

IT IS FURTHER ORDERED that Qwest's Rebuttal Testimony shall be filed by no later than May 8, 2003.

IT IS FURTHER ORDERED that Staff and Intervenor Reply Testimony shall be filed by no later than May 30, 2003.

IT IS FURTHER ORDERED that a Procedural Conference shall be scheduled in the above-captioned dockets for March 13, 2003, at 1:30 p.m., at the offices of the Commission. The purpose of the Procedural Conference will be to discuss each of the issues discussed above and the various pending motions filed in these dockets.

IT IS FURTHER ORDERED that Staff shall file a Response regarding its position on the TNS payment issue by March 10, 2003.

IT IS FURTHER ORDERED that the request by Richard S. Wolters for admission pro hac vice shall be granted.

IT IS FURTHER ORDERED that the Presiding Officer may rescind, alter, amend, or waive any portion of this Procedural Order either by subsequent Procedural Order or by ruling at hearing.

DATED this 5th day of March, 2003.

Dwight D. Nodde
Assistant Chief Administrative Law Judge

Copies of the foregoing mailed/delivered this 6th day of March, 2003 to:

Timothy Berg
Fennemore Craig
3003 N. Central Avenue, Suite 2600
Phoenix, Arizona 85012
Attorneys for Qwest Corporation

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

Charles White
TNS Telecoms
101 Greenwood Avenue, Suite 502
Jenkintown, PA 19046
DOCKET NO. T-00000A-00-0194 ET AL.

Lyndon J. Godfrey
AT&T
111 W. Monroe, Suite 1201
Phoenix, Arizona 85003

Robert S. Kant
E. Jeffrey Walsh
GREENBERG TRAURIG, LLP
2375 E. Camelback Rd., Suite 700
Phoenix, Arizona 85016
Attorneys for Mountain Telecommunications, Inc.

Mitchell F. Brecher
Debra McGuire Mercer
GREENBERG TRAURIG, LLP
800 Connecticut Ave., NW
Washington, D.C. 20006

Christopher Kempley, Chief Counsel
LEGAL DIVISION
1200 W. Washington Street
Phoenix, Arizona 85007

Ernest G. Johnson, Director
UTILITIES DIVISION
1200 W. Washington Street
Phoenix, Arizona 85007

ARIZONA COURT REPORTING
2627 N. Third St., Suite Three
Phoenix, Arizona 85004-1103

By: Molly Johnson
Secretary to Dwight D. Nodes