BEFORE THE ARIZONA CORPORATION COMMISSION

MARC SPITZER
Chairman
JIM IRVIN
Commissioner
WILLIAM A. MUNDELL
Commissioner
JEFF HATCH-MILLER
Commissioner
MIKE GLEASON
Commissioner

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

QWEST CORPORATION'S MOTION FOR RECONSIDERATION OF
PROCEDURAL ORDER OR, ALTERNATIVELY, FOR SUBMISSION OF
QWEST'S REQUEST TO REOPEN THE RECORD TO THE
COMMISSION

Qwest Corporation ("Qwest") submits this motion for reconsideration in connection with the Procedural Order issued by the Administrative Law Judge ("ALJ") in this docket on February 25, 2003. Qwest seeks reconsideration of the portion of the Procedural Order that denies Qwest's motion to reopen the record and modify Decision No. 65451 ("motion to reopen"). If the ALJ does not grant reconsideration, Qwest respectfully requests, in the alternative, that he refer Qwest's motion to reopen to the Commission for its consideration.

The basis for this motion for reconsideration is that the Procedural Order fails to provide an adequate remedy for a clear mistake of fact that underlies the analog port rate of $1.61 ordered by the Commission in Decision No. 65451. As the Procedural Order recognizes, the Commission's decision to order this rate was based on a representation from Staff that $1.61 "reflects a reasonable middle ground approach to resolving this issue." Procedural Order at 2 (quoting Decision No. 65451 at 16). Staff made this representation to the Commission at the
Commission's Open Meeting on December 9, 2002, through its consultant, William Dunkel.

During that meeting, Mr. Dunkel explained the basis for his conclusion that $1.61 is a reasonable rate. Critical to that conclusion and to his representations to the Commission was Mr. Dunkel's statement that the ALJs' Recommended Opinion and Order ("ROO") assigns 40% of total switching costs to the port. Thus, he told the Commission: "The next step is the ROO suggests 40 percent of switching costs go to the port." Using this assumption, Mr. Dunkel represented to the Commission that $1.61 "is a good number," making it clear that his conclusion was premised on a 40% assignment of switching costs to the port:

So basically my recommendation is $1.61 is a good number, but we need to reword the discussion of that issue to reflect the impact that the $1.61 includes a 40 percent distribution instead of 30 percent to the port, it includes the fact the feature costs may in fact already be recovered, and includes the change in the fill factor.2

The error in this recommendation is that contrary to Mr. Dunkel's assumption, the ROO and Decision No. 65451 do not assign 40% of switching costs to the port. Instead, the ALJs and the Commission assigned 60% of switching costs to the port based on AT&T's and WorldCom's agreement that this allocation of costs is appropriate. Through Mr. Dunkel, Staff presented its analysis of the port rate established by the ROO for the first time at the December 9 Open Meeting. Mr. Dunkel presented the analysis orally without any supporting documentation. Qwest objected on the ground that Staff should have provided the analysis prior to the meeting and requested the opportunity to respond to the analysis following the Open Meeting. Tr. at 53 ("[T]o be sitting here now and hearing arguments for the first time, it makes it very difficult for us to respond. And procedurally, I would ask that Mr. Dunkel's recommendations not be considered unless we all have an opportunity to respond to them at some later date . . . "). Qwest's concern when it made this objection was that the Commission should not rely on a cost analysis that other parties had not been permitted to review for accuracy. The Commission overruled Qwest's objection. Id. at 53, 56. As it turns out, Mr. Dunkel's analysis was not accurate, but the Commission issued Decision No. 65451 without knowing this important fact.

1 December 9, 2002, Open Meeting Transcript at 50.

2 December 9, 2002, Open Meeting Transcript at 51 (emphasis added).

3 Through Mr. Dunkel, Staff presented its analysis of the port rate established by the ROO for the first time at the December 9 Open Meeting. Mr. Dunkel presented the analysis orally without any supporting documentation. Qwest objected on the ground that Staff should have provided the analysis prior to the meeting and requested the opportunity to respond to the analysis following the Open Meeting. Tr. at 53 ("[T]o be sitting here now and hearing arguments for the first time, it makes it very difficult for us to respond. And procedurally, I would ask that Mr. Dunkel's recommendations not be considered unless we all have an opportunity to respond to them at some later date . . . "). Qwest's concern when it made this objection was that the Commission should not rely on a cost analysis that other parties had not been permitted to review for accuracy. The Commission overruled Qwest's objection. Id. at 53, 56. As it turns out, Mr. Dunkel's analysis was not accurate, but the Commission issued Decision No. 65451 without knowing this important fact.
that a 60/40 split between port and usage is more appropriate (Tr. 326, 338), we will adopt that ratio for purposes of this proceeding.4

By ordering the port rate of $1.61 based on Staff's erroneous recommendation, the Commission has inadvertently failed to implement its ruling that 60% of switching costs should be assigned to the port. As Mr. Dunkel's discussion at the Open Meeting makes clear, this rate reflects only a 40% assignment of costs to the port. That is not what the Commission intended and is directly contrary to the ruling in the ROO and in Decision No. 65451.

The importance of this issue relates not just to proper implementation of the Commission's decision, but also to Qwest's recovery of the costs it incurs to provide switching to competitive local exchange carriers in Arizona. These switching costs are recovered through the port rate and through a non-port switch usage rate, with total switching costs divided between these two rate elements. Because total switching costs are divided between these rate elements, increasing the amount of switching costs assigned to the port reduces the amount of costs that Qwest must recover through the switch usage rate. Thus, assigning 60% of switching costs to the port produces a lower usage rate than would a 40% assignment of these costs to the port; conversely, lowering the port assignment from 60% to 40% will increase the switch usage rate.

In this case, because the ROO and Decision No. 65451 provide that 60% of switching costs are to be assigned to the port, the switch usage rate of $0.00097 resulting from these orders recovers 40% of the total switching costs allowed by the Commission. That result would be fine if the port rate truly recovered 60% of the switching costs. But, as shown above, the port rate of $1.61 recovers only 40% of the costs despite the ALJs' and the Commission's intent that it would recover 60% of the costs. As a result, unless the Commission's decision is corrected, Qwest will recover only 80% of the total switching costs allowed by the Commission (40% through the port rate and 40% through the usage rate).

4 ROO at 17-18; Decision No. 65451 at 17-18 (emphasis added).
There is no dispute among the parties about the effect of using the 40% port assignment in the HAI model instead of the 60% that the Commission ordered. Qwest's compliance filing of January 11, 2003, demonstrates that the HAI model produces a port rate of $2.44 using the inputs ordered by the Commission in Decision No. 65451. At the Open Meeting on January 27, 2003, AT&T's counsel expressly acknowledged that Qwest's compliance filing is correct – that HAI produces a port rate of $2.44 using the inputs ordered by the Commission. Staff has not contested this fact.

Accordingly, the port rate of $1.61 ordered in Decision No. 65451 is based on the demonstrably incorrect premise that the Commission intended to assign 40% of switching costs to the port. Left uncorrected, this error will improperly deny Qwest full recovery of the switching costs established by Decision No. 65451. The error should be corrected by reopening the record to permit Qwest to introduce the runs of the HAI model that produce the port rate of $2.44. Qwest therefore requests that the ALJ reconsider the Procedural Order and order that the record be reopened. Alternatively, the ALJ should refer this matter to the Commission to permit it to rule on whether the record should be reopened to correct this error in the port rate.

Respectfully submitted,

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5 January 27, 2003, Procedural Conference Transcript at 12 ("We will agree that making the changes that the Commission has adopted would produce a $2.44 [port] rate.").
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