Chairman Marc Spitzer  
Commissioner Bill Mundell  
Commissioner Jeff Hatch-Miller  
Commissioner Kris Mayes

Re:  **Qwest Application for Rehearing of Decision No. 66385:**  
**Docket No. T-00000A-00-0194**

Dear Colleagues:

At the October 6 Open Meeting, in the above-referenced docket, the Commission found that the Commission-approved rate for the combined transport and entrance facility charge had an unintended negative impact on certain CLECs that do not utilize both elements. The Commission separated these elements and **applied their rates retroactively.** Additionally, the Commission found that the December 2002 Order setting the analog port rate contained inconsistent figures and ordered that the analog port rate be set at $2.44 and not $1.61. However, the Commission ordered that rate to be **applied on a going forward basis.**

These two UNE rates were originally approved by this Commission in December 2002 as part of the Phase IIa UNE wholesale pricing docket. (Decision No. 65451). The approved UNE rates are based on the HAI model and are TELRIC-compliant. The Commission’s decision was based on a thorough record and a lengthy hearing.

Shortly after Qwest implemented these new Commission-approved UNE rates, new concerns about the combined transport and entrance facility rate came to the Commission’s attention. Rightfully, the Commission took testimony, held a hearing and ultimately amended the rate. The Commission’s October 6 Order directed the amended rate be applied retroactively. A commission may not retroactively order a rate. (Arizona Grocery Co. v. Atchison, Topeka & Santa Fe R&RR, 284 U.S. 370 (1932)). However, this Commission distinguished its decision from controlling case law by declaring the previous rate “void ab initio.” Orders of this Commission are valid. Upon further reflection or new information, we can always go back and amend an order, but that does not make the previous ruling invalid.

On October 27, 2003, Qwest filed a “Motion for Reconsideration” of the Commission’s October 6 Decision pursuant to ARS §40-253 and Rule 14-3-111. The Commission must grant this Application within 20 days of its receipt or it is deemed denied.

I encourage the Commission to take the opportunity to entertain further discussion on this issue.

Sincerely,

Mike Gleason  
Commissioner