

ORIGINAL



0000010735

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

MARC SPITZER, Chairman  
WILLIAM A. MUNDELL  
JEFF HATCH-MILLER  
MIKE GLEASON  
KRISTIN K. MAYES

2004 JUL 23 1 P 1:54

AZ CORP COMMISSION  
DOCUMENT CONTROL

Arizona Corporation Commission

DOCKETED

JUL 23 2004

DOCKETED BY *AK*

IN THE MATTER OF QWEST CORPORATION'S  
FILING OF RENEWED PRICE REGULATION  
PLAN.

DOCKET NO. T-01051B-03-0454

IN THE MATTER OF THE INVESTIGATION OF  
THE COST OF TELECOMMUNICATIONS  
ACCESS.

DOCKET NO. T-00000D-00-0672

PROCEDURAL ORDER

**BY THE COMMISSION:**

On July 1, 2003, Qwest Corporation ("Qwest") filed the Qwest Renewed Price Regulation Plan pursuant to the provisions of the Second Revised Settlement Agreement approved in Decision No. 63487 on March 30, 2001.

By Procedural Order dated November 17, 2003, the Arizona Corporation Commission ("Commission") determined that Phase I of the Access Charge Docket, which addresses Qwest's access charges, should be considered in conjunction with the Price Cap Plan Docket.

By Procedural Order dated June 30, 2004, the Commission established the procedural schedule in this matter. The June 30, 2004 Procedural Order contained the following provision:

IT IS FURTHER ORDERED that all testimony and evidence will be filed and entered "on the public record" unless a prior determination has been made by the Administrative Law Judge or Commission that the material is confidential.

A Procedural Conference convened on July 20, 2004, for the purpose of discussing procedures pertaining to the treatment of testimony and exhibits claimed to be confidential.

The Commission's goal is to ensure that as much information as possible is "on the public record." At the same time, the Commission must balance the need in a competitive environment to

1 safeguard information that is legitimately proprietary with the need to foster a transparent process.

2 AT&T of the Mountain States, Inc. expressed the concern that the language in the June 30,  
3 2004 Procedural Order could be interpreted to release parties from their obligations under their  
4 protective agreements.<sup>1</sup> Additionally, all parties expressed concern that because the procedural  
5 schedule in this matter is somewhat accelerated over a traditional rate case, it would be impractical  
6 and inefficient for the Commission to attempt to determine in advance of the filing deadlines whether  
7 the information is legitimately confidential. No party expressed a belief that any other party has  
8 abused its obligation under the protective agreement to make a good faith effort to identify and mark  
9 only that information that is legitimately confidential.

10 In our June 30, 2004 Procedural Order it was not the intent of the Commission to have parties  
11 publicly file information that is claimed to be confidential in contravention of the protective  
12 agreements. However, based upon the discussion during the July 20, 2004 Procedural Conference, it  
13 appears in this case, that it may be highly cumbersome and inefficient to make a pre-determination of  
14 confidentiality. The Commission does not want to hinder the exchange of information, nor does it  
15 want to make participation in this docket unduly burdensome.

16 Consequently, the provision in the June 30, 2004 Procedural Order that requires a prior  
17 determination by the Commission of confidentiality should be eliminated. The parties shall follow  
18 the terms of their Protective Agreements, which we understand provide that documents stamped  
19 "Confidential Information" will not be filed in the public record unless the party who wishes to  
20 utilize the information gives the party claiming confidentiality five business days written notice. If  
21 within the five days the party claiming confidentiality has not filed a motion to retain the confidential  
22 designation, the information may become part of the public record. Thus, the Commission would  
23 expect that if a party submits redacted testimony or exhibits containing confidential information, that  
24 party concurs that the information is confidential. The Commission further expects that the parties  
25 will continue to use their best efforts to resolve any disputes regarding confidentiality amongst  
26

27 \_\_\_\_\_  
28 <sup>1</sup> Other parties interpreted the language to require them to seek a pre-determination that information is confidential prior to filing redacted testimony.

1 themselves prior to testimony filing deadlines and to take care to redact only that information that is  
2 confidential.

3 Consistent with prior practice, parties who want to use confidential information shall act  
4 according to the terms of their protective agreements, shall file public copies of redacted versions of  
5 the testimony and exhibits, and shall provide non-redacted versions of the testimony to all parties  
6 who have executed the protective agreement, the Administrative Law Judge, and the Commissioners.  
7 To assist the Commissioners, Administrative Law Judge, parties who are not subject to the protective  
8 order, as well as the public, any party who submits testimony/exhibits that contain confidential  
9 information shall simultaneously file a brief explanation of the legal basis for concluding that the  
10 information is confidential.

11 Without disclosing the information, the statement shall contain enough information that  
12 interested parties can understand the legal basis why the information is not being filed publicly.  
13 Such statement is intended to allow parties who do not have prior access to the confidential  
14 information to determine if they agree such information is of the type that should be protected. In the  
15 event of a challenge to the confidential designation, through an appropriate motion or request, the  
16 information should remain confidential, and the Commission will convene a Procedural Conference  
17 to determine whether such information should remain protected.

18 IT IS THEREFORE ORDERED that the following language "IT IS FURTHER ORDERED  
19 that all testimony and evidence will be filed and entered "on the public record" unless a prior  
20 determination has been made by the Administrative Law Judge or Commission that the material is  
21 confidential" contained in our June 30, 2004 Procedural Order, shall be deleted.

22 IT IS FURTHER ORDERED that any party who submits testimony or exhibits that contain  
23 confidential information shall simultaneously file a brief explanation of the legal basis for concluding  
24 that the information is confidential.

25 IT IS FURTHER ORDERED that all other terms of the June 30, 2004 Procedural Order shall  
26 remain in effect.

27 IT IS FURTHER ORDERED the Ex Parte Rule (A.A.C. R14-3-113-Unauthorized  
28 Communications) continues to apply to this proceeding.

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

3 DATED this 23 day of July, 2004.

4   
5 JANE L. RODDA  
ADMINISTRATIVE LAW JUDGE

6 Copy of the foregoing mailed/delivered  
7 this 23 day of July, to:

8 TIMOTHY BERG  
9 TERESA DWYER  
10 FENNEMORE CRAIG, P.C.  
3003 NORTH CENTRAL AVE., SUITE 2600  
PHOENIX, ARIZONA 85012-2913  
ATTORNEYS FOR QWEST CORPORATION

PHOENIX, ARIZONA 85004

11 TODD LUNDY  
12 QWEST LAW DEPARTMENT  
1801 CALIFORNIA STREET  
DENVER, COLORADO 80202

MARK A. DINUNZIO  
COX ARIZONA TELCOM, LLC  
20401 NORTH 29<sup>TH</sup> AVENUE  
PHOENIX, ARIZONA 85027

13 SCOTT S. WAKEFIELD, CHIEF COUNSEL  
14 RUCO  
1110 WEST WASHINGTON, SUITE 220  
15 PHOENIX, ARIZONA 85007

PETER Q. NYCE JR.  
REGULATORY LAW OFFICE  
U.S. ARMY LITIGATION CENTER  
901 N. STUART STREET, SUITE 713  
ARLINGTON, VA 22203-1644

16 RICHARD S. WOLTERS  
17 AT&T LAW DEPARTMENT  
1875 LAWRENCE STREET, SUITE 1503  
DENVER, CO 80202

RICHARD LEE  
SNAVELY KING MAJOORS O'CONNOR & LEE,  
INC.  
1220 L STREET N.W., SUITE 410  
WASHINGTON, DC 20005

18 JOAN S. BURKE  
19 OSBORN MALEDON, P.A.  
2929 NORTH CENTRAL AVENUE, SUITE 2100  
20 PHOENIX, ARIZONA 85012-2794  
ATTORNEYS FOR AT&T

MARTIN A. ARONSON, ESQ.  
MORRILL & ARONSON PLC  
ONE E. CAMELBACK, SUITE 340  
PHOENIX, AZ 85012-1648  
ATTORNEYS FOR ARIZONA DIALTONE, INC.

21 THOMAS F. DIXON  
22 WORLDCOM, INC.  
707 17<sup>TH</sup> STREET, 39<sup>TH</sup> FLOOR  
DENVER, COLORADO 80202

BRIAN THOMAS  
VICE PRESIDENT REGULATORY  
TIME WARNER TELECOM, INC.  
223 TAYLOR AVENUE NORTH  
SEATTLE, WASHINGTON 98109

23 THOMAS H. CAMPBELL  
24 MICHAEL T. HALLAM  
LEWIS AND ROCA  
25 40 N. CENTRAL AVENUE  
PHOENIX, ARIZONA 85004  
26 ATTORNEYS FOR WORLDCOM, INC.

ERNEST G. JOHNSON, DIRECTOR  
UTILITIES DIVISION  
ARIZONA CORPORATION COMMISSION  
1200 WEST WASHINGTON STREET  
PHOENIX, AZ 85007

27 MICHAEL W. PATTEN  
28 ROSHKA HEYMAN & DEWULF PLC  
400 EAST VAN BUREN STREET, SUITE 800

CHRISTOPHER KEMPLEY, CHIEF COUNSEL  
ARIZONA CORPORATION COMMISSION  
LEGAL DIVISION  
1200 WEST WASHINGTON  
PHOENIX, AZ 85007

