



BEFORE THE ARIZONA CORPORATION COMMISSION

JEFF HATCH-MILLER
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MARC SPITZER
Commissioner
MIKE GLEASON
Commissioner
KRISTIN K. MAYES
Commissioner

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AZ CORP COMMISSION
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IN THE MATTER OF QWEST
CORPORATION'S FILING OF
RENEWED PRICE REGULATION PLAN

) Docket No. T-01051B-03-0454
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IN THE MATTER OF THE
INVESTIGATION OF THE COST OF
TELECOMMUNICATIONS ACCESS

) Docket No. T-00000D-00-0672
)
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**REPLY IN SUPPORT OF
MOTION FOR LEAVE TO INTERVENE
BY XO COMMUNICATIONS SERVICES, INC.**

Arizona Corporation Commission
DOCKETED

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1. Background

By notice dated February 4, 2005, Qwest entered into settlement negotiations with parties in the above-referenced dockets. These settlement discussions are advancing quickly and could well resolve this case. But no hearing has been held on the Qwest Renewed Price Regulation Plan application, no witnesses have been cross-examined, and the Administrative Law Judge has not been asked to evaluate the evidence. The settlement negotiations are effectively short-circuiting public scrutiny of Qwest's application.

Certainly there are efficiencies inherent in settling a case like this with closed-door negotiations. But the Commission should take care to ensure that any such settlement includes two important protections. First, any stakeholder who wishes to participate in the settlement negotiations should be permitted to intervene and participate, and second, any resulting settlement agreement should be subject to hearing before, and evaluation by, the Administrative Law Judge.

By opposing XO's Application to Intervene, Qwest seeks to deprive affected parties of this first protection. Settlement negotiations that exclude stakeholders effectively produce secret agreements that are more likely to meet vigorous opposition once they are subjected to public scrutiny. For this reason, and in the interest of efficiency, as well as fairness, Qwest should welcome any process or application that increases support among stakeholders prior to the hearing.

2. Intervention Is Appropriate Under Rule 14-3-105(B)

Under the Commission's Rules of Practice and Procedure, an application to intervene is not due on the deadline set for the filing of testimony. Rather, Rule 14-3-105(B) provides that an application to intervene should be "served and filed by an applicant at least five days before the proceeding is called for hearing." Qwest concedes that this settlement has yet to be fully negotiated, and has not yet been scheduled for hearing. Qwest Response pp. 2-3. XO's Application to Intervene is not untimely.

Qwest nevertheless argues that the July 1, 2004 procedural order deadline of October 9, 2004, should control whether XO is permitted to intervene. But that order states that a hearing will commence on January 13, 2005, and that all testimony will be

filed by December 9, 2004. No hearing has been held in the case, and surrebutal testimony was not filed until January 12, 2005. These dates understandably have evolved as the case has progressed. It would be unreasonable, as well as inconsistent with the Rules, to use the dates set forth in this order as justification for excluding XO from this proceeding.

3. The Equities Favor Intervention by XO

Qwest seeks to exclude XO, a competitive local exchange carrier ("CLEC"), from its closed-door settlement discussions on the ground that testimony is already on file and XO may ask parties to share confidential and non-confidential discovery. These concerns are illusory. XO will be reasonable with respect to any request it makes for past discovery, and will execute Exhibits A and B to the Protective Order immediately if intervention is granted. Of course, if Qwest believes that any XO request is unreasonable or burdensome, it is free to object to the request. It would be unreasonable and unfair to bar intervention by an interested party based on a party's baseless speculation that the intervenor may make improper discovery requests.

Currently, only three CLECs are participating in the settlement discussions.¹ Two CLEC participants have withdrawn due to limited resources.² XO understands that closed-door settlement meetings were held on February 10, 11, 17, and 28, March 3 and 11. XO sought to attend these meetings beginning on March 3rd as an observer, but was

¹ MCI, Inc., Time Warner Telecom, and Cox Telecom have been active participants in this consolidated docket.

² AT&T Communications of the Mountain States and TCG Phoenix were granted leave to withdraw as intervenors on November 10, 2004. By letter dated October 1, 2004, Sprint Communications Company L.P. withdrew as an intervenor.

denied access by Qwest. XO then attempted to monitor this case without intervening, but soon realized that this was impossible because nothing about the case appears in the public file and meetings are conducted in private.

XO does not dispute the wisdom or efficacy of closed-door settlement discussions. Such discussions, however, must be subject to intervention by entities with a concrete interest in the outcome of the proceedings. Qwest cannot have it both ways. Either the resolution of this docket occurs under full public scrutiny, or the closed-door settlement discussions are open to interested parties who will be affected by the outcome. Fundamental fairness dictates that Qwest cannot resolve the case in closed-door meetings while refusing some industry participants access to those meetings.

XO respectfully requests that the Arizona Corporation Commission issue an order permitting XO to intervene in the above-captioned proceeding.

RESPECTFULLY SUBMITTED this 21st day of March, 2005.

OSBORN MALEDON PA

By 
Joan S. Burke
2929 North Central Avenue, Suite 2100
Phoenix, Arizona 85012-2794
(602) 640-9356
jburke@omlaw.com

Attorneys for XO Communications Services, Inc.

ORIGINAL AND 15 COPIES of the foregoing
filed March 21, 2005, with:

Docket Control
Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007

Copy of the foregoing mailed this
21st day of March, 2005, to:

Jane Rodda, Esq. ALJ, Hearing Division Arizona Corporation Commission 400 West Congress Tucson, Arizona 85701	Maureen Scott Legal Division Arizona Corporation Commission 1200 West Washington Street Phoenix, Arizona 85007
Christopher C. Kempley, Esq. Chief Counsel, Legal Division Arizona Corporation Commission 1200 West Washington Street Phoenix, Arizona 85007	Ernest G. Johnson, Esq. Director, Utilities Division Arizona Corporation Commission 1200 West Washington Street Phoenix, Arizona 85007
Timothy Berg, Esq. Theresa Dwyer, Esq. Darcy R. Renfro, Esq. Fennemore Craig, PC 3003 North Central Avenue, Suite 2600 Phoenix, Arizona 85012-2913	Todd Lundy, Esq. Qwest Law Department 1801 California Street Denver, Colorado 80202
Michael W. Patten Roshka Heyman & DeWulf, PLC One Arizona Center 400 East Van Buren Street, Suite 800 Phoenix, Arizona 85004	Mark A. DiNunzio Cox Arizona Telcom, LLC 1550 West Deer Valley Rd. MS DV3-16, Bldg C Phoenix, Arizona 85027
Brian Thomas Vice President Regulatory Time Warner Telecom, Inc. 223 Taylor Avenue North Seattle, Washington 98109	Scott S. Wakefield, Esq. Residential Utility Consumer Office 1110 West Washington, Suite 220 Phoenix, Arizona 85007

<p>Richard Lee Snavelly King Majoros O'Connor & Lee, Inc. 1220 L Street N.W., Suite 410 Washington, D.C. 20005</p>	<p>Peter Q. Nyce, Jr. Regulatory Law Office U. S. Army Litigation Center 901 N. Stuart Street, Suite 713 Arlington, Virginia 22203</p>
<p>Jon Poston ACTS 6733 East Dale Lane Cave Creek, Arizona 85331</p>	<p>Martin A. Aronson Morrill & Aronson PLC One East Camelback, Suite 340 Phoenix, Arizona 85012-1648</p>
<p>Walter W. Meek President Arizona Utility Investors Association 2100 North Central Avenue, Suite 210 Phoenix, Arizona 85004</p>	<p>Albert Sterman Vice President Arizona Consumers Council 2849 East Eighth Street Tucson, Arizona 85716</p>
<p>Thomas H. Campbell Michael T. Hallam Lewis and Roca 40 North Central Avenue Phoenix, Arizona 85004</p>	<p>Thomas F. Dixon Worldcom, Inc. 707 17th Street, 39th Floor Denver, Colorado 80202</p>

Kendra Wendt