

ORIGINAL



0000020108

BEFORE THE ARIZONA CORPORATION COMMISSION

RECEIVED

Arizona Corporation Commission

257

COMMISSIONERS

2005 APR 12 P 3:20

DOCKETED

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

AZ CORP COMMISSION
DOCUMENT CONTROL

APR 12 2005

DOCKETED BY

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 March 3, 2005, XO Communications Services, Inc. ("XO") filed an Application for Leave to Intervene in the above-captioned matter. XO is a telecommunications corporation certified to provide local exchange, intraexchange and interexchange telecommunication services throughout Arizona. XO states that it currently competes with Qwest Corporation ("Qwest") in the provision of telecommunications services, and that it is directly and substantially affected by the proceedings in this docket. XO further states that since the initiation of this case it has used the Arizona Corporation Commission's ("Commission") public file to monitor the proceedings, but as a result of recent settlement discussions by the parties, believes that substantive information regarding the nature of the disputes is no longer available in the public docket. XO states that through its intervention it does not seek to unduly broaden the nature or scope of the issues being discussed.

On March 8, 2005, Qwest filed a Response in Opposition to XO's Request to Intervene. Qwest objects to XO's intervention because it is untimely under the terms of the Procedural Order dated July 1, 2004, which established October 9, 2004 as the deadline for filing intervention requests. Qwest also argues that XO's late intervention would violate principles of fundamental fairness, as all testimony deadlines have passed and there has been extensive discovery. Qwest states that whatever XO's issues may be, without Qwest having an opportunity to engage in discovery, XO's issues would

1 not be subject to any meaningful opportunity for examination. Qwest argues that granting XO's
2 intervention at this date would raise hard questions about the sharing of discovery. Qwest notes that
3 XO will have the opportunity to scrutinize the results of any settlement discussions if and when they
4 are brought before the Commission in a public hearing.

5 On March 21, 2005, XO filed a Reply in Support of its Application. XO argues that the closed
6 door nature of the settlement discussions are short-circuiting public scrutiny of Qwest's application.
7 XO believes that allowing intervention during the settlement discussions promotes efficiency and
8 fairness. XO notes that the October 9, 2004 deadline for intervention contained in the July 1, 2004
9 Procedural Order anticipated a hearing that would commence on January 13, 2005. Given the
10 circumstances in this case, XO argues it is unreasonable and inconsistent with Commission Rules to
11 deny XO's participation as a party to this proceeding. XO states it would execute Exhibits A and B to
12 the Protective Order immediately upon the grant of intervention, and that it is baseless speculation to
13 assume XO would engage in improper discovery requests.

14 In this case, the dictates of fairness and efficiency weigh in favor of granting XO's request to
15 intervene. As a competitor of Qwest, XO has a direct interest in the outcome of the proceeding.
16 Circumstances have changed sufficiently from the time of the July 1, 2004 Procedural Order to
17 warrant intervention at this time. No party other than Qwest objected to XO's intervention.

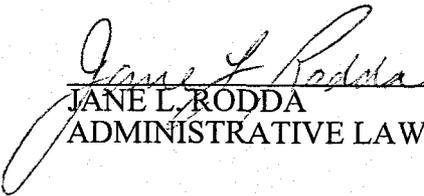
18 XO's intervention should not be allowed to unduly broaden the issues that have been raised in
19 the case, either in pre-filed testimony or in settlement discussions. Neither should XO's intervention
20 be an undue burden on any party. XO could have intervened earlier and chose to monitor the case
21 through the public filings rather than as a party, thus forgoing access to the discovery exchanged
22 among the parties and opting not to present witnesses or cross-examine the witnesses of other parties.
23 XO must take the case as it finds it. In the event current settlement negotiations do not produce an
24 agreement, and the Commission conducts a hearing on the parties' positions as expressed in pre-filed
25 testimony, XO may not offer its own witnesses, although it may participate in cross examination of
26 the witnesses. If a Settlement Agreement is tendered for the Commission's consideration, XO will be
27 permitted to offer testimony relating to any such Agreement and may participate in discovery
28 associated with that Agreement.

1 XO shall execute Exhibits A and B to the Protective Order and shall attempt to be reasonable
2 in any request for past discovery. If Qwest, or any other party, finds that XO's participation is
3 creating an undue burden or undue broadening of the issues, they should bring the issue to the
4 attention of the Hearing Division.

5 IT IS THEREFORE ORDERED that XO's Application for Intervention is granted subject to
6 the discussion above.

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

9 DATED this 8th day of April, 2005.

10
11 
12 JANE L. RODDA
13 ADMINISTRATIVE LAW JUDGE

14 Copy of the foregoing mailed/delivered
15 this 8th day of April 2005, to:

16 TIMOTHY BERG
17 TERESA DWYER
18 FENNEMORE CRAIG, P.C.
19 3003 NORTH CENTRAL AVE., SUITE 2600
20 PHOENIX, ARIZONA 85012-2913
21 ATTORNEYS FOR QWEST CORPORATION

22 TODD LUNDY
23 QWEST LAW DEPARTMENT
24 1801 CALIFORNIA STREET
25 DENVER, COLORADO 80202

26 SCOTT S. WAKEFIELD, CHIEF COUNSEL
27 RUCO
28 1110 WEST WASHINGTON, SUITE 220
PHOENIX, ARIZONA 85007

THOMAS F. DIXON
WORLD.COM, INC.
707 17TH STREET, 39TH FLOOR
DENVER, COLORADO 80202

THOMAS H. CAMPBELL
MICHAEL T. HALLAM
LEWIS AND ROCA
40 N. CENTRAL AVENUE
PHOENIX, ARIZONA 85004
ATTORNEYS FOR WORLD.COM, INC.

MICHAEL W. PATTEN
ROSHKA HEYMAN & DEWULF PLC
400 EAST VAN BUREN STREET,
SUITE 800
PHOENIX, ARIZONA 85004

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

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

1 RICHARD LEE
2 SNAVELY KING MAJOORS O'CONNOR & LEE,
3 INC.
4 1220 L STREET N.W., SUITE 410
5 WASHINGTON, DC 20005

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

11 BRIAN THOMAS
12 VICE PRESIDENT REGULATORY
13 TIME WARNER TELECOM, INC.
14 223 TAYLOR AVENUE NORTH
15 SEATTLE, WASHINGTON 98109

16 WALTER W. MEEK, PRESIDENT
17 ARIZONA UTILITY INVESTORS ASSOCIATION
18 2100 N. CENTRAL AVENUE, SUITE 210
19 PHOENIX, AZ 85004

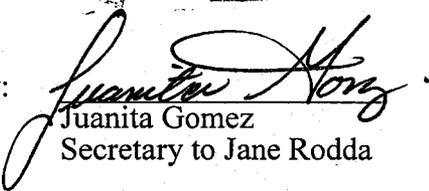
20 ALBERT STERMAN, VICE PRESIDENT
21 ARIZONA CONSUMERS COUNCIL
22 2849 E. 8th STREET
23 TUCSON, AS 85716
24
25
26
27
28

JON POSTON
ACTS
6733 EAST DALE LANE
CAVE CREEK, AZ 85331

JOAN S. BURKE
OSBORN MALEDON PA
2929 NORTH CENTRAL AVENUE, SUITE 2100
PHOENIX, ARIZONA 85012-2794

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

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

By: 
Juanita Gomez
Secretary to Jane Rodda