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BEFORE THE ARIZONA CORPORATION COMMISSION RECEIVED

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Arizona Corporation Commission

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AZ CORP COMMISSION
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IN THE MATTER OF THE INVESTIGATION
OF THE COST OF TELECOMMUNICATIONS
ACCESS.

DOCKET NO. T-00000D-00-0672

RUCO's BRIEF ON PROCEDURAL MATTERS

Pursuant to the Administrative Law Judge's request, the Residential Utility Consumer Office ("RUCO") files this brief on certain procedural matters.

BACKGROUND

At the Arizona Corporation Commission's ("Commission") August 22, 2000 Open Meeting, at which the Commission approved new rates for Tabletop Telephone Company (Docket No. T-02724A-99-0595), then-Chairman Kunasek requested an investigation into whether access charges for Arizona utilities reflect the cost of access.¹ See September 5, 2000 Memo from Deborah Scott, Director of Utilities Division ("Staff") opening this Docket No. T-00000D-00-0672. By Procedural Order dated December 3, 2001, parties were directed to

¹ Qwest had opposed the intrastate access charges that the Commission ultimately adopted for Table Top, arguing that they were not consistent with the access charge rates for other comparable companies in Arizona. See Decision No. 62840, pg. 3 (August 24, 2000).

1 provide written comments on a number of issues/questions that had been put forth by Staff.
2 After parties filed their responses, Staff, on March 28, 2002, filed its procedural
3 recommendations. By Procedural Order of May 21, 2002, the Commission adopted Staff's
4 proposed procedural schedule. RUCO and other intervenors filed direct testimony on June 28,
5 2002. By Procedural Order of July 8, 2002, the procedural schedule in this matter was
6 suspended.

7 On September 26, 2003, Staff filed a Request for and Expedited Procedural Conference
8 ("Motion") pursuant to the Commission's directive at the September 19, 2003 Open Meeting to
9 review Qwest's intrastate access charges on an expedited basis. Staff's Motion raised several
10 issues that it proposed be considered at the procedural conference. A procedural conference
11 was held on October 14, 2003. At the procedural conference, the Administrative Law Judge
12 requested briefs from the parties on the following issues: 1) the legal requirements for
13 changing access charges pursuant to *Scates v. Ariz. Corp. Comm'n*, et al. and possible
14 alternatives to deal with such requirements; 2) whether the proceeding should be bifurcated to
15 consider Qwest's access charges apart from those of other local exchange carriers ("LEC");
16 and 3) scheduling proposals for both a bifurcated and non-bifurcated proceeding.

18 **LEGAL REQUIREMENTS AND ALTERNATIVES TO COMPLY**

19 The Commission is required to determine the fair value of a public service corporation's
20 rate base as part of a proceeding in which the Commission established rates. If this
21 proceeding will result in modifications to any public service companies' access charges, the
22 requirement to determine fair value would apply. However, the Commission can explore policy
23 issues regarding access charges in this proceeding without determining any utility's fair value

1 rate base. RUCO recommends that the Commission's consideration of access charges
2 proceed in two phases, the first to deal with the general policy, and the second to address
3 specific LECs' access charges based on that general policy and in compliance with the fair
4 value requirement.

5 Article XV, § 14 of the Arizona Constitution requires that the Commission ascertain the
6 fair value of utilities' property when setting rates. *State v. Tucson Gas*, 15 Ariz. 294, 303, 138
7 P. 781, 785 (1914); *Simms v. Round Valley Light & Power Co.*, 80 Ariz. 145, 151, 294 P.2d
8 378, 382 (1956); *Scates v. Ariz. Corp. Comm'n*, 118 Ariz. 531, 534, 572 P.2d 612, 615 (App.
9 1978). Two exceptions to the fair value requirement are recognized: implementation of interim
10 rates to deal with an emergency, and the adjustment of rates pursuant to an existing rate
11 adjustor mechanism. *Scates*, 118 Ariz. at 535, 578 P.2d at 616. Recently, our Supreme Court
12 ruled that, even if the Commission believes that a determination of fair value is not useful in
13 setting rates, the Constitution requires ascertaining fair value. *U S West Communications v.*
14 *Ariz. Corp. Comm'n*, 201 Ariz. 242, 245 ¶ 12, 34 P.3d 351, 254 (2001). Clearly, the
15 determination of a utility's fair value is a mandatory step in establishing rates.

16 A revenue neutral "rebalancing" of rates, whereby rates for some services are increased
17 and rates for other services are decreased in an approximately equal amount, is not exempt
18 from the fair value requirement. The Constitution speaks of "rates and charges" that are to be
19 set with the assistance of a fair value determination. Art. XV, §§ 3, 14. The plain meaning of
20 the terms "rates" and "charges" are prices customers are required to pay for particular
21 services. Even if a rate "rebalancing" holds the overall revenue level of the utility constant, the
22 changes to "rates and charges" for particular services triggers the fair value requirement.

1 In light of these constitutionally-based requirements, RUCO recommends that the
2 Commission examine access rates in two phases. In the first phase, the Commission should
3 undertake a generic policy examination of access charges. Topics to be addressed could
4 include whether intrastate access charges should be set at rates equal to interstate access
5 charges (or perhaps some percentage above interstate rates), the degree to which costs of the
6 local loop should be recovered from access services, and what the likely impacts would be on
7 affordability of other services if intrastate access charges were decreased. The first phase
8 could result in policy determinations by the Commission, which could then be implemented in
9 the second phase. The first phase would not need to address Qwest's access charges
10 individually, as it would examine policy alternatives on an industry-wide basis. The second
11 phase would consist of company-specific proceedings in which the Commission can ascertain
12 fair value, evaluate the degree to which the general policies determined in the first phase are
13 suitable for the particular utility, and implement new access rates as appropriate.

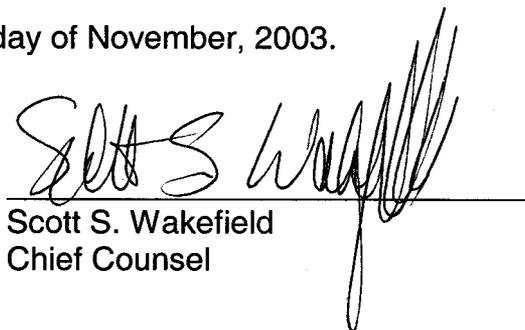
14 Examining access rate policy on a generic basis has several benefits. First, it allows
15 the Commission to consider the pros and cons of alternative access pricing policies with the
16 input of all interested parties. Rural LECs, which might not participate in a Qwest-only
17 proceeding, would be at the table and provide input to the Commission as to how
18 implementation of certain policies might impact them and their customers in ways that differ
19 from the impact of those policies on Qwest and its customers. Second, it assures that that a
20 LEC, which is both a seller of access services and a buyer of other LECs' access services,
21 advocate a consistent position on policy, rather than one position when it is the seller, and a
22 contrary position when it is a buyer of access services. Third, after the Commission
23 determines its general policies on access charges, it can implement those policies for the
24

1 various LEC on a more streamlined basis, not having to start again at square one in evaluating
2 each LECs current access charges, costs to be recovered through access charges, and
3 impacts of access charge reform on customers. Instead, the Commission can evaluate how its
4 general policy can best be implemented for each LEC. Fourth, examining access charge
5 policy generically allows the proceeding to focus precisely on a single issue, rather than
6 requiring the Commission to attempt to evaluate access policies while at the same time
7 attempting to resolve other disputed issues relevant to determinations of fair value for a
8 particular utility.

9
10 **SCHEDULING**

11 The generic first phase can pick up where the previous schedule left off, permitting
12 parties to update their filings within 30 days, then following a schedule similar to that of the
13 May 21, 2002 Procedural Order (Staff testimony 30 days later, Rebuttal Testimony 30 days
14 later, Surrebuttal Testimony 14 days later, Hearing 10 days after that). The second-phase
15 proceedings for LECs that require adjustments to access charges can be determined after the
16 first phase of the proceeding is concluded. After the first phase is completed, Qwest's access
17 charges can be addressed as part of the review of its price regulation plan.

18 RESPECTFULLY SUBMITTED this 3rd day of November, 2003.

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20 
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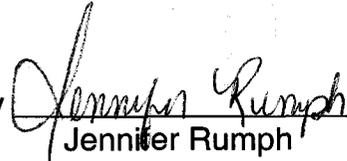
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