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COMMISSIONERS

Arizona Corporation Commission

2003 NOV 17 A 8:51

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

DOCKET NO. T-00000D-00-0672

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

DOCKET NO. T-01051B-03-0454

PROCEDURAL ORDER

BY THE COMMISSION:

On September 5, 2000, the Commission's Utilities Division Staff ("Staff") filed a Request for an Investigatory Docket Regarding the Cost of Access ("Access Charge Docket") to determine if access charges currently in effect reflect cost of access.

By Procedural Order issued July 8, 2002, Staff's Motion to Suspend the Procedural Schedule in this matter was granted.

A procedural conference was conducted in the Access Charge Docket on October 14, 2003. As a result of discussions during that conference, parties were directed to file briefs on the following issues: whether a fair value determination is required in this docket prior to ordering a reduction in access charges; and whether consideration of Qwest Corporation's ("Qwest's") access charges should be bifurcated from a review of access charges for independent telephone companies.

In accordance with that directive, briefs were filed on November 3, 2003 by Qwest, Staff, AT&T Communications of the Mountain States, Inc. ("AT&T"), the Residential Utility Consumer Office ("RUCO"), Sprint Communications Company, LLC ("Sprint"), WorldCom, Inc., on behalf of its operating subsidiaries ("MCI"), Cox Arizona Telecom, LLC ("Cox"), Eschelon Telecom of Arizona, Inc. ("Eschelon"), and the Arizona Local Exchange Carriers Association ("ALECA")¹. Eschelon also filed an application to intervene on November 3, 2003.

¹ ALECA represents most of the independent local exchange carriers in Arizona.

1 **Fair Value Requirement**

2 All parties appear to agree that the Commission may not simply reduce access charges in the
3 Access Charge Docket outside of a fair value determination case or without a corresponding revenue
4 neutral adjustment. The parties generally agree that, absent the presence of an emergency that
5 requires interim rates or an existing adjustor mechanism, the Arizona Constitution and various court
6 decisions require the Commission to make a fair value finding when establishing rates. In *Scates v.*
7 *Arizona Corporation Comm'n*, 118 Ariz. 531, 573 P.2d 612 (App. 1978), the Arizona Court of
8 Appeals reversed a Commission Decision that increased charges for installation, moving and
9 changing telephone service. The Court held that, pursuant to Article XV, §§ 3 and 14 of the Arizona
10 Constitution, the Commission was required to determine the fair value of the company's rate base
11 and to consider the effect of the increase on the company's rate of return prior to adjusting rates. *See*
12 *also, Simms v. Round Valley Light & Power Co.*, 80 Ariz. 145, 294 P.2d 378 (1956). Subsequently,
13 the Arizona Supreme Court clarified that although the Commission is not necessarily required to use
14 fair value as the sole basis for setting rates, the Commission must make a fair value determination of
15 the company's property as part of its rate setting authority under the Arizona Constitution. *U.S. West*
16 *Communications, Inc. v. Arizona Corporation Comm'n*, 201 Ariz. 242, 34 P.3d 351 (2001).

17 With the exception of RUCO, the parties suggest that the relevant court decisions do not
18 preclude the Commission from adjusting access rates outside of a full rate case, as long as the process
19 employed by the Commission does not affect Qwest's revenues or ultimate rate of return². Qwest
20 contends that any additional access charge reductions (beyond the \$15 million required under
21 Qwest's current price cap plan) must be accomplished in a revenue-neutral manner, or within the
22 context of a rate proceeding (such as the adoption of a revised price cap plan).

23 Alternatively, Qwest asserts that the Commission could reduce access charges to interstate
24 levels in conjunction with implementation of an end-user charge to offset the revenue loss from the
25 access charge reduction. Another alternative suggested by Qwest is to use the Access Charge Docket
26 to identify issues relevant to access reform, including an analysis of current access rates of all parties,

27 ² RUCO argues that even if the result of a rate "rebalancing" is revenue neutral, Article XV, § 14 of the Arizona
28 Constitution requires that any adjustment of rates and charges must be set with the assistance of a fair value
determination.

1 and to develop policies and procedures that can be implemented through rate proceedings to
2 effectuate the rate changes.

3 **Bifurcation of Qwest and Independent Telephone Companies**

4 Staff, the CLECs, and ALECA request that the Access Charge Docket be separated into two
5 phases. Staff contends that the Commission requested expedited consideration of Qwest's access
6 charges during the Commission's deliberations concerning Qwest's 271 application and that there are
7 significant differences between Qwest and the independent telephone companies (e.g., access charges
8 comprise a significantly larger percentage of the independents' revenues; Qwest has requested a
9 review of its current price cap plan under which access charges have been reduced pursuant to
10 settlement; and new issues and policy concerns unique to the independent companies will likely
11 arise). WorldCom also points out that the vast majority of traffic for interexchange carriers is
12 handled by Qwest. ALECA agrees that bifurcation is appropriate for many of the same reasons.
13 ALECA also claims that consideration of the independent companies' access charges with Qwest
14 would result in unnecessary costs to the smaller companies and would likely delay a determination of
15 Qwest's access rates.

16 Qwest and RUCO believe that the Access Charge Docket should not be bifurcated. Qwest
17 contends that this case should remain a generic docket because the issues facing Qwest and the
18 independent telephone companies are similar in nature. Qwest asserts that separation into two phases
19 will result in a wasteful duplication of effort and inconsistency between the treatment afforded to
20 Qwest and other carriers. RUCO agrees with Qwest's position and, in addition, claims that
21 bifurcation will result in inefficiencies because parties may end up with different positions in the two
22 phases depending on whether they are buyers or sellers of access charges.

23 **Conclusion**

24 The general consensus of all parties is that access charges may not be reduced outside the
25 context of a rate setting proceeding unless, at a minimum, a revenue-neutral mechanism is developed.
26 Due to these limitations, and because Qwest has requested a review of its current rate cap plan in
27 Docket No. T-01051B-03-0454, it is appropriate to consider Qwest's access charges in conjunction
28 with its rate cap review, where all of Qwest's rates will be analyzed. However, the independent

1 telephone company access charges must be considered separately because there are no existing price
2 cap plans or rate cases currently pending for those entities.

3 Accordingly, the Access Charge Docket will be bifurcated into two phases. Phase I will
4 address Qwest's access charges in combination with the review of Qwest's price cap plan. Phase II
5 will consider access charges for all other telephone carriers that provide access services. A
6 subsequent Procedural Order will be issued scheduling testimony and hearing dates for both phases
7 of the proceeding.

8 IT IS THEREFORE ORDERED that the Access Charge Docket will be bifurcated into two
9 phases.

10 IT IS FURTHER ORDERED that Phase I of the Access Charge Docket will address Qwest's
11 access charges in conjunction with the review of Qwest's current price cap plan in Docket No. T-
12 01051B-03-0454.

13 IT IS FURTHER ORDERED that Phase II of the Access Charge Docket will consider access
14 charges for all other telephone carriers that provide access services.

15 IT IS FURTHER ORDERED that Eschelon Telecom of Arizona, Inc.'s application for
16 intervention is granted.

17 IT IS FURTHER ORDERED that the Administrative Law Judge may rescind, alter, amend,
18 or waive any portion of this Procedural Order either by subsequent Procedural Order or by ruling at
19 hearing.

20 DATED this 17th day of November, 2003.

21
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23 

24 DWIGHT D. NODES
25 ASSISTANT CHIEF ADMINISTRATIVE LAW JUDGE
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