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BEFORE THE ARIZONA CORPORATION COMM.
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Commissioners

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

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AZ CORP COMMISSION
DOCUMENT CONTROL

In the Matter of the Application of)
ACC TELECOMMUNICATIONS, LLC)
Ika Adelphia for a Certificate)
of Public Convenience and Necessity)
To Provide Intrastate, Facilities-Based,)
Non-Switched, Dedicated Point-to-)
Point Data Transport Telecommunications)
Services in the)
State of Arizona and Petition for)
Competitive Classification of Proposed)
Services)
)

Docket No. T-04282A-04-0763

NOTICE OF ERRATA

On July 26, 2005, ACC Telecommunications, LLC, Ika Adelphia ("Adelphia") filed a brief with the Commission pursuant to Administrative Law Judge Wolfe's request. The brief inadvertently referred to ACC Telecommunications as "Adelphia Telecommunications" on the first page, and omitted the citations for footnote 11 on page 5. The attached pages should replace the previously filed brief's pages 1, 5, and 6.

Respectfully submitted this 27th day of July 2005,

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ADELPHIA

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BRIEF OF ACC TELECOMMUNICATIONS, LLC LKA ADELPHIA

Pursuant to the Arizona Corporation Commission (“Commission”) Rules of Practice and Procedure, R.14-3-106, and the Administrative Law Judge (“ALJ”) Wolfe’s request, ACC Telecommunications, LLC, locally known as Adelphia (“Adelphia”) hereby respectfully files this brief addressing the lawfulness of individual case basis (“ICB”) pricing for its proposed services. As discussed below and pursuant to discussions with staff, Adelphia will file a tariff including minimum and maximum price ranges for the proposed services.

I. SUMMARY

Adelphia filed an application for a certificate of convenience and necessity (“CCN”) on October 19, 2004. In its application, Adelphia noted that it seeks authority to provide intrastate, facilities-based non-switched, dedicated point-to-point data transport services, which will allow a

appropriately considered the companies' fair value rate base and the competitive market, in determining that the carriers would offer just and reasonable rates for these competitive services.

This Commission has also approved ICB pricing even for *incumbent* carrier Qwest's *wholesale* services to other carriers – which arguably are not “competitive services.” The Commission stated that although “ICB pricing is ... less desirable than UNE prices supported by a cost study, for the few remaining services offered on an ICB basis, there is currently no alternative.”¹⁰

In addition to approving ICB pricing, the Commission has generally found that rates for competitive services are “not set according to rate of return regulation” and are heavily influenced by the market. Therefore, the Commission has recognized consistently that the fair value rate base of CLECs is so small as not to be useful factors in setting rates.¹¹ Accordingly, the Commission generally conducts a relaxed level of review of the prices of competitive carrier services.

C. The Commission Should Approve ICB Prices for Adelphia's Proposed Services

Consistent with its precedent and relaxed standard of review of competitive services, the Commission should approve ICB pricing for Adelphia's services.

Adelphia is not an incumbent carrier in the state of Arizona, and its services are competitive services.¹² As described in its application, Adelphia planned to offer dedicated point

¹⁰ *In the Matter of the Investigation into Qwest Corporation's Compliance with Certain Wholesale Pricing Requirements for Unbundled Network Elements and Resale Discounts*, (Docket No. T-00000A-00-0194), Decision No. 64922 (2002), 2002 Ariz. PUC LEXIS 11, * 154.

¹¹ The Staff in those cases observed that the “rates for competitive services are not set according to rate of return regulation,” and that it believes that the proposed rates for those carriers are “just and reasonable as they are comparable to other competitive local carriers...” *See, e.g.*, CCG Communications, Decision No.67883 (2005), and Aztech Communications, Inc., Decision No. 67750 (2005).

¹² *See CNTC and OnFiber orders* (classifying dedicated private line services as “competitive”). Indeed, the Commission has permitted flexible pricing for services that include private line and data services even for

to point, non-switched data transport services on a private line basis. These services are similar to the type of services offered by CNTC and OnFiber at ICB rates, which the Commission has approved in the past, recognizing that competitive carriers do not possess market power and have little ability to control the market or raise prices.

Given that Adelphia is a competitive carrier offering competitive services and that its fair value rate base is zero, the Commission should accord little consideration to fair value rate base in considering whether the rates of Adelphia's services are just and reasonable. The Commission should also find that the rates that Adelphia will charge are heavily influenced by the market. Further, consistent with its decisions in the CNTC and OnFiber applications, the Commission should determine that ICB pricing for these private line services is appropriate, because Adelphia lacks market power to harm the market by restricting output or raising prices. However, to the extent that the Commission believes that it needs to approve a range of rates, Adelphia will file revised tariffs that include a minimum and maximum range of rates for its services – which the *Phelps Dodge* court has explicitly recognized is appropriate and lawful.

III. BRAND X DECISION

ALJ Wolfe also requested that Adelphia address in this brief whether the Supreme Court's recent *Brand X* decision is relevant to an analysis of Adelphia's offering.¹³ Adelphia does not believe that the *Brand X* case is applicable to the issues here.

In *Brand X*, the Court upheld the FCC conclusion that cable companies selling broadband Internet service are not providing "telecommunications services" as consistent with the

incumbent carrier U.S. West. See also *In the Matter of US West Communications, for a Hearing to Determine the Earnings of the Company, Fair Value of the Company for Ratemaking Purposes, to Fix a Just and Reasonable Rate Thereon, and to Approve Rate Schedules Designed to Develop such Return*, (Docket No. T-01051B-99-0105; Docket No. T-01051B-00-369), Decision No. 63487 (commission approved settlement agreement including pricing for data services under Basket 3, flexibly priced services).

¹³ See *National Cable and Telecommunications Ass'n v. Brand X Internet Services*, 545 U.S. ____, 125 S. Ct. 2688 (2005) ("Brand X").

PROOF OF SERVICE

I hereby certify that I have this day served the foregoing documents on all parties of record in this proceeding by first-class United States mail with postage prepaid thereon, and by mailing a copy thereof, properly addressed with first class postage prepaid to:

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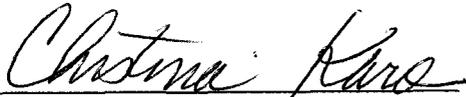
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Dated at San Francisco, California, this 27th day of July, 2005


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