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**COMMISSIONERS**

JEFF HATCH-MILLER, Chairman  
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2005 JUN 30 P 4: 24

AZ CORP COMMISSION  
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Arizona Corporation Commission  
**DOCKETED**

JUN 30 2005

DOCKETED BY *AKL*

IN THE MATTER OF THE APPLICATION OF  
QWEST COMMUNICATION CORPORATION  
D/B/A QWEST LONG DISTANCE FOR  
EXTENSION OF ITS EXISTING  
CERTIFICATE OF CONVENIENCE AND  
NECESSITY TO INCLUDE AUTHORITY TO  
PROVIDE RESOLD AND FACILITIES-  
BASED LOCAL EXCHANGE AND RESOLD  
LONG DISTANCE SERVICES, AND  
PETITION FOR COMPETITIVE  
CLASSIFICATION OF PROPOSED  
SERVICES, AND PETITION FOR  
COMPETITIVE CLASSIFICATION OF  
PROPOSED SERVICES WITHIN THE STATE  
OF ARIZONA.

DOCKET NO. T-02811B-04-0313

**STAFF'S RESPONSE TO QWEST  
COMMUNICATIONS CORPORATION'S  
SUPPLEMENTAL FILING AND MOTION  
TO AMEND ORDER SUSPENDING  
TIME-CLOCK**

**I. Introduction**

On June 21, 2005, Qwest Communications Corporation ("QCC") filed a Supplemental Filing and Motion to Amend Order Suspending Time-Clock ("Motion"). On June 23, 2005, the Commission issued a Procedural Order asking for Staff's comment on QCC's Motion. It is Staff's position that the Commission should deny QCC's Motion and that the Administrative Law Judge ("ALJ") should take additional testimony on the issues raised by the ALJ at the June 16, 2005 Procedural Conference since they are largely questions of fact. It is within the ALJ's discretion to take additional testimony on the issues in this case to the extent necessary to render her decision. The additional testimony goes in large part to the issue of whether the Company's amended Application is in the public interest. Given the complexity of the issues raised, it is critical that the ALJ have sufficient information to make a public interest determination in this case. In addition, while Staff

1 desires to see a speedy resolution to this case, it believes a suspension of the time-clock is appropriate  
2 if it is necessary to ensure a full and complete airing of the issues raised.

3 QCC also objects to addressing the R14-2-803 waiver issue in this proceeding. However, the  
4 Company has been on notice since February 1, 2005, that this would be an issue in this case, when  
5 the ALJ asked the Staff to address whether a continuation of the partial waiver granted the Company  
6 in Decision No. 64654 was still appropriate in light of its request to compete inside of QC's service  
7 territory. Since the Staff believes that the issues raised by the ALJ at the June 16, 2005 Procedural  
8 Conference have both legal and factual components, necessitating the taking of additional testimony,  
9 and additional testimony on the waiver issue was going to be taken anyway, the Company should not  
10 be prejudiced by addressing all of these issues at the same time.

## 11 **II. Discussion**

### 12 **A. The ALJ Is Entitled to Request Further Testimony on the Issues Raised.**

13 At the June 16, 2005 Procedural Conference the ALJ asked both Qwest and Staff to address  
14 the following questions:

- 15 (1) Why is Staff's alternative recommendation is in the public interest?
- 16 (2) Why should QCC be allowed to take revenues and customers away from QC and how  
17 should this be treated from a ratemaking perspective?
- 18 (3) Why should the partial waiver of R14-2-803 not be revisited if Staff's alternative  
19 recommendations are adopted?
- 20 (4) What is the purpose of the Affiliated Interest Rules?
- 21 (5) Will QCC's taking revenues and customers away from QC impact QC's ability to  
22 maintain high quality infrastructure in Arizona?
- 23 (6) If Staff's alternative recommendations are not adopted, should the partial waiver of  
24 R14-2-803 remain in effect? What process should be used to effectuate any change in  
25 the waiver?

26 Because the questions raise both factual and legal issues, it was Staff's position when asked at  
27 the June 16, 2005 Procedural Conference that the QCC and Staff responses should be in the form of  
28 supplemental testimony. Staff also believed that this would not engender any significant delay in the

1 proceeding since the ALJ had already earlier informed the parties that additional testimony would be  
2 taken on the R14-2-803 waiver issue, and QCC had not expressed any opposition to this at the  
3 hearing. Furthermore, Staff indicated at the Procedural Conference on June 16, 2005 that it would be  
4 able to put additional testimony together to address the waiver and other issues by mid-July.

5 QCC argued at the Procedural Conference that the ALJ had sufficient information in order to  
6 make a decision on all of the issues in this case, and that the waiver issue should be spun off into a  
7 separate docket. QCC also argued that the ALJ should close the record, require briefing by the  
8 parties and render a decision in this case.

9 Given the complexity of the issues raised in this case, Staff believes the ALJ is entitled to  
10 request additional testimony on the issues to enable her to make a decision in this case. The issues  
11 are apparently very important to the ALJ, or she would not have posed them to the parties. It is  
12 presumptuous on QCC's part to suggest to the ALJ that she has to make her decision on the basis of  
13 the existing record, when it is clear that she believes that more information is necessary on the issues  
14 raised at the June 16, 2005 Procedural Conference. Clearly the ALJ is a better judge of the  
15 information which she needs to decide this case than QCC.

16 QCC in its Supplemental Filing attempts to demonstrate that sufficient evidence exists on the  
17 points raised by the ALJ. However, an examination of those passages reveals that they do not  
18 directly address many of the issues raised by the ALJ. Indeed, many of the conditions requested by  
19 Staff in its Supplemental Staff Report go to the exact concerns posed by the ALJ in her questions to  
20 the parties at the June 16, 2005 Procedural Conference. In fact, QCC is vigorously contesting having  
21 to provide information to Staff on some of the same issues raised by the ALJ, i.e., the impact QCC  
22 will have on QC's operations and how this should be accounted for in QC's next AFOR filing.

23 It is critical in Staff's opinion that the ALJ have adequate time and information in order to  
24 address the issues raised in this proceeding. Many of the issues raised by the ALJ go directly to the  
25 issue of whether the Company's Application is in the public interest. Staff believes that there are  
26 many competing factors in this case, and that a public interest determination is not clear cut.  
27 However, if the ALJ believes the Company's most recent Application is in the public interest, Staff  
28

1 will support that recommendation as long as the conditions included in its Supplemental Staff Report  
2 are adopted.

3 **B. QCC Substantially Amended Its Application Several Times And Therefore With**  
4 **Each Supplement and Amendment, the Time-Clock Rules Began to Run Anew.**

5 In her Procedural Order dated June 9, 2005, the Hearing Officer suspended the time-clock  
6 rules pending the continuation of the hearing in this matter. QCC requests an amendment to this  
7 ruling. QCC's arguments for an amendment are two-fold: 1) the time-clock has already expired,  
8 and, 2) there is no good cause for suspending the time-clock. Staff disagrees with both arguments.

9 First, while QCC filed its original Application on April 23, 2004, the Company amended or  
10 revised its Application twice, once as recently as May 16, 2005. The first amendment occurred in  
11 December, 2004. In the July –August, 2004 time-frame, counsel for QCC and counsel for Staff had  
12 several conversations regarding the lack of clarity surrounding the Company's Application given  
13 statements made by Company personnel and the Company's responses to Staff data responses and  
14 other filings. As a result, QCC sent a letter to Staff on September 20, 2004 attempting to add some  
15 much clarity to the Company's Application and attempting to address the various inconsistencies  
16 appearing in the Company's filings as of that date. These conversations, as well as others between the  
17 parties, ultimately gave rise to the QCC's first supplement and revision to its Application.

18 The first supplement and revision to its Application was filed on December 17, 2004. At the  
19 same time it withdrew its original Exchange Service Tariff QCC Arizona Tariff No. 3 and filed a new  
20 Tariff. On January 12, 2005, Qwest filed an Errata to its December 17, 2004 Supplement and  
21 Revision to its Application which included tariff pages to "correct the information omitted from the  
22 Supplement to Application and Petition." Based upon these filings, Staff filed a Letter of  
23 Administrative Completeness on February 2, 2005. The letter indicated that substantial amendments  
24 to the filings would result in the need for additional time. The Hearing Division issued a procedural  
25 order establishing a timeline for publication of the application, public comment, and a hearing date.  
26 Staff filed its Staff Report and Recommendation on February 23, 2005. The Company filed a  
27 response on March 16, 2005.  
28

1 Between March 16, 2005 and May 16, 2005, the Company and Staff engaged in a series of  
2 settlement discussions in an effort to resolve the issues in dispute. The parties filed a Joint Procedural  
3 Proposal on April 1, 2005 which extended the hearing date from March 23, 2005 to May 10, 2005.  
4 This resulted in a suspension of the time-clock for a comparable period of time, or 48 days. The  
5 parties subsequently asked the ALJ for an additional week to undertake additional negotiations. The  
6 time-clock was again extended for a comparable period of time, 7 days.

7 While a settlement was ultimately not reached, those discussions resulted in a Supplemental  
8 Staff Report dated May 13, 2005 and another amendment by the Company to its Application. QCC's  
9 second amendment was filed on May 16, 2005. The second amendment contained a new  
10 supplemented application for a CC&N attached to the filing as Exhibit 1. In Staff's opinion, each  
11 revision and supplement to its Application had the effect of starting the time-clock over again.  
12 However, certainly, the May 16, 2005, with a revised CC&N Application attached had the effect of  
13 starting the time-clock over again. QCC appears to concede this in its filing when it states that: "The  
14 running of the time-clock should be re-instated as of May 18, 2005."

15 Moreover, QCC's argument that the time period ran on November 28, 2004 should also be  
16 rejected because the Company did not file publication of its Application as required by A.A.C. R14-  
17 2-1104(E) in *The Arizona Republic* until February 11, 2005. Until this was done, further processing  
18 of and a hearing on the Company's Application could not be done.

19 Assuming that this application contained only the typical CC&N application issues which as  
20 discussed below it does not, if the 180 day period is calculated using the first revision to its  
21 Application, including Errata, the time would begin to run with Staff's Letter of Sufficiency that was  
22 filed on January 22, 2005. With the two suspensions for settlement discussions, (without regard to  
23 the current suspension), the time-clock would run on September 13, 2005. However, if one was to  
24 calculate the 180 day period beginning with the last revision to the Company's application that was  
25 filed on May 16, 2005, the time-clock would not run until November 14, 2005.

26 **C. QCC's Own Actions Have Resulted In Significant Delay In This Case.**

27 Unfortunately, QCC's own actions have resulted in significant delay in this case. The  
28 Company's original filings were vague and contradictory in instances with respect to the Company's

1 plans to provide competitive local exchange service, such that Staff had to spend considerable time  
2 clarifying the Company's intentions.

3 The Company's Motion is yet another example of action on the Company's part which is  
4 going to cause further delay in resolving the issues in this case. If the Company had not filed its  
5 Motion, it is likely that a procedural order would have already issued establishing a date for the filing  
6 of testimony by Staff and QCC and for a hearing. It is likely that Staff would have been filing its  
7 testimony near the date that oral argument will now take place on QCC's Motion. QCC's Motion is  
8 diverting critical resources that could otherwise be used in resolving the issues in this case.

9 Further, it is difficult to determine what the Company expects to obtain by filing its Motion.  
10 The ALJ did not suspend the time-clock indefinitely. The time-clock was suspended pending the  
11 continuance of the hearing on this matter. The hearing probably would have been scheduled by now  
12 but for the Company's recent Motion.

13 In addition it is perplexing to Staff that despite Staff's best efforts to accommodate the  
14 Company through its alternative recommendation, QCC is contesting having to comply with Staff  
15 conditions. One of the Staff recommendations that the Company is vigorously contesting is the  
16 provision of information regarding current QC customers who choose QCC as their new provider.  
17 This information is necessary to determine the ultimate impact upon QC. The Company continues to  
18 claim that it is too burdensome to provide the Commission with this information, but its arguments in  
19 this regard are not persuasive.

20 The Company is also vigorously contesting having to provide 18 months worth of data before  
21 it seeks an expansion of its CC&N to provide competitive local exchange service to small business  
22 customers and residential customers in QC's service territory. The Company claims that it should be  
23 subject to no restrictions in this regard at all. Yet the Company has conceded that its current business  
24 plan in all 14 states is to provide competitive service to large and medium business customers only.  
25 In fact, currently the Company does not provide competitive local exchange service to residential  
26 customers in any of its 14 states and has no current plans to do so. In addition, the primary reason for  
27 requesting an expansion to its CC&N to provide competitive local exchange in QC's service territory,  
28 i.e., to provide one-stop shopping to large business customers, does not apply with respect to

1 residential service. So, it is difficult to understand why the Company is vigorously contesting this  
2 condition as well.

3 **D. This Case Raises Issues Which Are Outside the CC&N Time-Clock Rules,**  
4 **Including the Affiliated Interest Waiver Issue Which the ALJ Asked the Parties**  
5 **to Address in this Docket.**

6 QCC's Application also raises many issues that are not normally addressed in the typical  
7 CC&N application process. The Application raises both legal and policy issues that arise from the  
8 Company's status as a Regional Bell Operating Company and as the Incumbent Local Exchange  
9 Carrier serving over 90% of the residential local exchange market in Arizona. In addition, the  
10 Commission is reexamining whether the partial waiver of the Affiliated Interest Rules continues to be  
11 appropriate in QCC's case. The case has also raised the difficult issue of whether the Commission's  
12 policy which has not in the past allowed a CLEC affiliated with an ILEC to provide competitive  
13 service in the ILEC's service territory should be reevaluated, and if so, under what conditions. The  
14 Commission's resolution of some of these issues is not governed by the CC&N time-clock rules and  
15 additional time has been required given the complexity of the issues raised in this proceeding, which  
16 go far beyond the normal CC&N Application.

17 That the partial waiver granted to the Company in Decision 64654 would be an issue in this  
18 case was first set out in the Commission's February 1, 2005 Procedural Order. Staff addressed the  
19 issue in its initial Staff Report and Recommendation. However, the ALJ has asked for additional  
20 testimony on the issue of whether a partial waiver of R14-2-803 continues to be appropriate if Staff's  
21 alternative recommendation is adopted.

22 Staff believes that the ALJ should take additional testimony as needed on both the issues  
23 raised at the June 16, 2005 Procedural Conference and the waiver issue; and that Qwest's Motion for  
24 Amendment of the June 9, 2005 Procedural Order should be denied.

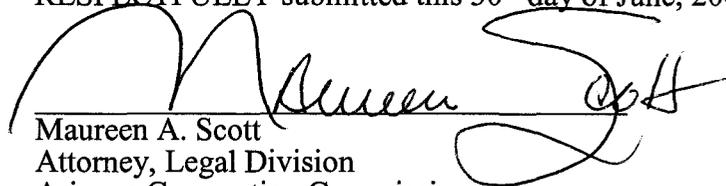
25 **III. Conclusion**

26 As Staff Witness Abinah testified, Staff has gone out of its way to accommodate QCC in this  
27 case. Staff has proposed an exception to the Commission's policy of not allowing a CLEC affiliated  
28 with an ILEC to provide competitive service in the ILEC's service area. This was done in part to  
accommodate QCC's primary reason for seeking an expansion to its CC&N, the need to provide

1 large and medium size business customers with one-stop shopping. While Staff's alternative  
2 recommendation is consistent with what QCC desires, QCC continues to vigorously protest several of  
3 Staff's conditions. QCC continues to protest having to provide certain information to the  
4 Commission which would allow the Commission to determine the impact on QC's operations. It  
5 protests the requirement to include 18 months of data with any future application to provide  
6 residential local exchange service in competition with QC despite the fact that it has no plans now or  
7 in the foreseeable future to provide residential local exchange service in QC's territory.

8 The Commission should deny QCC's Motion and take additional testimony as needed and  
9 allow initial briefing as requested by QCC and reply briefing. The Commission should suspend the  
10 time-clock to the extent necessary to ensure a full and fair airing of the issues in this case. The ALJ  
11 must have sufficient information to determine whether QCC's amended Application is in the public  
12 interest. If the ALJ finds that QCC's amended Application is in the public interest, Staff will support  
13 the ALJ's finding as long as the conditions it has proposed are adopted.

14 RESPECTFULLY submitted this 30<sup>th</sup> day of June, 2005.

15 

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23 Original and thirteen (13) copies  
24 of the foregoing were filed this  
25 30<sup>th</sup> day of June, 2005, with:

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