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Arizona Corporation Commission

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BEFORE THE ARIZONA CORPORATION COMMISSION

CARL J. KUNASEK
CHAIRMAN

JIM IRVIN
COMMISSIONER

WILLIAM A. MUNDELL
COMMISSIONER

IN THE MATTER OF THE GENERIC
REVIEW OF PROCEDURES FOR
COMPETITIVE
TELECOMMUNICATIONS.

DOCKET NO. RT-00000D-00-0694

**REPLY COMMENTS OF BROADBAND OFFICE COMMUNICATIONS, INC.
ADDRESSING FAIR VALUE ISSUES**

Pursuant to the Chief Administrative Law Judge's Procedural Order dated September 18, 2000, BroadBand Office Communications, Inc. ("BBOC") submits the following reply to comments filed by the Residential Utility Consumer Office ("RUCO"). BBOC is a certificated competitive local exchange carrier, seeking to provide full IT solutions (including telecommunications and high speed data services) to Arizona consumers. RUCO's comments responded to questions presented by the Hearing Division in response to the Court of Appeals' opinion in *US West Communications, Inc. v. Arizona Corporation Commission*, 1 CA-CV 98-0672 (August 29, 2000) (the "Opinion").

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1 Among other things in its Comments, RUCO suggests that the Arizona
2 Corporation Commission (“Commission”) review the fair value rate base of a newly-
3 certificated company, and that increases in tariff rates should be granted “only upon the
4 Commission examining fair value.” (RUCO’s Comments on Proposed Procedures for
5 Competitive Telecommunications, dated October 11, 2000, (“RUCO Comments”) at 2.)
6 BBOC urges the Commission to disregard these suggestions on grounds that they do not
7 promote competition and its attendant benefits of more consumer choice in
8 telecommunications providers, leading to lower prices and a wider array of services.
9 Instead, RUCO’s Comments impose an unnecessary regulatory burden on new entrants to
10 the Arizona communications market without returning discernable benefits to either the
11 Commission or the public.

12 Moreover, RUCO’s Comments should not be considered by the Commission
13 at this time because the Opinion is not final. Certain parties, including the Commission,
14 have petitioned the Arizona Supreme Court for review of the Opinion. Finally, even after
15 the Supreme Court has settled all procedural issues, the Commission will find that,
16 contrary to what RUCO urges, fair value rate base information is irrelevant to ratesetting
17 in a competitive market.

18 **1. THE OPINION IS NOT FINAL**

19 RUCO proposes that the Commission revise its rules and practices to
20 comply with RUCO’s reading of the Opinion.¹ Recently, certain parties, including the
21 Commission, filed petitions for review of the Opinion with the Arizona Supreme Court.
22 Rule 24 of the Arizona Rules of Civil Appellate Procedure provides that a mandate shall
23 not issue in a case until the Supreme Court either denies the petition for review or issues a
24 final decision in the case. No mandate has yet issued in this case.

25 ¹ See e.g., RUCO Comments at 4 which states: “RUCO does believe that the Court’s Opinion
26 requires that the approval of new tariff filings comply with the Constitution’s fair value requirement.”

1 Simply, until a final opinion is reached and a mandate has issued, the
2 Commission should not revise its rules or propose new procedures for competitive
3 providers because to do so would be premature and speculative.

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5 **2. FAIR VALUE INFORMATION IS IRRELEVANT**
6 **IN A COMPETITIVE MARKET**

7 In its petition to the Supreme Court, the Commission argues that, in a
8 competitive market, the Opinion “creates ratesetting requirements that have no precedent
9 in Arizona law and that are irrelevant to establishing just and reasonable rates.”
10 *Appellees’ Petition for Review*, Cause No. 1 CA-CV 98-0672 (“Petition”), at 11. The
11 Commission is correct that rate setting requirements based on the Opinion’s fair value
12 assumptions are irrelevant to just, reasonable and *market-based* rates.

13 In contrast, RUCO proposes that the Commission use fair value rate base
14 information to set rates for competitive providers. If implemented, this proposal will
15 impose an unnecessary and substantial regulatory burden on new competitive providers to
16 collect and report the data. Further, this proposal may constitute a barrier to competitive
17 entry in direct violation of the federal Telecommunications Act of 1996.² Moreover, as
18 the Commission itself recognized, fair value rate base information is “not relevant to
19 competition.” *Petition*, at 6. Such an approach is old style monopoly telephone
20 regulation being applied to the new competitive landscape. New entrants to Arizona
21 should not be burdened with providing fair value information because such information is
22 burdensome to collect by the Commission staff, delays new service to Arizona consumers,
23 and imposes unnecessary regulatory costs to providers.

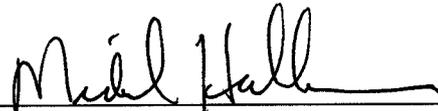
24 _____
25 ² See 47 U.S.C. § 253(a) which states: “No State or local statute or regulation, or other State or
26 local legal requirement may prohibit or have the effect of prohibiting the ability of any entity to
provide any interstate or intrastate telecommunications service.”

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3. CONCLUSION

The Opinion is not yet final. Accordingly, the Commission should not revise its rules or propose new procedures for competitive providers because to do so would be premature and speculative. The Commission is correct in concluding that fair value information is irrelevant and useless in a competitive market place. Despite proposals from any party, the Commission should not erect unnecessary and burdensome barriers to entry to Arizona's marketplace.

RESPECTFULLY SUBMITTED, November 1, 2000.

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ORIGINAL and ten (10) copies
of the foregoing hand-delivered
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