BEFORE THE ARIZONA CORPORATION COMMISSION

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Chairman
WILLIAM A. MUNDELL
Commissioner
JEFF HATCH-MILLER
Commissioner
KRISTIN K. MAYES
Commissioner
GARY PIERCE
Commissioner

IN THE MATTER OF THE REVIEW AND POSSIBLE REVISION OF ARIZONA UNIVERSAL SERVICE FUND RULES, ARTICLE 12 OF THE ARIZONA ADMINISTRATIVE CODE

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

DOCKET NO. RT-00000H-97-0137
DOCKET NO. T-00000D-00-0672

INITIAL COMMENTS OF TIME WARNER TELECOM OF ARIZONA, LLC

Time Warner Telecom of Arizona, LLC submits the following initial comments pursuant to the procedural order dated November 28, 2007. These comments briefly identify broad principles that are relevant to the Commission's work in amending the Arizona Universal Service Fund rules ("AUSF rules") and eliminating access charge subsidies. As discussed in greater detail below, Time Warner Telecom recommends that a workshop process be used to effectively frame and implement policies designed to reduce access charges and create a narrowly targeted explicit subsidy for high cost loops.

I. Process

a. Timing

The Commission should move quickly to implement revisions to the AUSF and reform the access subsidy system. The access subsidies flowing to incumbent carriers are harmful to competition. Consumers are gravitating to wireless providers in record numbers to avoid paying access subsidies.[1] This market distortion limits competition and reduces available alternatives for consumers. Time Warner Telecom recommends that a phased-in access reduction begin this calendar year, with a parallel process for revising the AUSF rules to create an effective explicit subsidy which will replace (where needed) subsidies reduced by access reform.

b. Workshop Format

Time Warner Telecom recommends that a workshop format be used that would begin soon after the exchange of comments. Interested parties could attend the workshops in person or choose to be represented by subject matter experts, consultants, in-house industry experts, in-house counsel or retained counsel. In other words, parties could choose the most cost-effective method for their participation. Staff would facilitate these meetings and set the agenda, but would propose specific rule amendments or solutions only after the initial workshop discussion.

II. Guiding Principals

a. Elimination of Implicit Subsidies

Section 254 of the Telecommunications Act of 1996 ("Telecom Act") provides that all universal service subsidies should be explicit. 47 U.S.C. § 254(e). Today, more than a decade after passage of the Telecom Act, switched access rates in Arizona are still priced far above cost and deliver to Qwest a remarkable implicit subsidy. These implicit subsidies harm all competition insofar as they motivate market participants to rely on profit that is not otherwise associated with a productive market activity or product. In other words, a subsidized profit directly hinders a carrier's ability to develop and offer

[1] *See Trends in Telephone Service,* FCC Report issued February 2007, § 15.3.

new and innovative products. From a competitor provider's perspective, this public subsidy gives the incumbent carrier an immediate and sizeable advantage in the market. The Commission has heard repeatedly from competitors (and IXEs) that access reform is needed.[2] What was predicted in those comments filed in this docket years ago has come to pass. Arizona has diminished competition, distorted prices for other telecommunications services, and suppressed demand for intraLATA toll.

Time Warner Telecom recognizes that access reduction will require a phase-in period, and recommends that the phase-in period be no longer than the three year transition period utilized by the FCC in similar proceedings. *See e.g. Access Charge Reform*, Seventh Report and Order and Further Notice of Proposed Rulemaking, 16 F.C.C.R. 9923, 9941 (2001). Consistent with this approach, the Commission should adopt an initial access rate and a final access rate. The initial access rate would be implemented within 180 days of the decision in this case. Thereafter, access would be reduced one-year following adoption of the order with a second reduction at the two year mark. Each reduction would total one third of the delta between the initial access rate and the final access rate. A final reduction (reaching the final rate) would occur on the three-year anniversary of the decision. This transition period would allow access recipients time to adjust their business models and the industry time to implement revisions to the ASUF.

b. Use of Explicit Subsidies

Time Warner Telecom agrees that explicit subsidies may be necessary to guarantee basic telephone service to customers in rural, low density areas. Any such

[2] *See e.g.* Testimony filed in Docket No. T-00000D-00-0672 by competitive local exchange carriers on July 3, 2002, November 18, 2004, January 12, 2005.

subsidy should be: (1) competitively neutral, (2) narrowly targeted and (3) broadly funded. A competitively neutral subsidy treats various contributors to the fund equally. All providers contribute to the fund and no single group of providers contributes a disproportionate share. A competitively neutral subsidy is also portable. Time Warner Telecom recommends that the AUSF rules be revised to allocate support to a carrier on a per line basis so that any AUSF support goes with the customer if the customer switches to another provider. Guarantying a set level of support to a carrier, regardless of customer retention, is not competitively neutral.

Any explicit subsidy should also be narrowly targeted. Specifically, this means that the subsidy should provide funding for basic telecommunications in low income households and should support high cost loops where needed. Time Warner Telecom would oppose use of a subsidy for a wider array of communications or information services. Finally, any explicit subsidy should be broadly funded, meaning that it receives contributions from the largest possible pool of telephone service providers. As mentioned above, the explicit subsidy discussed here could take the form of the AUSF with modifications.

c. Market Conditions

Explicit subsidies, which include the AUSF, should only be available when the needs of end-users cannot be met by the market.

d. No Constraints

Time Warner Telecom recommends that the Commission impose no constraints on the technical means a carrier might employ in providing basic local exchange telephone service. Advances in the coming decade may make wireless connectivity the most efficient and cost-effective means for reaching rural Arizona with basic telephone service. Amendments to the AUSF rules should allow broad latitude in how high-cost rural end-users are served. This latitude may require redefining the "basic local exchange telephone service." A.A.C. R14-2-1201(6).

e. The CLC Charge (Common Carrier Line Charge)

If the Common Carrier Line Charge is retained in Arizona as an explicit subsidy, it should have the explicit subsidy characteristics discussed above.

III. Commission Authority to Reduce Access Expeditiously

The Commission would not need to undertake a comprehensive rate proceeding before reducing the access subsidies received by Qwest. Section 3 of the Arizona Constitution gives the Commission broad discretion to "prescribe . . . just and reasonable rates and charges to be made and collected, by public service corporations within the state for service rendered therein." See Arizona Corp. Comm'n v. State ex rel. Woods, 171 Ariz. 286, 294, 830 P.2d 807, 815 (1992) (courts defer to "the Commission's determination of what regulation is reasonably necessary for effective ratemaking").

While the Commission has an affirmative constitutional duty to determine fair value in connection with prescribing rates and charges, the Arizona Supreme Court has already held that the presence of a competitive market may impact the manner in which the Commission exercises that constitutional duty. *See US West Communications, Inc. v. Arizona Corp. Comm'n,* 201 Ariz. 242, 246, ¶ 19, 34 P.3d 351, 355 (2001) ("In such a climate, there is no reason to rigidly link the fair value determination to the establishment of rates.") In *US West v. ACC,* the court examined whether competitive local exchange carrier ("CLEC") rates were necessarily subject to rate-of-return regulation and based its conclusion ("no") on the presence of a competitive environment. So too, in a truly competitive market, the Commission could shift resources away from a contested rate-of-return proceeding and instead facilitate an abbreviated proceeding wherein parties reach a stipulated agreement on the fair value of the incumbent carrier's plant and stipulate to a rate of return. With those "constitutionally mandated" steps resolved through stipulation, the parties could direct resources and energy to designing and implementing an access reduction timetable and updated ASUF rules. This proceeding would be very similar to the meetings and negotiations which lead up to Commission approval of Qwest's Renewed Price Regulation Plan in 2006. (Commission Decision No. 68604). The incumbent carrier would not make a full rate case filing under A.A.C. R14-2-103, and the Commission's evaluation of Universal Service support would be made against the backdrop of the existing competitive telecommunications environment.[3]

Time Warner Telecom appreciates the opportunity to submit these comments and looks forward to participating in discussions that will lead to an updated Universal Service Fund plan for Arizona.

Respectfully submitted this 7th day of January 2008.

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[3] Where competitive alternatives have not yet developed, the proceeding to adjust access revenues would reflect the fact that the rate of return required by the provider may be the central issue.

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