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IN THE MATTER OF QWEST CORPORATION'S PETITION FOR ARBITRATION AND APPROVAL OF AMENDMENT TO INTERCONNECTION AGREEMENT WITH ARIZONA DIALTONE, INC. PURSUANT TO SECTION 252(B) OF THE COMMUNICATIONS ACT OF 1934, AS AMENDED BY THE TELECOMMUNICATIONS ACT OF 1996 AND APPLICABLE STATE LAWS

DOCKET NO. T-01051B-07-0693
T-03608A-07-0693

QWEST CORPORATION'S MOTION FOR AN ORDER AWARDING QWEST'S REQUESTED RELIEF REGARDING THE PROPOSED TRO/TRRO AMENDMENT BASED UPON THE STATEMENTS AND ADMISSIONS OF ARIZONA DIALTONE, INC., AND DENYING ARBITRATION OF ALLEGED BILLING DISPUTES

(Expedited Consideration Requested)

Qwest Corporation ("Qwest") hereby moves for the Arizona Corporation Commission ("Commission") acting as arbitrator in this proceeding to issue an order compelling Arizona Dialtone, Inc. ("Arizona Dialtone") to execute a TRO/TRRO Amendment reflecting the FCC's TRO and TRRO rulings, based on statements and admissions made by Arizona Dialtone in this proceeding (the "Arbitration"). Alternatively, Qwest requests an order regarding the scope of issues to be brought forward for hearing on the date set, February 11, 2008. In support of its motion Qwest states as follows:

1 **I. Relationship of the Arbitration to the Qwest Complaint against Arizona Dialtone**

2

3 In a parallel proceeding, *In the Matter of the Formal Complaint of Qwest Corporation*
4 *Against Arizona Dialtone to Enforce Its Interconnection Agreement*, Docket No. T-01051B-07-
5 0694 (the "Complaint"), Qwest has asked the Commission for essentially the same relief as
6 Qwest seeks in this Arbitration. The Arbitration and the Complaint arise out of the same
7 operative facts and circumstances concerning Qwest's attempts to enter into an amendment to
8 the ICA implementing the *TRRO*. In the Complaint proceeding, on January 31, 2008, the same
9 day the Commission decided against consolidating the Complaint and Arbitration, Qwest filed a
10 Motion for Judgment on the Pleadings. In Qwest's view, a ruling in its favor on its Motion for
11 Judgment on the Pleadings would make the Arbitration unnecessary. Because the proceedings
12 are not consolidated, however, and because the hearing date for the Arbitration is imminent,
13 Qwest concludes that it should make the same points in the Arbitration that it made in its Motion
14 for Judgment on the Pleadings in the Complaint.

15

16 **II. Introduction and Background**

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18 Qwest's Petition for Arbitration asks the Commission to adopt and approve the TRO /
19 TRRO Amendment that is substantially and in all material respects the same amendment that
20 Qwest has entered into with every other CLEC in the State of Arizona. Arizona Dialtone has
21 refused to accept the TRRO Amendment. By reason of the admissions and statements made by
22 Arizona Dialtone in its January 22, 2008 Response to Qwest's Petition, and in its January 22,
23 2008 Answer to Qwest's Complaint, it has become clear that Arizona Dialtone no longer objects
24 to the application of the *TRRO* to the interconnection agreement between the parties by way of
25 an appropriate amendment. Arizona Dialtone agrees with Qwest about the impact and meaning
26 to the *TRRO*, and the effective dates of the *TRRO*. Arizona Dialtone's only remaining objections

1 involve the true-up of charges back to the effective date of the *TRRO*, and the arbitration of
2 several matters that are unrelated to any of the matters that must be included in the
3 interconnection agreement to implement the *TRRO*.

4 The objections Arizona Dialtone makes in the context of the true-up of charges from the
5 effective date of the *TRRO* to the present stem from issues that are not subject to arbitration
6 under Section 252 of the Act, or are groundless as a matter of law.

7 The non-*TRRO* matters that Arizona Dialtone seeks to arbitrate do not qualify for
8 arbitration under Section 252 of the Act because they are not the subject of the current notice of
9 negotiation, which was made by Qwest under Section 252. Nor, in fact have those issues been
10 discussed by the parties sufficiently to enable Qwest, or the Commission, to consider them. For
11 those non-*TRRO* issues, there is no national telecommunications policy pronouncement
12 exhorting the industry and state commissions to move swiftly toward implementation like there
13 is for the *TRRO* matters. Therefore, because the non-*TRRO* matters and the *TRRO* Amendment
14 are unrelated and independent, the non-*TRRO* matters should be severed.

15 The *TRRO* Amendment should be approved immediately. Regarding the *TRRO*
16 Amendment, there is no genuine issue of material fact for hearing, and an arbitration decision in
17 favor of Qwest's version of the *TRRO* Amendment is proper as a matter of law.

18

19 **III. Arizona Dialtone Now Agrees with Qwest Regarding the Legal Impact of the *TRRO***
20 **and the Implementing Regulations**

21

22 Qwest stated in its Arbitration Petition and Arizona Dialtone admits,¹ that from the
23 effective Date of the *TRRO* on March 11, 2003 to the time Qwest filed these actions, Qwest
24 repeatedly requested Arizona Dialtone to enter into negotiations to implement the *TRRO*.
25 Throughout this long-standing impasse, Arizona Dialtone asserted various excuses, which it has

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¹ Answer to Complaint, ¶ 10.

1 now abandoned. Indeed, Arizona Dialtone now states in its Response that it “does not object to
2 signing an appropriate TRRO Amendment.”²

3 Arizona Dialtone now “agrees generally with ¶¶ 18-19 of the Petition regarding the legal
4 impact of the TRRO and the implementing regulations.”³ Arizona Dialtone has now abandoned
5 its pre-arbitration position that it was not required to sign the TRRO Amendment based on its
6 theory that the *TRRO* did not mandate the changes.⁴ Arizona Dialtone fails to deny or rebut
7 Qwest’s assertion that Arizona Dialtone refused to sign the Amendment on the basis of a
8 mistaken theory that the TRRO did not mandate such changes.⁵

9 Further, Arizona Dialtone has now abandoned the pre-arbitration position that the
10 provisions of the *TRRO* are overridden by other provisions of federal or state law, which
11 positions relied on [erroneous] legal theory emanating from the Commission’s arbitration order
12 in the Qwest / Covad Arbitration, Decision No. 68440. Arizona Dialtone does not espouse that
13 legal theory in its Response to Arbitration. Nor could it do so, because as Arizona Dialtone now
14 recognizes, the Commission’s order in Decision 68440 has been overturned by the Order and
15 Judgment of the United States District Court for the District of Arizona in *Qwest Corporation v.*
16 *Arizona Corporations Commission, et al.*, entered in Case No. CV 06-1030 –PHX-ROS on
17 September 30, 2007 (“District Court Order”).⁶ Arizona Dialtone expressly “does not object to
18 ¶21 of the Petition regarding the legal impact of the decision by the District Court in the *Qwest*
19

20 ² Arbitration Response, ¶ 1

21 ³ Arbitration Response, ¶10.

22 ⁴ Arizona Dialtone’s pre-litigation position was stated in the March 3, 2006, letter from William D. Cleaveland, counsel for Arizona Dialtone, to Qwest, which letter appears as Appendix C to Qwest’s Petition. The letter states:

23 Additionally, the proposed TRRO Amendment that Qwest has drafted
24 seems to imply that somehow the modifications contained in it are mandated by
25 the TRRO currently on review in the Washington DC courts. While the TRRO is
26 quite a lengthy document, I have been searching it for any mention of such a
mandate to implement the changes in the Amendment, but I have been unable to
find one.

⁵ See, Arbitration Response, ¶ 10.

⁶ The opinion of the court is published as 496 F.Supp. 2d 1069.

1 *Corporation v. Arizona Corporation Commission* matter.”⁷

2 Arizona Dialtone’s Response essentially admits that Arizona Dialtone’s pre-litigation
3 objections to the TRRO Amendment were simply wrong.

4
5 **IV. Arizona Dialtone’s Admissions Resolve the TRRO Amendment Arbitration Issues**

6
7 With these statements and admissions by Arizona Dialtone, their “disputes” over Qwest’s
8 proposed amendment fall away.

9
10 **A. Issues 1 and 2.**

11
12 Arizona Dialtone has abandoned its earlier arguments about how continued offering of
13 UNE-P is mandatory under Section 271 or under some “other applicable provisions” of the Act
14 or other applicable laws and regulation. Further, under the District Court Order, there are in fact
15 legal restrictions on the UNEs Qwest must provide, so the language requested by Arizona
16 Dialtone is erroneous as a matter of law. Given Arizona Dialtone’s statements and admission,
17 Qwest prevails on Issue 1 of its Petition (See, ¶ 25 Qwest Petition), which was stated as,
18 “Whether the federal regulatory regime restricts the unbundling obligations that may be imposed
19 upon ILECs in interconnection agreements arbitrated under Section 252.” And, given Arizona
20 Dialtone’s statements and admissions, Qwest prevails on Issue 2 of its Petition (See, ¶ 26 Qwest
21 Petition), which was stated as, “Whether the scope of Qwest’s unbundling obligations should be
22 made conditional upon non-specific references to state or federal laws and regulations.” Arizona
23 Dialtone’s acknowledgment of the District Court Order eliminates the claim that other state or
24 federal laws overshadow the *TRO*.

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⁷ Arbitration Response, ¶ 12.

1 **B. Issue 3**

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3 Arizona Dialtone no longer asserts that it may continue use of UNE-P indefinitely, or for
4 one more year after signing an amendment, or that it does not have the burden of converting
5 from UNE-P to alternatives.⁸ With Arizona Dialtone's new expression of agreement over the
6 meaning of the *TRRO*, no dispute can exist over when UNE-P became unavailable according to
7 the FCC. Thus, Arizona Dialtone's contentions regarding when it must discontinue UNE-P, no
8 longer exist. Given Arizona Dialtone's statements and admissions, Qwest prevails on Issue 3 of
9 its Petition. There is no longer any argument against Qwest's assertion that Arizona Dialtone has
10 no right to continued UNE-P services, and that Arizona Dialtone was obliged by the *TRRO* to
11 convert from UNE-P by March 11, 2006, which is the end of the transition period ordered by the
12 FCC. Arizona Dialtone must immediately convert from its remaining UNE-P services to
13 alternatives.

14
15 **C. Issue 4**

16
17 Issue 4 concerns the question of backbilling, or as it was called in the *TRRO*, a true-up.
18 Because Arizona Dialtone has agreed with Qwest about the legal impact of the *TRRO* and its

19
20 ⁸ In ¶ 8 of Arizona Dialtone's Answer to the Complaint, Arizona Dialtone admits Qwest's
averments stated in ¶8 of the Complaint, which are as follows:

21 8. The FCC regulations provide, "Requesting carriers may not obtain new local
22 switching as an unbundled network element." (47 C.F.R. § 51.319(d)). The bar against
23 unbundling obligations for mass market local circuit switching is self-implementing.
(Footnote omitted). The *TRRO* provides:

24 We require competitive LECs to submit the necessary orders to convert their mass
25 market customers to an alternative service arrangement within twelve months of
26 the effective date of this Order. This transition period shall apply only to the
embedded customer base and does not permit competitive LECs to add new UNE-
P arrangements using unbundled access to local circuit switching pursuant to
section 251(c)(3) except as otherwise specified in this order. (*TRRO*, ¶ 227).

1 implementing regulations, there can no longer be any debate over whether Arizona Dialtone was
2 obliged by the *TRRO* to convert from UNE-P by March 11, 2006, and obliged to pay according
3 to a true-up. Arizona Dialtone's pleadings have shifted the backbilling issue from whether they
4 are obligated to pay backbilling, to claims of affirmative defenses. Those claims are, (a) Qwest
5 "knowingly processed" orders for new UNE-P services during the one-year transition period and
6 thereafter, and that Arizona Dialtone paid Qwest for the UNE-P services at the rates invoiced by
7 Qwest, such that Qwest should now be estopped from collecting additional amounts from
8 Arizona Dialtone for those services (Arbitration Response, ¶ 4, Complaint Answer, ¶ 9), (b) that
9 the rates that Arizona Dialtone is required to pay for UNE-P during the one year transition period
10 and thereafter are not known, and (c) that Arizona Dialtone's "billing disputes" should serve as a
11 setoff against their liability for the backbilling. Each of these attempts at affirmative defenses to
12 the backbilling is legally incorrect, and does not provide any bar to an order affirming Qwest's
13 version of the *TRRO* Amendment. It is important to note, however, that Arizona Dialtone does
14 not deny the applicability of the *TRRO*, and the consequences that flow from it, which
15 necessarily includes backbilling.

16
17 **1. The Estoppel Theory of the Defense to the Backbill Cannot Apply**
18 **Because the *TRRO* Expressly Provided for a True-up, and because**
19 **Arizona Dialtone Had Notice of the Temporary Nature of the**
20 **Charges and the Necessity of a Subsequent True-up.**

21 Arizona Dialtone raises the affirmative defenses of waiver and estoppel to the
22 backbilling, alleging that "Qwest knowingly processed orders for new UNE-P services during
23 the one-year transition period and thereafter, and that AZDT paid Qwest for the UNE-P and
24 POTS services at the rates invoiced by Qwest, such that Qwest should now be estopped from
25 collecting additional amounts from AZDT for those services."⁹ That theory is insufficient to
prevent the *TRRO* Amendment from being ordered by the Commission.

26 ⁹ Answer to Complaint, ¶ 9.

1 An essential element of the theory of estoppel as a defense to a liability is whether the
2 party claiming estoppel has justifiably relied on the action of the other party. The Arizona
3 Supreme Court stated, in connection with different variations of the estoppel theory: “We need
4 not here state all of the elements of these complimentary principles of estoppel. It suffices for
5 our purposes to state that both forms require a justifiable right to rely on the part of the
6 representee or promisee.”¹⁰ In this case Qwest notified Arizona Dialtone as early as March 4,
7 2005 that Qwest intended to negotiate ICA amendments reflecting the new requirements of both
8 the TRO and TRRO, and specifically stated that in the meantime Qwest would continue to
9 process service orders requested for impacted UNEs under existing ICA, subject to price true-
10 up.¹¹ Arizona Dialtone admits to Qwest’s averments concerning the March 4, 2005 notice.¹²

11 As noted in the Petition for Arbitration, the FCC provided for a one-year transition
12 period, and specifically envisioned that true-ups would be necessary when *TRRO* amendments
13 were negotiated: “UNE-P arrangements no longer subject to unbundling shall be subject to true-
14 up to the applicable transition rate upon the amendment of the relevant interconnection
15 agreement, including any applicable change of law processes.”¹³ This underscores the FCC’s
16 recognition that there were existing ICAs, which contain change of law processes, that must be
17 taken into account. Likewise, in the face of the FCC’s express respect for the processes
18 contained in ICAs and for the processes provided by Section 252, Qwest could not unilaterally
19 begin billing at a different rate. Qwest did not waive its rights to back bill, however, and in fact,
20 as noted above, expressly reserved those rights. For Arizona Dialtone to argue that Qwest
21 somehow waived its rights by continuing to perform under the ICA until an amendment was
22 finalized does not speak to waiver or estoppel; rather it exposes Arizona Dialtone’s scheme to

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24 ¹⁰ *Trollope v. Koerner*, 470 P.2d 91 (Ariz. 1970), citing *Waugh v. Lennard*, 211 P.2d 806 (Ariz.
25 1949) (“The binding thread in all the classes of cases which have been enumerated is the
justifiable reliance of the promisee and the hardship involved in refusal to enforce the promise”).

25 ¹¹ See, ¶10, Complaint.

26 ¹² Answer to Complaint, ¶ 10.

¹³ *TRRO*, fn. 630.

1 “game” the TRRO in an effort to avoid the higher rate for as long as it can. Arizona Dialtone did
2 not justifiably rely on the fact that Qwest filled orders, and continued to bill under the UNE-P
3 rate regime. Nor did Arizona Dialtone take any action or change its position to its detriment
4 based on any actions or promises from Qwest; rather, Arizona Dialtone refused to act, not to its
5 detriment, but to its benefit. Arizona Dialtone’s refusal to enter into a TRRO Amendment, left
6 Qwest in an impossible dilemma that could not have been intended by the FCC, and which this
7 Commission should resolve by ordering that the parties enter into Qwest’s proposed TRRO
8 Amendment, with the backbilling provisions intact.

9

10 **2. The rate Arizona Dialtone Is Required to Pay for UNE-P During the One**
11 **Year Transition Period Established by the *TRRO* Was Set By the FCC in**
12 **the *TRRO***

13

14 Arizona Dialtone attempts to dispute the rate that applies to UNE-P services used during
15 the transition period. This claim has no support whatsoever. In the *TRRO*, the FCC set the
16 transition rate exactly, by the adoption of Rule 51.319(d)(2)(iii). That rule provides:

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Thus, the transition rates are known and should be applied to the transition period.

3. The Rate Arizona Dialtone Is Required to Pay for UNE-P During
the Hold-Over Period Between the Expiration of the Transition
Period Forward, Is the Same as the Current Rates for

Comparable Functionality.

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2
3 After March 11, 2006, the rate the CLEC was obligated to pay goes up to the rate Qwest
4 offered for alternative service arrangements in order to protect Qwest's interests where it is no
5 longer required to provide UNE-P. The FCC provided:

6 We believe that the moderate price increases help ensure an orderly transition by
7 mitigating the rate shock that could be suffered by competitive LECs if TELRIC
8 pricing were immediately eliminated for these network elements, while at the
9 same time, these price increases, and the limited duration of the transition,
provide some protection of the interests of incumbent LECs in those situations
where unbundling is not required.¹⁴

10 Other PUCs addressing this matter have both ordered compliance with the *TRRO* by applying the
11 rates the incumbent LEC offered for alternative service arrangements back to March 11, 2006 to
12 any UNE-P transitioned after March 11, 2006.¹⁵

13 There are two ways for Arizona Dialtone to get comparable functionality to UNE-P from
14 Qwest. One is resold service, for which the rates are already set in Arizona. The other is to
15 purchase UNE loops, together with a contract for platform services offered by Qwest under
16 contract. In that instance, the UNE loop rate is already established and approved by the
17 Commission, and the platform services rates are offered at a published schedule of rates which
18 are not set by the Commission, but that are offered to any CLEC who wishes to subscribe. The
19 rates are known and identified, and should be applied.

20 21 **4. Arizona Dialtone's Position that the True-Up Must Take into Account** 22 **Their Unexplained Claims about Billing Disputes Is Not Supportable In** **Arbitration Under Section 252.**

23 ¹⁴ *TRRO*, p. 228.

24 ¹⁵ See, *In Re: Order Establishing Generic Docket To Consider Change-Of-Law To Existing*
25 *Interconnection Agreements*, Docket No. 2005-Ad-139; 2006 La. PUC Lexis 250 (July 25, 2006,
26 Ordered; May 25, 2006 Decided) and *Louisiana Public Service Commission Ex Parte*
Consolidated With Bellsouth Telecommunications Ex Parte; Order Number U-28131; Docket U-
28141; Order Number U-28356; Docket Number U-28356; 2006 Miss. PUC Lexis 680 (October
20, 2006).

1 Arizona Dialtone states that there are “billing disputes” that “can and should be heard in
2 this arbitration,”¹⁶ and that those disputes create a “setoff” to the backbilling.¹⁷ Upon analysis,
3 this is just another attempt by Arizona Dialtone to postpone the backbilling as long as it can.
4 The TRRO Amendment, and the backbilling that it contemplates, bears no relationship to the
5 billing disputes. Arizona Dialtone does not claim that the “billing disputes” arise out of a
6 calculation of the backbill; rather they are described as a “setoff” which necessarily means that
7 the disputes arise from something other than the backbilling. Arizona Dialtone does not have
8 any right to a setoff of an unfiled, unliquidated claim against an unrelated liability.

9 Further, the “setoff” notion necessarily means that Arizona Dialtone seeks a finding of
10 liability retroactively with regard to the alleged billing disputes. Arizona Dialtone’s procedural
11 path to pursue that type of claim is to notify Qwest of the billing dispute pursuant to the dispute
12 resolution provisions of the ICA, and if that dispute is not resolved it could then file a complaint
13 with the Commission, seeking enforcement of the ICA. Arizona Dialtone does not claim any
14 justification for inclusion of such a remedy as part of this Section 252 arbitration, unlike the clear
15 justification for Qwest’s request for the true-up, which is part of the FCC’s *TRRO*. A claim for
16 retroactive compensation for billing disputes is not properly before the Commission in the
17 arbitration.

18 Should Arizona Dialtone bring a complaint regarding its claimed billing disputes, and
19 prevail, the Commission should then issue its order requiring Qwest to fulfill its contractual
20 obligations. There is no reason to hold the long-delayed TRRO Amendment, however.

21 **D. Issue 5—The Issues Arizona Dialtone Raises for Arbitration Are Not**
22 **Properly Part of this Arbitration, and Should be Struck; Alternatively,**
23 **Severed for Subsequent Determination. Those Issues Do Not Constitute a**
24 **Bar to An Order Regarding the TRRO Amendment.**

24 **1. Arizona Dialtone’s List of Issues Is Not Properly in Section 252**
25 **Arbitration.**

26 ¹⁶ Arbitration Response, ¶18.b.

¹⁷ Complaint Answer, ¶ 27.

1 Arizona Dialtone's Arbitration Response attempts to introduce in this Arbitration a
2 number of issues¹⁸ that are completely unrelated to the TRRO Amendment, which was the only
3 issue on which Qwest requested negotiations under Section 252(a)(1). The extraneous matters
4 Arizona Dialtone seeks to arbitrate, which are those set forth in Exhibit A to its Response, were
5 the subject of a request for negotiations made by Arizona Dialtone in April, 2006--two years ago.
6 Neither Arizona Dialtone nor Qwest moved that notice into arbitration under Section 252(b), and
7 neither party noticed those issues in the current negotiations. The matters raised by Arizona
8 Dialtone do not arise out of the same operative facts and circumstances as do the matters Qwest
9 seeks to arbitrate with respect to implementation of the *TRRO*. Therefore the only issues
10 properly before the Commission for arbitration under Section 252(b) are the *TRRO* matters, and
11 the arbitrator should strike them.

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**2. Alternatively, Arizona Dialtone's List of Issues Should Be Severed for
Subsequent Determination, and Made Subject to an Order Requiring
More Definite Statement.**

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16 Should the arbitrator not strike this list of issues from this arbitration, Qwest requests that
17 they be severed, and that Arizona Dialtone be compelled to provide a more definite statement.
18 Neither the Act nor any applicable rule requires that all issues raised in Section 252 arbitration
19 must be considered simultaneously. Common sense and concerns over issue preclusion may
20 dictate that certain issues must be tried together, but these other issues raised by Arizona
21 Dialtone do not fall within that category since they do not concern the same underlying subject
22 matter or facts as do the matters addressed by the TRRO Amendment. Just as the Commission
23 may join issues and consolidate proceedings "when it appears that the issues are substantially the

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¹⁸ See Exhibit 1 to Response. The list of issues includes the accuracy of Qwest's DUF records for prepaid IXC's and the use of local PRI for access, a concern about a wholesale discount rate in Colorado, Qwest's billing of long distance and other end user charges including charges from other carriers, operator services charges, the billing of Qwest's EUCL, and "the accuracy of Qwest's billing."

1 same and that the rights of the parties will not be prejudiced by such procedure,”¹⁹ Qwest
2 submits the Commission should sever issues and proceedings when the issues are substantially
3 different or the rights of one of the parties will be prejudiced by consolidation.

4 Although Arizona Dialtone listed most of those subjects in their April 21, 2006 letter
5 opening negotiations under Section 252(a)(1) of the Act, the “window” for seeking arbitration
6 closed without Arizona Dialtone having pursued negotiations of those subjects. Essentially,
7 then, the parties have not discussed them within at least the last two years. Because Arizona
8 Dialtone has not provided a more definite statement of its issues, Qwest is not sufficiently
9 familiar with them to fashion responses and testimony. Nor has Arizona Dialtone provided the
10 type and depth of information that is required for requests for arbitration under A.A.C.R14-2-
11 1505. Among the matters lacking, is any brief or other written statement addressing the disputed
12 issues. Nor is there any proposed interconnection agreement language proposed beyond that
13 which might best be described as “headings” rather than detailed contract provisions that provide
14 the parties with certainty regarding their obligations. Further explanation of the issues, and
15 potentially discovery, will be required to fully comprehend and try those issues. However, the
16 Commission should not permit these issues to delay the implementation of the important national
17 policies made in the *TRRO*.

18 19 **V. CONCLUSION**

20
21 In the *TRO*, the FCC admonished all parties to “avoid gamesmanship. In the *TRRO*, the
22 FCC again admonished all parties not to delay in implementing the *TRRO*:

23 We expect that incumbent LECs and competing carriers will implement the
24 Commission’s findings as directed by section 252 of the Act. Thus, carriers must
25 implement changes to their interconnection agreements consistent with our conclusions in
this Order. We note that the failure of an incumbent LEC or a competitive LEC to
negotiate in good faith under section 251(c)(1) of the Act and our implementing rules

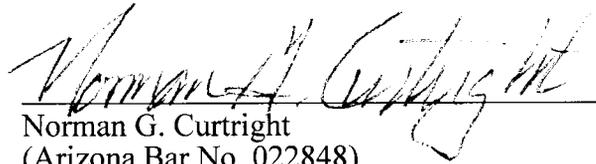
26 ¹⁹ A.A.C. R14-3-109(H).

1 may subject that party to enforcement action. Thus, the incumbent LEC and competitive
2 LEC must negotiate in good faith regarding any rates, terms, and conditions necessary to
3 implement our rule changes. We expect that parties to the negotiating process will not
4 unreasonably delay implementation of the conclusions adopted in this Order. We
5 encourage the state commissions to monitor this area closely to ensure that parties do not
6 engage in unnecessary delay.²⁰

7 The Commission can best fulfill its role in this matter by immediately ruling in favor of
8 Qwest for its proposed TRRO Amendment; alternatively the Commission should limit the scope
9 of issues for Arbitration to the requested TRRO Amendment, and deny arbitration of billing
10 disputes and the other matters raised by Arizona Dialtone. If Arizona Dialtone's statement of
11 issues for arbitration is not struck from the Arbitration, those issues should be separated from
12 the TRRO Amendment issues for further development, and not permitted to delay the arbitration
13 of the TRRO Amendment.

14 RESPECTFULLY SUBMITTED this 4th day of February, 2008.

15 QWEST CORPORATION

16 

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24
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26 ²⁰ TRRO, ¶ 233.

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