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BEFORE THE ARIZONA CORPORATION COMMISSION

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COMMISSIONERS

MIKE GLEASON, Chairman  
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FEB -6 2008

AZ CORP COMMISSION  
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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

DOCKET NO. T-03608A-07-0693

PROCEDURAL ORDER

**BY THE COMMISSION:**

On December 17, 2007, Qwest Corporation ("Qwest") filed with the Arizona Corporation Commission ("Commission") a Petition for Arbitration under 47 U.S.C. § 252(b) and Arizona Administrative Code ("A.A.C.") R14-2-1505 ("Petition"). In its Petition, Qwest requested that the Commission resolve issues related to the Interconnection Agreement ("ICA") between Qwest and Arizona Dialtone, Inc. ("Arizona Dialtone"), which Qwest asserts derive from Arizona Dialtone's refusal to enter into an amendment to the current ICA ("ICA Amendment") that would implement changes related to unbundled access to mass market local circuit switching, changes that Qwest asserts are mandated by federal law, specifically the Federal Communications Commission's ("FCC's") Triennial Review Remand Order<sup>1</sup> ("TRRO") and 47 C.F.R. § 51.319(d).

Also on December 17, 2007, Qwest filed a Complaint against Arizona Dialtone, requesting that the Commission (1) declare that the ICA requires Arizona Dialtone to compensate Qwest at the transitional rate for UNE-P PAL and POTS for embedded services for a one-year transition period that began March 11, 2005, and at the rate for alternative services for new orders thereafter; (2) compel Arizona Dialtone to pay such charges to Qwest; (3) compel Arizona Dialtone to pay late payment charges on the amounts ordered to be paid; (4) compel Arizona Dialtone to execute the ICA

<sup>1</sup> *In re* Unbundled Access to Network Elements, Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, 20 F.C.C.R. 2533 (2005)(Order on Remand).

1 Amendment and to comply with its obligations thereunder; and (5) award such other relief, including  
2 but not limited to appropriate fines or penalties, as the Commission deems just and reasonable.<sup>2</sup>

3 A joint procedural conference for the Arbitration matter and the Complaint matter was held  
4 on January 14, 2008, at the Commission's offices in Phoenix, Arizona. Qwest and Arizona Dialtone  
5 each appeared through counsel. Staff did not appear. Because it was Qwest, an incumbent local  
6 exchange carrier ("ILEC"), rather than Arizona Dialtone, a competitive local exchange carrier  
7 ("CLEC") that requested negotiation in the Arbitration matter, and 47 U.S.C. § 252(b)(1) allows a  
8 party to a negotiation to petition for arbitration within a specified period after an ILEC receives a  
9 request for negotiation, Qwest and Arizona Dialtone were both asked to state their positions on (1)  
10 Qwest's authority to petition for arbitration under 47 U.S.C. § 252 and (2) the applicability of the 47  
11 U.S.C. § 252 timelines. As a full discussion of these issues was not possible at the procedural  
12 conference, Qwest and Arizona Dialtone were directed to file briefs on those issues by January 28,  
13 2008.

14 Also at the procedural conference, Qwest and Arizona Dialtone were asked to state their  
15 positions on consolidating the Arbitration matter and the Complaint matter. Neither Qwest nor  
16 Arizona Dialtone objected to consolidating the two matters. The issue of consolidation was taken  
17 under advisement.

18 In light of the issue regarding Qwest's authority to petition for arbitration under 47 U.S.C. §  
19 252, Qwest and Arizona Dialtone were also asked whether they objected to suspending the timelines  
20 under 47 U.S.C. § 252, assuming that they apply. Qwest objected to a suspension of the timelines,  
21 while Arizona Dialtone did not. As a result of Qwest's objection, the hearing in the Arbitration  
22 matter was tentatively scheduled for February 11, 2008. Counsel for Qwest and Arizona Dialtone  
23 indicated that this date appeared to be acceptable, and counsel for Qwest was instructed to make a  
24 filing as soon as possible if that should prove to be incorrect upon further inquiry. Counsel for Qwest  
25 was also instructed that requesting a different hearing date would likely result in suspension of the 47  
26 U.S.C. § 252 timelines.

27  
28 <sup>2</sup> The Complaint matter was assigned Docket No. T-03608A-07-0694 et al.

1 On January 16, 2008, a Procedural Order was issued directing Qwest and Arizona Dialtone to  
2 file the briefs discussed at the procedural conference. Staff was also requested to file such a brief.  
3 The Procedural Order also scheduled a hearing in the Arbitration matter to commence on February  
4 11, 2008; requested Staff to appear and participate in the hearing; and directed Qwest and Arizona  
5 Dialtone to share equally the costs for transcription, including expedited transcripts, if the hearing  
6 were to go forward on the Arbitration matter alone or on both matters, if consolidated. The issue of  
7 consolidation was not decided, pending resolution of the issues concerning Qwest's authority to  
8 petition for arbitration under 47 U.S.C. § 252 and the applicability of the 47 U.S.C. § 252 timelines.

9 On January 17, 2008,<sup>3</sup> Arizona Dialtone filed its response to Qwest's Petition. In its response,  
10 Arizona Dialtone did not object to or dispute the bulk of Qwest's Petition. However, Arizona  
11 Dialtone asserted that, in addition to the issues raised by Qwest, the Arbitration matter should resolve  
12 the "true up" of rates sought by Qwest in the Complaint matter and Arizona Dialtone's ongoing  
13 billing and pricing disputes with Qwest.

14 On January 28 and 29, 2008, Qwest, Arizona Dialtone, and Staff filed their briefs.

15 On January 30, 2008, Qwest filed a Motion for Judgment on the Pleadings in the Complaint  
16 matter.

17 On January 31, 2008, a Procedural Order was issued ordering that Qwest had the authority to  
18 petition the Commission for arbitration under 47 U.S.C. § 252(b)(1) and that the Arbitration matter  
19 may proceed before the Commission; that the hearing in the Arbitration matter, at which Staff is  
20 requested to appear and participate, shall commence on February 11, 2008; and that Qwest and  
21 Arizona Dialtone shall equally share the costs for transcription of the hearing in the Arbitration  
22 matter and shall arrange and pay to have expedited transcripts prepared and provided to the  
23 Commission's Hearing Division. The Procedural Order did not consolidate the Arbitration matter  
24 and the Complaint matter.

25 Later on January 31, 2008, Qwest filed a Request for Procedural Conference in the  
26 Arbitration matter and a Request for Procedural Conference in the Complaint matter. Qwest stated  
27

28 <sup>3</sup> This was six days after the deadline for response under 47 U.S.C. § 252(b)(3).

1 that it desired a procedural conference because of its Motion for Judgment on the Pleadings in the  
2 Complaint matter.

3 On February 1, 2008, Procedural Orders were issued in the Arbitration matter and the  
4 Complaint matter scheduling a joint procedural conference for February 6, 2008, at the Commission's  
5 offices in Phoenix, Arizona, to discuss Qwest's Motion for Judgment on the Pleadings in the  
6 Complaint matter and any other relevant issues in the Arbitration matter and the Complaint matter.

7 Late on February 4, 2008, in the Arbitration matter, Qwest filed a Motion for an Order  
8 Awarding Qwest's Requested Relief Regarding the Proposed TRO/TRRO Amendment Based upon  
9 the Statements and Admissions of Arizona Dialtone, Inc., and Denying Arbitration of Alleged Billing  
10 Disputes. Qwest requested expedited consideration of the motion.

11 On February 6, 2008, a joint procedural conference was held in the Arbitration matter and the  
12 Complaint matter at the Commission's offices in Phoenix, Arizona. Qwest, Arizona Dialtone, and  
13 Staff appeared through counsel. At the procedural conference, it was agreed that Arizona Dialtone  
14 and Staff should be afforded an opportunity to file responses to Qwest's motions and that Qwest  
15 should have the opportunity to file replies to those responses. It was agreed that February 22, 2008,  
16 would be the deadline for the responses and that February 29, 2008, would be the deadline for  
17 Qwest's replies. It was also agreed that it would be appropriate in the Arbitration matter to vacate the  
18 hearing scheduled for February 11, 2008, and to suspend the 47 U.S.C. § 252 timelines for the  
19 amount of time needed for the Commission to rule on both of Qwest's motions. Qwest, Arizona  
20 Dialtone, and Staff agreed to a 45-day suspension of the timelines, but were put on notice that 45  
21 days may ultimately prove to be an insufficient amount of time. They were also put on notice that an  
22 Order granting either of Qwest's motions could only be accomplished through a Recommended  
23 Order to be considered by the Commission at an open meeting. In the Complaint matter, Qwest was  
24 instructed to file a substantive (not fully redacted) version of Exhibit D to its Complaint. Staff stated  
25 that it would provide a draft protective order to Qwest and Arizona Dialtone for the information to be  
26 included therein. Qwest was also directed to provide an explanation concerning the reference to  
27 Exhibit A included in its proposed TRO/TRRO amendment, included as Appendix D to its Petition,  
28 as it does not appear to have an Exhibit A.

1 IT IS THEREFORE ORDERED that the hearing scheduled for February 11, 2008, at  
2 10:00 a.m. at the Commission's offices in Phoenix, Arizona, is vacated.

3 IT IS FURTHER ORDERED that, by February 22, 2008, Arizona Dialtone and Staff shall  
4 each file a response to Qwest's motion in this matter and shall include therein sufficient information  
5 to allow the Commission to make a determination on the motion.

6 IT IS FURTHER ORDERED that, by February 29, 2008, Qwest shall file a reply to the  
7 responses filed by Arizona Dialtone and Staff and shall file an explanation concerning the reference  
8 to Exhibit A included in its proposed TRO/TRRO amendment, included as Appendix D to its  
9 Petition, as it does not appear to have an Exhibit A.

10 IT IS FURTHER ORDERED that the timeline under 47 U.S.C. § 252 is hereby suspended  
11 for 45 days, which means that the Commission's deadline for resolving this matter is extended  
12 to June 4, 2008.

13 IT IS FURTHER ORDERED that all parties must comply with Rules 31 and 38 of the Rules  
14 of the Arizona Supreme Court and A.R.S. § 40-243 with respect to the practice of law and admission  
15 *pro hac vice*.

16 IT IS FURTHER ORDERED that the Ex Parte Rule (A.A.C. R14-3-113—Unauthorized  
17 Communications) applies to this proceeding and shall remain in effect until the Commission's  
18 Decision in this matter is final and non-appealable.

19 IT IS FURTHER ORDERED that the Arbitrator may rescind, alter, amend, or waive any  
20 portion of this Procedural Order either by subsequent Procedural Order or by ruling at hearing.

21 DATED this 6<sup>th</sup> day of February, 2008.

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24   
25 SARAH N. HARPRING  
26 ARBITRATOR  
27  
28

1 Copies of the foregoing mailed/delivered  
2 this 6<sup>th</sup> day of February, 2008, to:

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4 QWEST CORPORATION  
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6 Phoenix, AZ 85012  
7 Attorney for Qwest Corporation

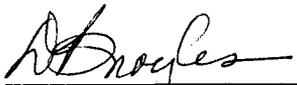
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