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BEFORE THE ARIZONA CORPORATION COMMISSION

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COMMISSIONERS

MIKE GLEASON, Chairman
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
KRISTIN K. MAYES
GARY PIERCE

IN THE MATTER OF THE FORMAL
COMPLAINT OF QWEST CORPORATION
AGAINST ARIZONA DIALTONE, INC. TO
ENFORCE ITS INTERCONNECTION
AGREEMENT.

DOCKET NO. T-03608A-07-0694

DOCKET NO. T-01051B-07-0694

PROCEDURAL ORDER

BY THE COMMISSION:

On December 17, 2007, Qwest Corporation ("Qwest") filed with the Arizona Corporation Commission ("Commission") a Complaint against Arizona Dialtone, Inc. ("Arizona Dialtone"). The Complaint stems from a dispute between Qwest and Arizona Dialtone over implementation of the Federal Communications Commission's Triennial Review Remand Order¹ ("TRRO") and amendment of the Interconnection Agreement ("ICA") between Qwest and Arizona Dialtone. Qwest asserts that the TRRO barred the unbundling of new mass market switching services, including UNE-P, effective March 11, 2006, and provided for a one-year transition period for Arizona Dialtone to convert from UNE-P to alternative services with comparable functionality. In the Complaint, Qwest requests 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 the 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 an ICA Amendment and to comply with its obligations thereunder; and (5) award such other relief, including but not limited to appropriate fines or penalties, as the Commission deems just and reasonable.

¹ *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 Also on December 17, 2007, Qwest filed with the Commission a Petition for Arbitration
2 under 47 U.S.C. § 252(b) and Arizona Administrative Code (“A.A.C.”) R14-2-1505 (“Petition”).² In
3 its Petition, Qwest requested that the Commission resolve issues related to the ICA, which Qwest
4 asserts derive from Arizona Dialtone’s refusal to enter into an amendment to the ICA (“ICA
5 Amendment”) that would implement changes related to unbundled access to mass market local circuit
6 switching, changes that Qwest asserts are mandated by federal law, specifically the TRRO and 47
7 C.F.R. § 51.319(d).

8 A joint procedural conference for the Complaint matter and the Arbitration matter was held
9 on January 14, 2008, at the Commission’s offices in Phoenix, Arizona. Qwest and Arizona Dialtone
10 each appeared through counsel. Staff did not appear. Because it was Qwest, an incumbent local
11 exchange carrier (“ILEC”), rather than Arizona Dialtone, a competitive local exchange carrier
12 (“CLEC”) that requested negotiation in the Arbitration matter, and 47 U.S.C. § 252(b)(1) allows a
13 party to a negotiation to petition for arbitration within a specified period after an ILEC receives a
14 request for negotiation, Qwest and Arizona Dialtone were both asked to state their positions on (1)
15 Qwest’s authority to petition for arbitration under 47 U.S.C. § 252 and (2) the applicability of the 47
16 U.S.C. § 252 timelines. As a full discussion of these issues was not possible at the procedural
17 conference, Qwest and Arizona Dialtone were directed to file briefs on those issues by January 28,
18 2008.

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

23 In light of the issue regarding Qwest’s authority to petition for arbitration under 47 U.S.C. §
24 252, Qwest and Arizona Dialtone were also asked whether they objected to suspending the timelines
25 under 47 U.S.C. § 252, assuming that they apply. Qwest objected to a suspension of the timelines,
26 while Arizona Dialtone did not. As a result of Qwest’s objection, the hearing in the Arbitration
27

28 ² The Arbitration matter has been assigned to Docket No. T-01051B-07-0693 et al.

1 matter was tentatively scheduled for February 11, 2008. Counsel for Qwest and Arizona Dialtone
2 indicated that this date appeared to be acceptable, and counsel for Qwest was instructed to make a
3 filing as soon as possible if that should prove to be incorrect upon further inquiry. Counsel for Qwest
4 was also instructed that requesting a different hearing date would likely result in suspension of the 47
5 U.S.C. § 252 timelines.

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

15 On January 17, 2008,³ Arizona Dialtone filed its response to Qwest's Petition. In its response,
16 Arizona Dialtone did not object to or dispute the bulk of Qwest's Petition. However, Arizona
17 Dialtone asserted that, in addition to the issues raised by Qwest, the Arbitration matter should resolve
18 the "true up" of rates sought by Qwest in the Complaint matter and Arizona Dialtone's ongoing
19 billing and pricing disputes with Qwest.

20 On January 22, 2008, Arizona Dialtone filed its Answer to Qwest's Complaint. In its Answer,
21 Arizona Dialtone asserted as affirmative defenses payment, waiver, estoppel, accord and satisfaction,
22 and setoff. Arizona Dialtone requested that the Commission deny the Complaint in its entirety and
23 award Arizona Dialtone such other relief as the Commission deems just and proper.

24 On January 28 and 29, 2008, Qwest, Arizona Dialtone, and Staff filed their briefs in the
25 Arbitration matter.

26 On January 30, 2008, Qwest filed a Motion for Judgment on the Pleadings in the Complaint
27

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

1 matter.

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

10 Later on January 31, 2008, Qwest filed a Request for Procedural Conference in the
11 Arbitration matter and a Request for Procedural Conference in the Complaint matter. Qwest stated
12 that it desired a procedural conference because of its Motion for Judgment on the Pleadings in the
13 Complaint matter.

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

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

22 On February 6, 2008, a joint procedural conference was held in the Arbitration matter and the
23 Complaint matter at the Commission's offices in Phoenix, Arizona. Qwest, Arizona Dialtone, and
24 Staff appeared through counsel. At the procedural conference, it was agreed that Arizona Dialtone
25 and Staff should be afforded an opportunity to file responses to Qwest's motions and that Qwest
26 should have the opportunity to file replies to those responses. It was agreed that February 22, 2008,
27 would be the deadline for the responses and that February 29, 2008, would be the deadline for
28 Qwest's replies. It was also agreed that it would be appropriate in the Arbitration matter to vacate the

1 hearing scheduled for February 11, 2008, and to suspend the 47 U.S.C. § 252 timelines for the
2 amount of time needed for the Commission to rule on both of Qwest's motions. Qwest, Arizona
3 Dialtone, and Staff agreed to a 45-day suspension of the timelines, but were put on notice that 45
4 days may ultimately prove to be an insufficient amount of time. They were also put on notice that an
5 Order granting either of Qwest's motions could only be accomplished through a Recommended
6 Order to be considered by the Commission at an open meeting. In the Complaint matter, Qwest was
7 instructed to file a substantive (not fully redacted) version of Exhibit D to its Complaint. Staff stated
8 that it would provide a draft protective order to Qwest and Arizona Dialtone for the information to be
9 included therein. In the Arbitration matter, Qwest was also directed to provide an explanation
10 concerning the reference to Exhibit A included in its proposed TRO/TRRO amendment, included as
11 Appendix D to its Petition, as it does not appear to have an Exhibit A.

12 On February 6, 2008, a Procedural Order was issued requiring Arizona Dialtone and Staff
13 each to file a response to Qwest's motion in this matter by February 22, 2008, and requiring Qwest to
14 file a reply to the responses and a substantive version of Exhibit D to its Complaint by February 29,
15 2008.

16 On February 22, 2008, Arizona Dialtone filed its opposition to Qwest's motion for judgment
17 on the pleadings, and Staff filed its comments on Qwest's motion for judgment on the pleadings.

18 On February 29, 2008, Qwest filed a motion requesting an extension of time to file a
19 substantive version of Exhibit D to its Complaint. Qwest explained in its motion that Arizona
20 Dialtone has confirmed that it considers the information contained in Exhibit D to be proprietary data
21 of a competitively sensitive nature that it does not consent to be released except under an appropriate
22 protective order. Qwest also explained that the parties had exchanged a proposed protective order,
23 attached to Qwest's motion, but that Arizona Dialtone and Staff had not yet responded to it.
24 Therefore, Qwest requested that its deadline to file Exhibit D be extended seven days, until March 7,
25 2008.

26 Under the circumstances, Qwest's request for an extension, to allow time to enter into an
27 appropriate protective agreement, is reasonable and should be granted. To allow the parties adequate
28 time to enter into the protective agreement, without the need to request an additional extension, it is

1 appropriate to grant Qwest an extension of 14 days, until March 14, 2008.

2 IT IS THEREFORE ORDERED that Qwest's deadline to file a substantive version of
3 Exhibit D to its Complaint is extended from February 29, 2008, to March 14, 2008.

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

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

10 IT IS FURTHER ORDERED that the Presiding Officer may rescind, alter, amend, or waive
11 any portion of this Procedural Order either by subsequent Procedural Order or by ruling at hearing.

12 DATED this 29th day of February, 2008.

13
14
15 
16 SARAH N. HARPRING
ADMINISTRATIVE LAW JUDGE

17 Copies of the foregoing mailed/delivered
18 this 29th day of February, 2008, to:

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By: 
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