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BEFORE THE ARIZONA CORPORATION COMMISSION

1  
2 **MIKE GLEASON**  
3 **Chairman**  
4 **WILLIAM MUNDELL**  
5 **Commissioner**  
6 **JEFF HATCH-MILLER**  
7 **Commissioner**  
8 **KRISTIN MAYES**  
9 **Commissioner**  
10 **GARY PIERCE**  
11 **Commissioner**

2008 APR -3 P 4: 15  
AZ CORP COMMISSION  
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Arizona Corporation Commission  
**DOCKETED**  
APR - 3 2008

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8 **IN THE MATTER OF QWEST**  
9 **CORPORATION'S PETITION FOR**  
10 **ARBITRATION AND APPROVAL OF**  
11 **AMENDMENT TO INTERCONNECTION**  
12 **AGREEMENT WITH ARIZONA**  
13 **DIALTONE, INC. PURSUANT TO**  
14 **SECTION 252(B) OF THE**  
15 **COMMUNICATIONS ACT OF 1934, AS**  
16 **AMENDED BY THE**  
17 **TELECOMMUNICATIONS ACT OF 1996**  
18 **AND APPLICABLE STATE LAWS**

T-0308A-07-0693  
**DOCKET NO. T-01051B-07-0693**

**ARIZONA DIALTONE, INC.'S**  
**STATEMENT OF ISSUES IN DISPUTE**  
**AND REQUEST TO PRESENT**  
**TESTIMONY**

15 Pursuant to the Arbitrator's Procedural Order dated March 27, 2008, Respondent, Arizona  
16 Dialtone, Inc. ("AZDT"), hereby provides its list of factual and legal issues in dispute, and  
17 requests the opportunity to present testimony and other evidence regarding those issues.

18 **I. AZDT'S ISSUES IN DISPUTE**

19 AZDT believes the following mixed issues of fact and law remain in dispute:

- 20 1. Whether AZDT was required to sign Qwest's form of TRRO amendment, as  
21 opposed to a negotiated form of TRRO amendment;  
22 2. Whether the passage of time without a signed TRRO amendment is due to AZDT's  
23 bad faith, as Qwest argues; or due to a combination of Qwest's refusal to negotiate, and the  
24 parties' decision to await a ruling from the United States District Court for the District of Arizona  
25 in the Qwest Corp. v. Covad Communications matter, as AZDT contends;  
26

1           3.       Whether the fact that Qwest at all times between March 11, 2005 and March 10,  
2 2006 (hereinafter, the “transition year”) billed AZDT for local circuit switching services at the  
3 then existing unbundled rate and AZDT paid for those services at the unbundled rate constitutes an  
4 “alternative arrangement” within the meaning of TRRO § 228;

5           4.       Whether the fact that Qwest: (a) encouraged AZDT to continue placing new service  
6 orders during the transition year, (b) accepted those orders and billed AZDT for them at the  
7 unbundled rate, and (c) accepted AZDT’s payments at the unbundled rate, despite the fact that the  
8 TRRO prohibits new orders for local circuit switching at the unbundled rate, bars Qwest from  
9 collecting any rate other than the unbundled rate;

10          5.       Whether the fact that Qwest continued to provide switching services to AZDT at the  
11 unbundled rate and accept AZDT’s payments at that rate throughout the transition year despite  
12 knowing that the parties had a fundamental dispute regarding the price AZDT should have to pay  
13 for such services estopps Qwest from collecting any different rate for the transition year;

14          6.       Whether the fact that Qwest continued to provide switching services to AZDT at the  
15 unbundled rate and accept AZDT’s payments at that rate throughout the transition year despite  
16 knowing that the parties had a fundamental dispute regarding the price AZDT should have to pay  
17 for such services waives Qwest’s right to collect any different rate for the transition year;

18          7.       Whether Qwest was bound by the terms of the parties’ Interconnection Agreement  
19 to bill AZDT for local circuit switching services at the unbundled rate during the transition year,  
20 or instead, whether Qwest had the right to bill AZDT for local circuit switching services at the  
21 “plus \$1.00” transition rate during the transition year;

22          8.       Whether AZDT should have to pay the unbundled rate, the “plus \$1.00” transition  
23 rate, or some other rate for local circuit switching services during the transition year;

24          9.       Whether Qwest is entitled to a true-up of the difference between the unbundled rate  
25 and the “plus \$1.00” transition rate, and whether that true-up should be written into the form of  
26 TRRO amendment to be executed by the parties;

1           10.    Whether the TRRO mandates a rate that Qwest must (or may) charge AZDT for  
2 local circuit switching services for the period from March 11, 2006 to date (hereinafter, the “post-  
3 transition period”);

4           11.    Whether the fact that Qwest continued to provide switching services to AZDT at the  
5 unbundled rate and accept AZDT’s payments at that rate throughout the post-transition period  
6 despite knowing that the parties had a fundamental dispute regarding the price AZDT should have  
7 to pay for such services estopps Qwest from collecting any different rate for the post-transition  
8 period;

9           12.    Whether the fact that Qwest continued to provide switching services to AZDT at the  
10 unbundled rate and accept AZDT’s payments at that rate throughout the post-transition period  
11 despite knowing that the parties had a fundamental dispute regarding the price AZDT should have  
12 to pay for such services waives Qwest’s right to collect any different rate for the post-transition  
13 period;

14          13.    Whether Qwest was bound by the terms of the parties’ Interconnection Agreement  
15 to bill AZDT for local circuit switching services at the unbundled rate during the post-transition  
16 period, or instead, whether Qwest had the right to bill AZDT at its rate for “alternative service  
17 arrangements” during the post-transition period;

18          14.    Whether AZDT should have to pay the unbundled rate, Qwest’s rate for “alternative  
19 service arrangements” or some other rate for local circuit switching services during the post-  
20 transition period;

21          15.    Whether Qwest is entitled to a true-up of the difference between the unbundled rate  
22 and Qwest’s rate for “alternative service arrangements,” and whether that true-up should be  
23 written into the form of TRRO amendment to be executed by the parties;

24          16.    Whether the rate for “alternative service arrangements” that Qwest proposes as a  
25 replacement for the unbundled rate during the post-transition period is an above-market rate  
26

1 because it is higher than the rate that AZDT is paying other carriers for identical switching  
2 services;

3 17. Whether awarding Qwest the relief it seeks herein will drive AZDT out of the  
4 Public Access Lines ("PAL") product market, thereby lessening competition in that market; and

5 18. Whether AZDT has transitioned its embedded base of PAL customers to other  
6 carriers to the extent possible given that Qwest has a monopoly position in certain geographic  
7 areas.

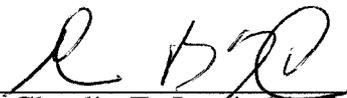
8 19. Whether the notice Qwest must give if it decides to replace a copper loop with a  
9 FTTH/FTTC loop should be provided by both certified and electronic mail, rather than by  
10 electronic mail alone, and whether such notice should include a specific identification of the  
11 subloops to be replaced that will impact AZDT.

12 **II. AZDT'S REQUEST TO PRESENT TESTIMONY**

13 AZDT hereby provides notice that it wishes to present testimony and other evidence on the  
14 issues set forth above in this arbitration proceeding, which currently is scheduled for hearing on  
15 Thursday, April 17, 2008, at 10:30 a.m. Based on the parties' experience in a parallel arbitration  
16 hearing held before the Colorado Public Utilities Commission last month, and subject to Qwest's  
17 intentions regarding presentation of evidence, AZDT anticipates that the evidentiary hearing in  
18 this matter can be concluded within one day.<sup>1</sup>

19 **RESPECTFULLY SUBMITTED** this 21 day of April, 2008.

20 **CHEIFETZ IANNITELLI MARCOLINI, P.C.**

21  
22 By   
23 Claudio E. Iannitelli, Esq.  
24 Glenn B. Hotchkiss, Esq.  
25 Matthew A. Klopp, Esq.  
26 Attorneys for Arizona Dialtone, Inc.

<sup>1</sup> Pursuant to the Arbitrator's March 27, 2008 Procedural Order, AZDT submits simultaneously herewith its Proposed Interconnection Agreement Amendment Language.

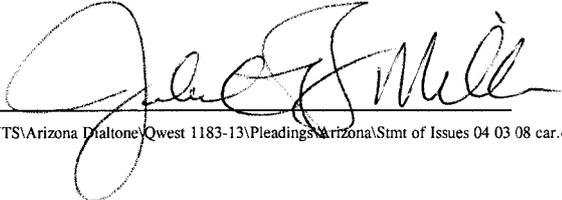
1 ORIGINAL and 13 copies of the foregoing  
2 hand-delivered this 3 day of April, 2008, to:

3 Docket Control  
4 ARIZONA CORPORATION COMMISSION  
5 1200 West Washington Street  
6 Phoenix, AZ 85007

7 COPY of the foregoing mailed  
8 this 3 day of April, 2008, to:

9 Norman G. Curtright, Esq.  
10 Qwest Corporation  
11 20 East Thomas Road, 16<sup>th</sup> Floor  
12 Phoenix, AZ 85012

13 Maureen A. Scott, Esq.  
14 Legal Division  
15 ARIZONA CORPORATION COMMISSION  
16 1200 West Washington  
17 Phoenix, AZ 85007

18 By: 

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