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BEFORE THE ARIZONA CORPORATION COMMISSION

MIKE GLEASON
Chairman
WILLIAM MUNDELL
Commissioner
JEFF HATCH-MILLER
Commissioner
KRISTIN MAYES
Commissioner
GARY PIERCE
Commissioner

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AZ CORP COMMISSION
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Arizona Corporation Commission
DOCKETED
APR - 3 2008

DOCKETED BY:

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 STATEMENT REGARDING LACK OF MATERIAL ISSUES OF FACT

The Procedural Order dated March 27, 2008, characterizes Qwest Corporation's Motion filed February 4, 2008 as a motion for summary judgment, and requires Qwest Corporation ("Qwest") and Arizona Dialtone, Inc. ("Arizona Dialtone") to identify any genuine issue of material facts existing in this matter.

The only remaining issue in the arbitration is the appropriateness of Qwest's language permitting back-billing of the FCC's interim rate during the one-year TRRO transition period, and of the resale rate for services Arizona Dialtone did not convert for times after the one-year TRRO transition period. Essentially, Arizona Dialtone has admitted that the TRRO required it to convert its UNE-P circuits, and that it did not convert its circuits because it did not want to pay a higher rate. Arizona Dialtone attempts to justify its conduct and avoid liability for back-billing by theorizing that Qwest entered into an enforceable agreement by which Qwest consented to continue to provide the otherwise discontinued UNE services, at the much lower TELRIC rate,

1 or alternatively, that Qwest waived its rights to back-bill.

2 Arizona Dialtone does not deny that it received repeated notices from Qwest that Qwest
3 sought back-billing. Arizona Dialtone's own averments show that it hoped for a better deal if
4 there would a favorable outcome of the appeal of the Covad Arbitration Litigation, and
5 accordingly, Arizona Dialtone proposed that UNE P continue during that litigation. (See,
6 Arizona Dialtone's Opposition to Qwest's Motion, Bade Affidavit, ¶6). Arizona Dialtone
7 acknowledges that Qwest expressly refused the interim proposal, and even attached Qwest's
8 response in that regard. That response clearly reiterates Qwest's position that the status quo was
9 unacceptable and that Qwest was entitled to charge either QPP or tariff based resale rates.

10 These facts are not reasonably subject to different interpretations, and do not support
11 Arizona Dialtone's legal theory that Qwest relinquished its rights, or entered into an "alternative
12 arrangement." No reasonable finder of fact could conclude that Qwest intentionally or
13 voluntarily entered into "an alternative arrangement" or "relinquished" a known right. No
14 reasonable finder of fact could conclude that Arizona Dialtone acted in justifiable reliance in the
15 face of such communications as those attached to Arizona Dialtone's own affidavit. There being
16 no genuine issues of material fact bearing on the legal issues of waiver, estoppel, and "alternative
17 arrangements," the Commission should proceed to decide the legal issues identified in the
18 Procedural Order.

19 RESPECTFULLY SUBMITTED this 3rd day of April, 2008.

20 QWEST CORPORATION

21 

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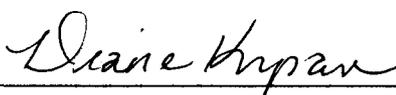
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