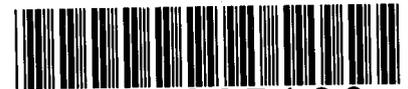


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BEFORE THE ARIZONA CORPORATION COMMISSION

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 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 Order¹ ("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

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 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.²

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 the 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 ² 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, 2008,³ Arizona Dialtone filed its response to Qwest's Petition.

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

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

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

20 Later on January 31, 2008, Qwest filed a Request for Procedural Conference in this matter
21 and a Request for Procedural Conference in the Complaint matter. Qwest stated that it desired a
22 procedural conference because of its Motion for Judgment on the Pleadings in the Complaint matter.

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

27
28 ³ This was six days after the deadline for response under 47 U.S.C. § 252(b)(3).

1 Late on February 4, 2008, in this matter, Qwest filed a Motion for an Order Awarding
2 Qwest's Requested Relief Regarding the Proposed TRO/TRRO Amendment Based upon the
3 Statements and Admissions of Arizona Dialtone, Inc., and Denying Arbitration of Alleged Billing
4 Disputes ("Motion").

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

22 On February 6, 2008, a Procedural Order was issued vacating the February 11, 2008, hearing
23 date in this matter, directing Arizona Dialtone and Staff to file responses to Qwest's Motion in this
24 matter by February 22, 2008; requiring Qwest to file a reply to the responses and an explanation
25 concerning the reference to Exhibit A in the ICA Amendment by February 29, 2008; and suspending
26 the timeline under 47 U.S.C. § 252 for 45 days.

27 On February 22, 2008, Arizona Dialtone filed its Opposition to Qwest's Motion.

28 Also on February 22, 2008, Staff filed its Comments on Qwest's Motion.

1 On February 28, 2008, Qwest filed a Notice of Filing to explain that there is no Exhibit A to
2 Appendix D to its Petition and that the reference to Exhibit A referenced therein should be considered
3 omitted.

4 On February 29, 2008, Qwest filed a Reply in Support of its Motion.

5 On March 27, 2008, a Procedural Order was issued requiring Arizona Dialtone and Qwest to
6 file, by April 3, 2008, documents indicating whether any genuine issue of material fact exists in this
7 matter and, if so, identifying the issue; whether any legal issue other than those identified in the
8 Procedural Order needs to be resolved in this matter and, if so, identifying the legal issue; and
9 whether the party desires to present testimony in this matter. The Procedural Order scheduled oral
10 argument in this matter for April 17, 2008, at 10:30 a.m. and stated that the oral argument would be
11 changed to an evidentiary hearing if either Arizona Dialtone or Qwest indicates in its filing that a
12 genuine issue of material fact exists in this matter or that it desires to present testimony. The
13 Procedural Order also required Arizona Dialtone to file, by April 3, 2008, ICA Amendment language
14 that accurately reflects its current position in this matter and required Qwest to file, by the same date,
15 copies of the public utility commission orders cited in footnote 15 of its Motion. Finally, the
16 Procedural order required Qwest and Arizona Dialtone to share equally the costs for transcription and
17 to arrange and pay to have expedited transcripts ("dailies") prepared and provided to the
18 Commission's Hearing Division for the oral argument or hearing scheduled in this matter.

19 On April 1, 2008, Qwest filed a Motion for Modification of Hearing Schedule, requesting that
20 the hearing date scheduled for April 17, 2008, be moved to April 16, 2008, due to counsel's previous
21 travel plans. Qwest also stated that it had been authorized by Staff and Arizona Dialtone to state that
22 they agree with this request.

23 Qwest's request to move the oral argument date by one day is reasonable and should be
24 granted.

25 **IT IS THEREFORE ORDERED that the oral argument scheduled for April 17, 2008, at**
26 **10:30 a.m. is hereby vacated.**

27 **IT IS FURTHER ORDERED that oral argument in this matter is scheduled to commence**
28 **on April 16, 2008, at 9:30 a.m., or as soon thereafter as is practicable, in the Legal Division**

1 **Library** at the Commission's offices in Phoenix, Arizona. The oral argument may be changed to an
2 evidentiary hearing, as discussed above.

3 IT IS FURTHER ORDERED that Qwest and Arizona Dialtone shall share equally the costs
4 for transcription and shall arrange and pay to have expedited transcripts prepared and provided to the
5 Commission's Hearing Division for the oral argument or hearing scheduled in this matter. **Rather**
6 **than arranging for "dailies" as previously ordered, Qwest and Arizona Dialtone shall arrange**
7 **to have the transcripts in this matter completed and delivered to the Commission's Hearing**
8 **Division by the morning of April 21, 2008.**

9 IT IS FURTHER ORDERED that the requirements of the March 27, 2008, Procedural Order
10 for Qwest and Arizona Dialtone to submit filings by April 3, 2008, are unchanged.

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

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

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

19 DATED this 1st day of April, 2008.

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SARAH N. HARPRING
ARBITRATOR

1 Copies of the foregoing mailed/delivered
this 15th day of April, 2008, to:

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