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COMMISSIONERS

- KRISTIN K. MAYES, Chairman
- GARY PIERCE
- PAUL NEWMAN
- SANDRA D. KENNEDY
- BOB STUMP

AZ CORP COMMISSION
DOCKET CONTROL

IN THE MATTER OF THE REVIEW AND
POSSIBLE REVISION OF ARIZONA UNIVERSAL
SERVICE FUND RULES, ARTICLE 12 OF THE
ARIZONA ADMINISTRATIVE CODE.

Docket No. RT-00000H-97-0137

IN THE MATTER OF THE INVESTIGATION OF
THE COST OF TELECOMMUNICATIONS
ACCESS.

Docket No. T-00000D-00-0672

IN THE MATTER OF QWEST CORPORATION'S
FILING OF RENEWED PRICE REGULATION
PLAN

Docket No. T-01051B-03-0454

**PROTECTIVE ORDER AND
PROCEDURAL COMMENTS**

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Pursuant to the Procedural Order entered in these dockets¹ dated December 19, 2008, AT&T Communications of the Mountain States, Inc. and TCG Phoenix (collectively referred to as "AT&T") provide their (1) procedural recommendations to resolve issues concerning switched access ("access") charge reform and possible revisions to the Arizona Universal Service Fund ("AUSF") Rules and (2) comments on the proposed form of Protective Agreement filed by Staff on January 16, 2009.

Arizona Corporation Commission

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¹ Commission records indicate that per "Decision No. 67047, dated 6/18/04, Dockets T-01051B-03-0454 and T-000000-00-0672 are consolidated."

1 **INTRODUCTION**

2 As the Procedural Order correctly notes, AT&T believes the Commission's inquiry into
3 the reasonableness of carriers' intrastate switched access charges—an inquiry the Commission
4 started over eight years ago—is now in critical need of resolution. As background, historically
5 regulators held the price of switched access service at levels substantially above cost so that long
6 distance usage could subsidize (implicitly) low-cost basic local telephone service. This scheme
7 could work in the monopoly environment for which it was created, but it is not viable today.

8 In today's robustly competitive telecommunications environment, this attempt to use
9 switched access prices as an implicit subsidy harms competition and consumers. Above-cost
10 switched access prices significantly distort the prices of companies providing services that
11 depend on switched access, such as long distance companies.

12 This harms consumers in the following ways:

- 13 1. Consumers in Arizona will continue to face prices for some long distance services
14 that are kept artificially higher due to the high level of intrastate access charges,
15 which are much higher than their underlying economic costs;
- 16 2. These higher prices discourage the use of landline long distance services, even
17 though this mode of providing long distance service may be more economically
18 efficient than other technologies;
- 19 3. Competition is distorted because access charges are applied differently to the
20 various technologies (broadband and wireless, for example) than they are to
21 traditional landline services; and

1 4. As customers move away from landline services because of high access charges,
2 carriers receive less revenue from access charges and, without some means to
3 recover those lost revenues, universal service will be and is being threatened.
4 These and other harmful impacts can be stopped only if prices for switched access services are
5 brought in line with their underlying economic costs.

6 To be fully effective, this reform must be comprehensive, not just limited to certain
7 industry participants as advocated by Qwest and some CLECs. Qwest argued it should be
8 excluded from reform because it reduced its access rates several years ago.² CLECs Integra
9 Telecom, Inc., tw telecom of Arizona and XO Communications Services advocate that CLEC
10 access rates should not be examined now, but in a non-existent third phase of this proceeding.³

11 AT&T recognizes that the Commission, by Procedural Order dated November 17, 2003,
12 determined that Phase 1 of the Access Charge Docket, which addressed Qwest's access charges,
13 should be considered in conjunction with the review of Qwest's then-current rate cap plan, while
14 Phase 2 would look at the access charges of all other carriers, including CLECs. AT&T also
15 recognizes, however, that when the Commission bifurcated the proceeding in this way, it did not
16 intend nor anticipate that this phase would lay dormant for more than five years. Rather, at the
17 time the Commission ordered bifurcation, it intended—indeed stated—that a subsequent
18 procedural order would “schedule testimony and hearings for both phases of the proceeding.”⁴
19 Thus, the Commission intended that the access charges of all carriers would be examined on a
20 timely basis, albeit in the context of different, but consolidated, proceedings.

21
22 ² Qwest Corporation's Reply Regarding Matrix Issues and Procedural Recommendations, p. 1 (Oct. 7, 2008).

23 ³ Integra Telecom's Statement of Issues, p. 2 (Oct. 7, 2008); Procedural Recommendations of tw telecom of Arizona
and XO Communications Service, pp. 2-3 (Oct. 7, 2008).

24 ⁴ Consolidated Docket Nos. T-00000D-00-0672 and T-01051B-03-0454, Procedural Order, p. 4 (Nov. 17, 2003)
(emphasis added).

1 While that may not have happened for carriers other than Qwest, including CLECs, that
2 certainly does not mean that now, five years later, Qwest should be exempt from a
3 comprehensive examination of access charges by the Commission, particularly when the term of
4 Qwest's Renewed Price Cap Plan, including its switched access provisions, ends in a couple of
5 months.⁵ Instead, the time is ripe for an industry-wide examination of intrastate access charges.
6 That examination is not only urgently needed, but will prevent the administrative duplication,
7 waste and potential for inconsistency that would result from the piecemeal approach advocated
8 by Qwest and some CLECs. Additionally, unless the access charges of all carriers—Qwest,
9 CLEC and rural carriers alike—are subject to potential Commission action, there will be little or
10 no incentive for the carriers to work together to develop comprehensive access charge reform.

11 The Commission, moreover, cannot wait for the FCC to address these issues, as some
12 parties have advocated. The issue of access reform, along with intercarrier compensation in
13 general, has been pending at the FCC for over seven years. During this time, the FCC has tried
14 to address comprehensive reform, but Federal reform has been an elusive goal. The FCC is now
15 in transition with new Commissioners and new priorities further delaying comprehensive reform.
16 Many states, including Arizona, have argued to keep their jurisdiction over intrastate rates and,
17 accordingly, should take the lead in reform efforts.⁶ Indeed, several of these states have taken up
18 access charge reform as an issue for resolution.⁷ The need for states to transition the outdated
19 and unsustainable implicit subsidy structure to one that paves the way to an all-internet protocol
20

21 ⁵ Re Qwest Corporation's Filing of Renewed Price Regulation Plan, Decision No. 68604, Exhibit A, p. 13 (Mar. 23,
22 2006).

23 ⁶ See, e.g., Reply Comments of the Arizona Corporation Commission, filed in FCC WC Docket No. 05-337,
pp. 15-16 (Dec. 22, 2008).

24 ⁷ Alaska Docket R-08-003; Iowa Docket TF-07-125; New Jersey Docket TX08090830; Virginia Docket PUC 2007-
00108.

1 converged broadband world is now and the Commission should move forward to provide that
2 result for Arizona consumers and businesses.

3 In sum, the Commission should proceed promptly in pursuit of the goal it set for itself
4 over eight years ago: determine a reasonable level for intrastate access charges and bring
5 carriers' access charges in line with that level. AT&T's proposed process and schedule for this
6 proceeding is designed to allow the Commission to achieve that end.

7 **PROCEDURAL RECOMMENDATION**

8 In their comments submitted on October 7, 2008, some parties identified what appear to
9 be dozens of issues for resolution in this proceeding. The basic issues to be decided in this
10 proceeding, however, are not nearly so numerous or imposing as suggested. Many of the issues
11 identified have substantial overlap.

12 In reality, there are four primary issues the Commission must address and resolve:

- 13 (1) What carriers should be covered by access reform and to what target
14 level should their access rates be reduced;
- 15 (2) How procedurally should the Commission require/allow reduction in the
16 access rates to the desired level;
- 17 (3) What revenue sources should be made available to carriers to compensate
18 for the loss of access revenues; and
- 19 (4) Assuming that AUSF funds will be used as one compensating revenue
20 source, what revisions to the existing AUSF Rules are needed to allow use
21 of AUSF funds for that purpose?

1 In its comments dated October 7, 2008, AT&T proposed a process and schedule for the
2 Commission's use in resolving these issues. That process and schedule are summarized in table
3 form below.⁸

Action	Timeframe
Staff sends data requests to parties ⁹	As soon as possible after the ALJ's procedural ruling
Carriers respond to Staff data requests	30 days after Staff sends requests
Carriers propound additional discovery if desired	No later than 15 days after carriers respond to Staff data requests
Direct testimony filed and served (including each party's proposed set of revisions to AUSF Rules)	60 days after carriers respond to Staff data requests
Reply testimony filed and served	30 days after direct testimony is filed
Hearings	30 days after reply testimony filed
Briefs	Schedule established by ALJ

11 This process and schedule will balance the need of the Commission to have necessary
12 and accurate information on which to base its decision with the need for timely completion of the
13 proceeding. For example, the initial Staff data requests and discovery by parties, coming soon
14 after the issuance of the ALJ's procedural order, will ensure that the Commission and carriers
15 can proceed with testimony based on actual, rather than estimated, data. At the conclusion of
16 this process, the Commission's decision would address the four issues identified above and
17 would include a proposed set of revised AUSF rules that could be used as the basis of the
18 rulemaking process pursuant to the Arizona Administrative Procedures Act.¹⁰

21 _____
22 ⁸ See AT&T's October 7, 2008 Issues Matrix and Procedural Recommendations (pp. 6-7) for additional discussion
of this process and schedule.

23 ⁹ In its filing on October 7, 2008, AT&T proposed a set of data request questions the Staff could send to parties.
AT&T attaches those proposed data request questions, revised to seek 2008 data rather than 2007 data, as
Attachment 1 hereto.

24 ¹⁰ A.R.S. § 41-1021, *et seq.*

1 In their October 7, 2008 comments, some parties proposed the use of further workshops
2 as part of the process for resolving the issues in this proceeding.¹¹ AT&T respectfully submits
3 that workshops and other informal procedures will not be productive, but only delay much
4 needed reform. AT&T proposed and participated in multi-party, informal discussions last year
5 with the hope that parties could find resolutions they all could live with. Those discussions
6 produced little progress toward consensus among the parties. AT&T has no reason to believe
7 future workshops would fare any better in the absence of concurrent Commission action. The
8 Commission, therefore, should begin a formal process for resolving these issues, as proposed
9 above. AT&T, of course, is willing to have further informal discussions with the parties, while
10 the formal process is being conducted.

11 **PROPOSED PROTECTIVE ORDER**

12 The Protective Order filed by Staff on January 16, 2009 appears workable for purposes of
13 this proceeding. AT&T has two suggestions in relation to it. First, because this is a consolidated
14 proceeding, for clarity, we suggest “(Consolidated)” be added after the docket numbers on
15 Exhibits A and B.

16 Second, the restrictions on copying in paragraph 3 and destruction timing requirements in
17 paragraph 7 are problematic for companies which have automatic backup systems on their
18 computers. AT&T has such a system and assumes that several other parties and their counsel do,
19 too. Basically, they automatically produce a copy of all e-mail traffic, warehouse such backups
20 away from recipients as a safeguard against system “crashes” and then automatically delete the
21 materials at varying times, ranging normally from two weeks to sixty days. Technically, such a

23 ¹¹ See, e.g., Issues Matrix-Arizona Local Exchange Carriers Association, p. 5 (October 7, 2008).

1 system could violate the copy restrictions and destruction timing requirements, so AT&T
2 suggests the following new sentence at the end of paragraph 7(g) at page 10, line 8:


3 Notwithstanding the provisions of paragraphs 3 and 7, the Receiving Party and
4 any person executing Exhibit B may maintain and retain electronic copies of
5 Highly Confidential materials, but only if such electronic copies are generated,
maintained and subsequently destroyed subject to systems backup (i.e., non-
manual and computer system generated).

6 **CONCLUSION**

7 The Commission should act with dispatch on the access reform investigation it began
8 eight years ago. AT&T's procedural recommendations and proposed schedule will facilitate that
9 investigation. The Commission should adopt AT&T's proposal.

10 RESPECTFULLY SUBMITTED this 23rd day of January, 2009.

11 GALLAGHER & KENNEDY, P.A.

12
13 By 
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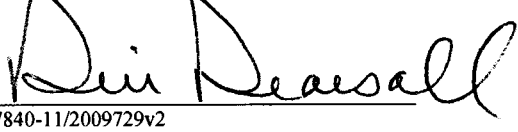
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APPENDIX 1

PROPOSED DATA REQUESTS TO CARRIERS

1. Please provide the following information for each of your company's study areas (COSA) used for ARMIS reporting for calendar year 2008:
 - a. Total intrastate switched access revenues (revenue need not include non-switched items that are not rated on a minute of use basis, e.g. dedicated, 8YY database dip or query, non-recurring charges);
 - b. Total intrastate switched access minutes of use volume;
 - c. Average revenue per intrastate minute of use;
 - d. Total interstate switched access revenues (revenue need not include non-switched items that are not rated on a minute of use basis, e.g. dedicated, 8YY database dip or query, non-recurring charges);
 - e. Total interstate switched access minutes of use volume;
 - f. Average revenue per interstate minute of use;
 - g. The difference of c minus f;
 - h. The product of b times g (the estimated annual revenue reduction).
2. Please provide your company's current retail local exchange rates including any mandatory EAS charges and touch tone charges, if not included in the basic rate, for:
 - a. primary line residential flat rate service;
 - b. single line business flat rate service;
 - c. multi-line business flat rate service.
3. If your company offers different retail local exchange rates by exchange area or by some other classification, please provide the weighted average rate separately for 2.a, b, and c above.