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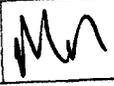
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AZ CORP COMMISSION
DOCKET CONTROL

Arizona Corporation Commission

DOCKETED

JAN 28 2009

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**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

**QWEST CORPORATION'S MOTION TO STRIKE AT&T'S PROCEDURAL
COMMENTS RELATING TO QWEST CORPORATION DOCKET NO. T-01051B-03-
0454 AND QWEST CORPORATION'S INTRASTATE SWITCHED ACCESS RATES**

Qwest Corporation ("Qwest") moves that the Arizona Corporation Commission ("Commission") issue an order striking from the record in this docket the Procedural Comments filed by AT&T Communications of the Mountain States, Inc. and TCG Phoenix ("AT&T"), relating to Qwest Corporation Docket No. T-01051B-03-0454 and Qwest Corporation's intrastate switched access rates. The grounds for the motion are that such comments are outside the scope of the phase of the Access Charges Docket (Docket No. T-00000D-00-0672) that is now before the Commission, and, as recognized by the Procedural Order requesting comments, the issue of Qwest's access charges has been resolved.

1 At the urging of AT&T, the Commission split the Access Charges Docket (00-0672) into
2 two phases. Procedural Order, November 17, 2003). Phase I was ordered to consider access
3 charges in combination with the review of Qwest's Price Cap Plan. Phase II was supposed to
4 consider access charges for all other telephone carriers that provide access services. Phase I was
5 completed by the Commission, by its order approving the settlement agreement between Qwest
6 the Commission Staff, RUCO, the federal executive agencies, and four telecommunications
7 carriers who compete directly with Qwest in Arizona. The matter was noticed for public
8 hearing, public hearings were held, and the Commission ordered changes to the settlement. As
9 stated by the Procedural Order entered in these dockets dated December 19, 2008:

10
11 Phase I of the Access Charge Docket, addressed Qwest Corporation's ("Qwest")
12 access charges, and was consolidated with, *and resolved*, in conjunction with
13 Qwest's rate cap review. Phase II of the Access Charge Docket is intended to
14 address access charges *for all other telephone companies* that provide access
15 services. (Emphasis added).

16 AT&T knows that Phase II is reserved exclusively for all companies other than Qwest.
17 AT&T has stated, "Based on the language of the Procedural Order, [fn omitted] it appears that
18 the regulatory policies regarding the intrastate access charges for both incumbent local exchange
19 carriers ("ILECS") and competitive local exchange carriers("CLECs") will be addressed in this
20 docket *with the exception of Qwest Corporation.*" Comments of AT&T, *In the Matter of the*
21 *Review and Possible Revision of Arizona Universal Service Fund Rules, Article 12 of the*
22 *Arizona Administrative Code*, Docket No. RT-00000H-97-0137; T-00000D-00-0672, August 14,
23 2007 (emphasis added).

24 AT&T inappropriately captioned its comments filed on January 23, 2009, to include
25 Qwest's Price Cap Plan, Docket No. T-01051B-03-0454. For the reasons stated above, AT&T's
26 pleading should be struck from the record. This phase of the proceeding is for all carriers other
than Qwest. AT&T's citation to the consolidation of Qwest's Price Cap Plan docket with the

1 Access Charges docket overlooks the fact that the Access Charges docket was bifurcated and
2 Phase I of the docket involving Qwest has been resolved.

3 AT&T's filing and comments are not only procedurally out of place—they are
4 unsupportable. Despite the fact that AT&T argued for bifurcation of the Access Charges docket
5 into two phases, one phase specifically examining Qwest's access charges (Phase I) and another
6 for all other LECs (Phase II), AT&T voluntarily withdrew from the Phase I proceeding, long
7 before it was concluded, by motion which was granted by the Commission. Notice of
8 Intervention, Docket No. T-00000D-00-0672, November 10, 2004. Because AT&T quit the
9 case, it should not be heard to complain that the Phase I access reductions were not adequate.

10 Apart from of the procedural violations, AT&T's urging to revisit Qwest's access charges
11 addresses the wrong problem with access charges. Qwest's intrastate switched access rates are
12 the lowest in Arizona. Qwest has reduced its Arizona switched access charges time and time
13 again. The following illustrates the amounts of access charge reductions Qwest has undertaken
14 in relation to other carriers since the Commission opened it investigation into the cost of
15 telecommunications access:

16
17 **Qwest**

18 Date	Amount	Order No.
19 4-1-01	\$5.0 M	63487
20 4-1-02	\$5.0 M	63487
21 4-1-03	\$5.0 M	63487
22 4-1-06	<u>\$12.0 M</u>	68604
23 Total	\$27.0 M	

ILECs and CLECs

Date	Amount	Order No
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There have been no known or quantifiable
access reductions for any ILEC or CLEC
in Arizona during this time frame.¹

24
25
26 ¹ Cox filed a tariff to restructure its access rates on 11/21/05. However, the amount of reduction
in intrastate access charges, if any, could not be verified from Cox's filing.

1 None of the other ILECs in the state have reduced their access charge tariff rates, even though
2 they are substantially higher than Qwest's.

3 The rates charged by Cox present a stark example of why the LECs other than Qwest
4 should be examined. The local switching element of Cox's terminating switched access rate is
5 \$0.034 per minute, more than double Qwest's rate of \$0.016 per minute. Cox is the largest
6 competitive local exchange carrier in the state, and has eclipsed Qwest's market share in
7 residential and small business services in the Phoenix metropolitan area.

8 It makes little sense to revisit the oft-before visited level of Qwest's switched access rates
9 when those rates are already the lowest, and Qwest is not a monopoly provider. Indeed, Qwest's
10 rate has been described in the Phase II Access Charges Docket as the "target" for reductions
11 other carriers should make. As Verizon states in the Phase II proceeding, "As a starting point for
12 access reform in Arizona, all carriers rates should be reduced to Qwest's current intrastate levels
13 . . ." See Initial Comments of Verizon, Docket Nos. RT-00000H-97-0137 and T-00000D-00-
14 0672, October 7, 2008, page.2. AT&T's suggestion that the Commission turn once again to
15 scrutiny of Qwest's access charges before any reform of the other carriers' rates, is out-of-turn
16 and unfair. Phase II of the Access Charges docket must be completed next, as the Commission
17 contemplated when it bifurcated the docket.

18 Last, Qwest submits that AT&T has not demonstrated the urgency of its cause.
19 As Qwest has stated in a similar filing made in its Price Cap Plan Renewal, Qwest believes that
20 the Commission may not yet be fully informed of the complete history of AT&T's actions with
21 regard to switched access. Qwest Corporation Reply to the Response of AT&T
22 Communications, *In the Matter of Qwest Corporation's Filing of Renewed Price Regulation*
23 *Plan*, Docket No. T-01051B-03-0454. AT&T has entered into private agreements with some
24 CLECs for substantially discounted switched access rates. Beginning in 2004, the Minnesota
25 Public Utilities Commission conducted a series of investigations focused on the fact that
26 approximately 27 CLECs had entered into off-tariff, unfiled agreements in connection with their

1 provision of intrastate switched access services to selected IXCs, primarily AT&T. *See*
2 *Minnesota PUC Dockets C-04-235, C-05-1282 and C-06-498*. In the course of those
3 proceedings, a handful of the private agreements were made public. Those agreements are not
4 limited to the CLECs' provisioning of switched access in Minnesota, but are national in scope.
5 Qwest has reason to believe that similar agreements were entered between many CLECs in
6 Arizona and AT&T. Qwest believes, based on AT&T's own public comments in the Minnesota
7 pleadings, that AT&T's practice was widespread and not limited to the 27 CLECs identified in
8 the Minnesota proceedings. In fact, AT&T explained, "[i]n the past four years or so, AT&T has
9 entered into hundreds of agreements based on the same form with CLEC providers of switched
10 access throughout the United States." *See AT&T Comments, Motion to Dismiss and Motion for*
11 *Summary Judgment, Docket C-04-235 (MN PUC, Aug. 19, 2004)(underline added)*. In addition,
12 based on correspondence received from Cox in March 2008, Qwest believes that AT&T and Cox
13 have entered into one or more agreements that provide "discounts on Intrastate switched access
14 services based on volume purchases of special access services." Qwest submits that these
15 private agreements between CLECs and AT&T discriminate against carriers that are charged the
16 tariffed rate. It is ironic that AT&T now comes back to the Commission to seek regulatory
17 resolutions after it has entered anti-competitive agreements such as those described above with a
18 number of CLECs.

19 In summary, AT&T's request that Qwest's switched access rates be reduced in this
20 proceeding is not properly before the Commission, and would not constitute sound public policy
21 for the reasons stated above. The Commission should strike AT&T Comments regarding
22 Qwest's rates, and Qwest's Price Cap Plan docket.

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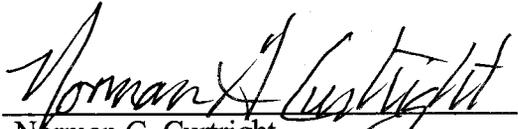
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RESPECTFULLY SUBMITTED this 28th day of January, 2009.

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2 **were filed this 28th day of January, 2009 with:**

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7 **COPY of the foregoing mailed**
8 **this 28th day of January, 2009 to:**

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