

**ORIGINAL**



**RECEIVED**

**BEFORE THE ARIZONA CORPORATION COMMISSION**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

**KRISTIN K. MAYES**  
Chairman  
**GARY PIERCE**  
Commissioner  
**PAUL NEWMAN**  
Commissioner  
**SANDRA D. KENNEDY**  
Commissioner  
**BOB STUMP**  
Commissioner

2009 FEB 18 P 4: 30  
AZ CORP COMMISSION  
DOCKET CONTROL

Arizona Corporation Commission  
**DOCKETED**  
FEB 18 2009

DOCKETED BY

**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  
COMMENTS REGARDING SCOPE OF  
PHASE II**

Pursuant to the Procedural Order dated February 3, 2009, Qwest Corporation ("Qwest") files comments on whether Qwest's intrastate access rates should be included as part of Phase II of the inquiry regarding access costs ("Access Charges Docket"), and on the scope of Phase II to include competitive local exchange carriers ("CLECs").

**INTRODUCTION**

Qwest opposes inclusion of its access rates in Phase II, for the reasons stated below. Qwest's intrastate access rates are already the lowest in the state, and have been reduced twice before. No other carriers' rates have been analyzed by the Commission. Qwest does not believe

1 that its access charges should be immune from analysis, but that no compelling rationale exists  
2 for Qwest's rates to be examined again in Phase II. Inclusion of Qwest in Phase II would  
3 contradict the Arizona Corporation Commission's previous actions splitting the docket into  
4 phases, and would subject Qwest to competitive harm because its switched access rates have  
5 already been reduced in Phase I. Further, there is no data available to the Commission upon  
6 which it may make a reasoned decision to reverse the course it set previously. Inclusion of  
7 Qwest's rates in Phase II will only slow down progress on that Phase, which was intended to  
8 address all carriers other than Qwest. The interexchange carriers (IXC's) have not demonstrated  
9 the urgency of their cause. The IXCs signed off on the resolution of the access charge reduction  
10 for Qwest in Phase I, and all of them ignored Phase II for years. The Commission should  
11 proceed with Phase II as originally planned, including an examination of the rates of CLECs,  
12 which now are powerful competitors handling significant amounts of access traffic.

13  
14 **A. The Commission's Plan for Comprehensive Review, Which Split the Investigation**  
15 **Into Two Phases, Should be Implemented as Planned.**

16  
17 The Access Charges Docket had languished for approximately three years until the  
18 Commission split the proceeding into two Phases. (Procedural Order, November 17, 2003).  
19 Phase I was ordered to consider access charges in combination with the review of Qwest's Price  
20 Cap Plan. Phase II was supposed to consider access charges for all other telephone carriers that  
21 provide access services. Phase I was completed by the Commission, when the Commission  
22 approved Qwest's Renewed Price Cap Plan. Decision No. 68604. As stated by the Procedural  
23 Order entered in these dockets dated December 19, 2008:

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

1 It is telling that the resolution of the access charges issue in Phase I does not provide that further  
2 analysis of Qwest's access charges should be undertaken in Phase II, or otherwise.

3 The Commission determined that it would address all carriers other than Qwest in Phase  
4 II. This bifurcation was urged by the Commission Staff, ALECA, CLECs, and AT&T. The  
5 access charges regimes of Qwest and all other carriers have been treated separately since then,  
6 and no party has suggested that there was not a separate track, until AT&T made its last-filed  
7 comments.

8 In AT&T's Comments filed January 26, 2009, and in the statements of its counsel at the  
9 Procedural Conference on January 29, 2009, AT&T attempted to suggest that the bifurcation  
10 order has somehow been superseded or undone by the consolidation of Qwest's Price Cap Plan  
11 with Phase I of this docket. AT&T's suggestion is not supported by the procedural record. The  
12 order of the Commission consolidating the Price Cap Plan docket with the Access Charges  
13 Docket is the Procedural Order dated November 17, 2003 that bifurcated the Access Charges  
14 Docket into separate phases. Thus, it is obviously wrong to consider that the Price Cap Plan  
15 docket is consolidated with the Access Charges Docket for any purposes other than for the  
16 separate Phase I proceeding, which is over. AT&T's citation to the "Commission records" is a  
17 flawed reference and does not lend any support to the notion that Qwest's Price Cap Plan and  
18 Phase II of the Access Charges Docket are already consolidated.<sup>1</sup>

19 AT&T's interpretation of the Procedural Order that bifurcated the Access Charges  
20 Docket into Phases I and II further attempts to revise history by suggesting that although there  
21 were two phases, they were meant to be conducted "in the context of different, but consolidated  
22 proceedings." AT&T Comments, p. 3, lines 16-20. That is a strange interpretation, requiring us  
23

---

24 <sup>1</sup> AT&T stated that it was quoting "directly from the Commission records" (Proc. Conf. TR 29:9-  
25 15) that: "Per Decision No. 67047, dated 6/18/04 T-01051B-03-0454 and T-0000D-00-0672 are  
26 CONSOLIDATED." However, investigation reveals that the "Commission records" AT&T  
refers to is merely an unofficial navigational aid in the Commission's E-Docket system. As it  
turns out, the note is incorrect. A complete reading of Decision No. 67047 reveals that the  
Decision does not address the consolidation of the two dockets.

1 to believe that the Commission bifurcated the proceedings and in the same order consolidated  
2 them for purposes of testimony and hearings. No subsequent proceeding or order of the  
3 Commission, or other pleading by AT&T or any other party, supports that interpretation.

4 Ultimately, AT&T confuses two different procedural questions. AT&T states that Qwest  
5 is part of this proceeding, but does not differentiate that this proceeding has been split into two  
6 parts, by design. Qwest's part, Phase I, has been completed, and Phase II is for the other carriers.

7  
8 **B. No Compelling Rationale or Data Have Been Provided for Including Qwest's Access**  
9 **Charges For a Possible Third Round of Reductions, While Other Carriers Rates**  
10 **Have Remained Untouched To-Date**

11 The Commission deliberately determined that the Access Charges Docket should be  
12 bifurcated between Qwest and all other carriers, as shown above. Before that determination  
13 should be reversed, there should be some compelling reasons established. The reasons stated by  
14 AT&T fall well short of compelling, and do not address any of the reasons why the Docket was  
15 bifurcated in the first instance.

16  
17 1. **Qwest's Intrastate Switched Access Rates Have Been Reduced Time and Again,**  
18 **While No Other Carriers' Rates, All of Which Are Higher, Have Been Reduced**

19  
20 Qwest's intrastate switched access rates are the lowest in Arizona. Qwest has reduced its  
21 Arizona switched access charges time and time again. The following illustrates the amounts of  
22 access charge reductions Qwest has undertaken in relation to other carriers since the Commission  
23 opened its investigation into the cost of telecommunications access:  
24  
25  
26

1 **Qwest**

**ILECs and CLECs**

2 Date Amount Order No.

3 4-1-01 \$5.0 M 63487

4 4-1-02 \$5.0 M 63487

5

6 4-1-03 \$5.0 M 63487

7 4-1-06 \$12.0 M 68604

8 Total \$27.0 M

Date Amount Order No

There have been no known or quantifiable access reductions for any ILEC or CLEC in Arizona during this time frame.<sup>2</sup>

9

10 None of the other LECs in the state have reduced their access charge tariff rates, even though

11 they are substantially higher than Qwest's.

12 It makes little sense to revisit the oft-before visited level of Qwest's switched access rates

13 when those rates are already the lowest, and Qwest is not a monopoly provider of local services.

14

15 2. Commenters Have Previously Suggested that the Objective of Phase II Should Be

16 For the Other Carriers to Reduce Their Access Charges to Qwest's Level;

17 Including Qwest in Phase II Will Only Create A Greater Disparity and Increase

the Size of the Problem for Other Carriers

18 As noted above, Qwest's rate is lower, sometimes substantially lower than the other

19 carriers. Qwest's access rates have been described in the Phase II Access Charges Docket as the

20 "target" for reductions other carriers should make. As Verizon states in the Phase II proceeding,

21 "As a starting point for access reform in Arizona, all carriers rates should be reduced to Qwest's

22 current intrastate levels . . ." See Initial Comments of Verizon, Docket Nos. RT-00000H-97-

23 0137 and T-00000D-00-0672, October 7, 2008, page.2. Reaching that lower rate will be

24 difficult, as was recognized by the Staff when it proposed bifurcation of the Docket. At that

25

26 <sup>2</sup> 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 time, the Staff observed that there are significant differences between Qwest and the independent  
2 telephone companies. Among other differences, the independents' access charges comprise a  
3 significantly larger percentage of the independents' revenues. Procedural Order, Nov. 17, 2003,  
4 p. 3, lines 7-8. ALECA concurred, and asserted that by and large the independents have higher  
5 average loop costs, and that the potential impact of access rate reductions on the independent  
6 carriers is substantially greater than is the case of Qwest. ALECA Comments, November 4,  
7 2003, p. 2. If Qwest's rates are the target that the other companies should strive to meet, further  
8 reductions in Qwest's rates will only make the challenge for those companies even harder.

9  
10 3. Combining Qwest's Access Charges Investigation With the Phase II Proceeding  
11 Will Diffuse the Focus and Increase the Costs of the Phase II Proceeding

12 When it urged the Commission to bifurcate the Access Charges Docket, ALECA made  
13 the point that the dissimilarities between Qwest and the independent carriers supported  
14 bifurcation. ALECA argued that separate serial phases were necessary to assure that the parties'  
15 attention was properly focused on the particular issues of the independents. ALECA Comments,  
16 November 4, 2003, p. 2. Qwest believes that there is still merit in that concern. There are still  
17 meaningful differences between the average loop costs of the independents as a whole and  
18 Qwest, and the impact of access rate reductions on the independents will be proportionately  
19 greater to them.

20 In 2003 ALEC also was concerned that requiring the independents to participate in a  
21 consolidated proceeding, as compared to a phased proceeding, would require the independents to  
22 needlessly incur additional costs. ALECA Comments, November 4, 2003, p. 3. There is no  
23 reason to think that concern will have changed.

24  
25 4. Qwest's Access Charges Revenues Have Declined Significantly in Amount and  
26 In Proportion to All Access Charges Assessed by LECs In Arizona

1           When the Access Charges Docket was bifurcated, a primary reason was the belief that  
2 “the vast majority of traffic for interexchange carriers is handled by Qwest.” Procedural Order,  
3 November 17, 2003, p. 3, lines 11-12. Since 2003, however, major changes have occurred in the  
4 competitive landscape for local exchange services in Arizona. In Qwest’s local service areas  
5 competition has flourished in all segments. In the Phoenix market, for example, it is well  
6 accepted that Cox Telcom is matching Qwest’s customer counts.

7  
8           5.       The End of Qwest’s Current Three Year Price Cap Plan Does Not Cause  
9                   Qwest’s Access Rates to Revert to Pre-Price Cap Plan Levels or Provide Any  
10                   Other Basis for Hastened Review of Qwest’s Access Charges

11           Qwest’s current Price Cap Plan is nearing the end of its initial three year term. AT&T  
12 has seized upon that to lend support to its demand that Qwest’s access charges must be analyzed  
13 again, out-of-turn. However, AT&T’s arguments are based on a flawed understanding of the  
14 Price Cap Plan and Qwest’s request for extension of that Plan.

15           First, Qwest’s Price Cap Plan is not expiring, as AT&T has suggested. According to its  
16 terms, Qwest has the option of applying for the Plan to be extended. Qwest has done that,  
17 having filed its request for extension in June, 2008.

18           Second, the Price Cap Plan provides that at the end of the initial three year period, it  
19 continues in effect until the Commission acts. Thus, while Qwest’s request for extension of the  
20 Plan is pending, the Plan does not end.

21           Third, the section of the Price Cap Plan Settlement Agreement regarding access charges  
22 reduction provides that “This shall be a permanent reduction in Switched Access Charges.”  
23 Price Cap Plan Settlement Agreement, para. 8. Thus Qwest’s access charges may not be  
24 increased again. AT&T’s fears are unfounded.

25           Because the end of the initial period of Qwest’s Price Cap Plan does not jeopardize the  
26 access charge reductions that have already been taken to Qwest’s rates, there is not any urgency

1 created, and no cause to inject Qwest to the Phase II proceeding.

2

3 6. The IXC's Argument to Include Qwest in Phase II Cannot Overcome the  
4 Unfairness of Their Proposal

5 Subjecting Qwest to another round of access charge reductions is simply unfair, in light  
6 of the facts stated above. Qwest's rates are already the lowest; the amount of access traffic  
7 Qwest handles has diminished while other carriers have increased proportionately. The  
8 Commission set a procedural course for comprehensive examination of the access charges of all  
9 carriers, but only accomplished the mission as it relates to Qwest. Bluntly, it is not Qwest's turn.  
10 However, in balancing the equities, the Commission should also consider the actions and  
11 inactions of the largest IXCs, and particularly of AT&T, which is the company that has proposed  
12 including Qwest in Phase II. AT&T's years-long inattention to the access charge reform dockets  
13 in Arizona does not merit the granting of its latent wishes for immediate action on Qwest's rates.

14 Despite that fact that it argued for bifurcation of the Access Charges Docket into two  
15 phases, AT&T voluntarily withdrew from the Qwest Phase, long before it was concluded.  
16 Notification of Intervention, Docket No. T-00000D-00-0672, November 10, 2004. Because  
17 AT&T quit the case, it should not be heard to complain that the Phase I access reductions were  
18 not adequate. Further, not only did AT&T decamp from the Phase I proceeding involving  
19 Qwest, but neither it nor any of the IXCs did anything to advance the Phase II proceeding  
20 involving the other LECs, until the docket was consolidated with the AUSF proceeding in 2007.  
21 The passage of time in this case does not mean that the cause is now urgent; rather it shows that  
22 the IXCs didn't care enough to move it forward.

23

24 **C. The Access Charges Investigation Should Now Focus on Independents and CLECs –**  
25 **As Originally Envisioned by the Procedural Bifurcation Established By the Commission**

26

1 As established above, there is not a compelling reason to include Qwest in Phase II of the  
2 Access Charge Docket. On the other hand, there has been long-standing recognition that the  
3 access charge regime is ripe for reform with respect to the independents. As has been noted, the  
4 independents tend to rely on access charge revenues more, and overall their rates for intrastate  
5 and interstate switched access are higher than Qwest's. Phase II should go on as planned, for the  
6 independents.

7 However, Qwest respectfully submits that the CLECs must also be included in Phase II.  
8 As noted above, the rates for many CLECs are also higher than Qwest's. Qwest's total minutes  
9 of use have steadily declined as competition takes more of Qwest's market share. While some of  
10 the minutes are going to wireless or VoIP technologies, CLECs are handling an increased  
11 number of exchange access minutes in proportion to the total. As the parties have stated, the  
12 CLECs access charge rates are generally higher than Qwest's, some significantly so. These  
13 higher access charges are implicit subsidies to those providers, permitting local services to be  
14 offered below cost, and putting competing providers like Qwest, who have lowered their access  
15 charges, in unfair competitive peril. The market should determine success between among  
16 competitors, not unbalanced rate regulation.

17  
18 **D. Data Requests**

19  
20 At the last Procedural Conference, AT&T pressed for data requests to be made that are  
21 designed to obtain carrier-specific details on access charges on incumbent carriers. For the  
22 reasons discussed above, obtaining access charge data from incumbent carriers will only obtain a  
23 fragment of the whole picture, and will not fulfill the objectives the Commission set out to  
24 achieve—a comprehensive investigation. To gain an understanding of what needs to occur in  
25 these dockets, there should be data requests that are designed to determine how the various  
26 wireline carriers in all categories compare with regard to minutes of use of originating and



1 Christopher Kempley, Chief Counsel  
2 Arizona Corporation Commission  
3 Legal Division  
4 1200 West Washington Street  
5 Phoenix, AZ 85007  
6 ckempley@cc.state.az.us

Maureen A. Scott, Esq.  
Legal Division  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, AZ 85007  
[msscott@cc.state.az.us](mailto:msscott@cc.state.az.us)

5 Michael W. Patten  
6 Roshka Heyman & DeWulf, PLC  
7 400 E. Van Buren Street, Suite 800  
8 Phoenix, AZ 85004  
9 mpatten@rhd-law.com

Thomas Campbell  
Michael Hallam  
Lewis and Roca LLP  
40 North Central Avenue  
Phoenix, AZ 85004  
Attorneys for Verizon  
[tcampbell@lrlaw.com](mailto:tcampbell@lrlaw.com)  
[mhallam@lrlaw.com](mailto:mhallam@lrlaw.com)

10 Mark A. DiNunzio  
11 Cox Arizona Telcom, LLC  
12 MS: DV3-16, Bldg. C  
13 1550 West Deer Valley Road  
14 Phoenix, AZ 85027  
15 Mark.dinunzio@cox.com

Scott Wakefield, Chief Counsel  
Residential Utility Consumer Office (RUCO)  
1110 West Washington Street, Suite 220  
Phoenix, AZ 85007  
[sakefield@azruco.gov](mailto:sakefield@azruco.gov)

14 Jeffrey Crockett  
15 Bradley S. Carroll  
16 Snell & Wilmer, LLP  
17 One Arizona Center  
18 Phoenix, AZ 85004  
19 Attorneys for ALECA  
20 [jcrocket@swlaw.com](mailto:jcrocket@swlaw.com)  
21 [bcarroll@swlaw.com](mailto:bcarroll@swlaw.com)

Michael M. Grant  
Gallagher & Kennedy  
2575 East Camelback Road  
Phoenix, AZ 85016  
Attorneys for AT&T  
[mmg@gknet.com](mailto:mmg@gknet.com)

19 Dan Foley  
20 Gregory Castle  
21 AT&T Nevada  
22 645 E. Plumb Lane, B132  
23 P.O. Box 11010  
24 Reno, NV 89520  
25 [Dan.foley@att.com](mailto:Dan.foley@att.com)  
26 [Gc1831@att.com](mailto:Gc1831@att.com)

Charles H. Carrathers, III  
General Counsel South Central Region  
Verizon, Inc.  
HQE03H52  
600 Hidden Ridge  
Irving, TX 75015-2092  
[Chuck.carrathers@verizon.com](mailto:Chuck.carrathers@verizon.com)

1 Arizona Dialtone, Inc.  
2 Thomas W. Bade, President  
3 717 W. Oakland Street  
4 Chandler, AZ 85226  
5 [tombade@arizonadialtone.com](mailto:tombade@arizonadialtone.com)

Joan S. Burke  
Osborn Maledon, PA  
2929 North Central Avenue, Suite 2100  
Phoenix, AZ 85012  
Attorneys for Time Warner Telecom  
[jburke@omlaw.com](mailto:jburke@omlaw.com)

5 OrbitCom, Inc.  
6 Brad VanLeur, President  
7 1701 N. Louise Avenue  
8 Sioux Falls, SD 57107  
9 [bvanleur@svtv.com](mailto:bvanleur@svtv.com)

Lyndall Nipps  
Vice President, Regulatory  
Time Warner Telecom  
845 Camino Sur  
Palm Springs, CA 92262  
[Lyndall.nipps@twtelecom.com](mailto:Lyndall.nipps@twtelecom.com)

9 Karen E. Nally  
10 Moyes Sellers & Sims, Ltd.  
11 1850 N. Central Avenue, Suite 1100  
12 Phoenix, AZ 85004  
13 [kenally@lawns.com](mailto:kenally@lawns.com)

Dennis D. Ahlers  
Associate General Counsel  
Eschelon Telecom, Inc.  
6160 Golden Hills Drive  
Golden Valley, MN 55416-1020  
[ddahlers@eschelon.com](mailto:ddahlers@eschelon.com)

13 Nathan Glazier  
14 Regional Manager  
15 Alltel Communications, Inc.  
16 4805 E. Thistle Landing Drive  
17 Phoenix, AZ 85044  
18 [Nathan.glazier@alltel.com](mailto:Nathan.glazier@alltel.com)

Dennis D. Ahlers  
Associate General Counsel  
Integra Telecom, Inc.  
6160 Golden Hills Drive  
Golden Valley, MN 55416  
[ddahlers@eschelon.com](mailto:ddahlers@eschelon.com)

19   
20 \_\_\_\_\_